



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

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

Consultation by Graham Simpson MSP, Member for Central Scotland

19 January 2022

## Contents

- Page 3: Foreword by Graham Simpson MSP**
- Page 8: How the consultation process works**
- Page 10: Aim of the proposed Bill**
- Page 10-16: Background
  - Page 16-33: Detail of the proposed Bill
  - Page 33-41: Questions
- Page 42: How to respond to this consultation**

# Foreword



Members of the Scottish Parliament (MSPs) are firstly and lastly public servants.

They are elected to represent their constituents for a five-year term and, at the end of their tenure, voters take a view on their record and decide whether they are worthy of re-election.

However, I consider the existing checks and balances on members' performance in their role during those five years to be insufficient. Unlike many other professions, MSPs are not subject to performance reviews. In any other workplace there would be processes to manage poor attendance, which could ultimately see someone lose their job. At present, there are very limited circumstances where an MSP is required to vacate office. In relation to prison sentences, only when an MSP is sentenced to more than a year in prison are they required to do so.<sup>1</sup>

Councillors are bound by a law that, if they fail to attend council meetings for six consecutive months, they can lose their job. There is no such mechanism for MSPs.

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<sup>1</sup> Under [section 15 of the Scotland Act 1998](#) (read in conjunction with the provisions of the [House of Commons Disqualification Act 1975](#)), there are other examples of disqualification from membership of the Scottish Parliament. For example, judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures are disqualified from being members of the Scottish Parliament. Section 15 of the 1998 Act also provides that any individual disqualified from membership of the House of Commons is prevented from being a member of the Scottish Parliament. This would include, for example, any individual who has been declared bankrupt (see [section 427 of the Insolvency Act 1986](#)).

This anomaly was brought into stark focus during the last parliamentary session when Derek Mackay resigned from his role as Cabinet Secretary for Finance, Economy and Fair Work.

He remained as an MSP however, for 15 months, as far as I am aware, he did not attend another meeting of the Parliament, or take part in any votes, despite measures for remote attendance and voting making both of these things straightforward.

Mr Mackay was able to see out his term as an MSP and continued to collect his salary and some expenses.

This was widely recognised as being an unacceptable situation and several MSPs said that Mr Mackay should have had to resign his seat. Yet, there was no lever available to either parliamentarians or the public to remove him from office as an MSP.

In any local authority, a member who failed to attend meetings for six consecutive months could automatically be removed from office, unless the failure was due to some reason approved by the relevant council. The relevant provisions for this process are set out in section 35 of the Local Government (Scotland) Act 1973.<sup>2</sup>

An MP can be suspended from the House of Commons and subsequently be removed through a by-election called using the Recall of MPs Act 2015.<sup>3</sup> This process is known as “recall” and enables constituents to bring forward a petition for recall if certain grounds are met. There are a number of grounds, including parliamentary sanctions or prison sentences, which would trigger such a petition to begin this process. Further background information on this process is available in the House of Commons Library research briefing, *Recall Elections* (9 November 2021).<sup>4</sup> There is presently no such process for MSPs.

That is why my party called for the passing of a law in its 2021 Scottish Parliament Election manifesto so that MSPs who do not carry out the key elements of the job that they were elected to do can be removed.

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<sup>2</sup> [Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>3</sup> [Recall of MPs Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>4</sup> [Recall elections - House of Commons Library \(parliament.uk\)](https://parliament.uk)

And that is why I am beginning the process of developing a Member's Bill on establishing processes to achieve this.

I believe the proposals in this document would strengthen the integrity of the democratic process by ensuring that the full and proper representation of constituents can be maintained throughout every parliamentary session. I believe that these proposals would contribute towards improving the powers of the Parliament by ensuring that MSPs can be removed and replaced during the course of a parliamentary session.

The **first element** of my proposal is based on [section 35 of the Local Government \(Scotland\) Act 1973](#). This would enable an MSP to be removed from office automatically due to a lack of participation in proceedings at Parliament, unless there was a valid reason provided, such as maternity leave or ill health.

The **second element** of my proposal is to strengthen 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.

I believe that this is far too high a bar and could mean that members who commit serious offences can continue in office. Bill Walker, the former MSP for Dunfermline, was convicted of 23 charges of assault and one of breach of the peace in August 2013, yet was sentenced to just a year in prison. If he had not resigned then the Parliament would have had no power available to it to remove him and, consequently, the people of Dunfermline would have been represented for a year by an MSP in jail.

In light of this, I am also proposing to legislate so that receiving a sentence of one year or less would mean that an MSP would automatically be removed from office. This will ensure that members convicted of serious crimes cannot continue in their role.

The **third element** of my proposal is to consider establishing a system of recall for MSPs. As mentioned above, 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<sup>5</sup>. At present, only MPs can be recalled. Further background on recall can be found in the House of Commons Library research briefing, *Recall Elections* (9 November 2021).<sup>6</sup>

Currently, the only opportunity for the electorate to decide who is elected to represent them in the Scottish Parliament is every five years. There is no opportunity to seek to replace an MSP where there is a notable issue with how they fulfil their role as a parliamentarian, or where their conduct separate to their working life notably impacts on their ability to be an MSP.

In relation to recall, different countries have different approaches. The Scottish Parliament Information Centre (SPICe) produced a very useful piece of research for me that focuses on international examples of recall. I have posted this on my website and you can read it here:

<https://www.grahamsimpson.org.uk/spice-research-briefing>

I want to be clear at the outset that, while I am very interested in introducing a process for recall of MSPs, I would only pursue this element of my proposed Bill if I can establish a process for recall that is practical and treats regional and constituency MSPs fairly. I include information later in this document as food for thought on how such a process could be approached, based on a number of international examples. However, I would very much welcome insight from respondents to this consultation on what a workable recall system for MSPs could look like.

My proposed bill is not intended to be political. In all parties, the vast majority of parliamentarians go into politics with the intention of serving their constituents dutifully and to the best of their ability. However, in all parties, there are examples where representatives have abused their position or have failed to meet the standards that the public have a right to expect, be they in the UK Parliament, Scottish Parliament or in local government.

I look forward to hearing from the public, interested stakeholders and my parliamentary colleagues on these proposals.

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<sup>5</sup> Conditions could include imprisonment, exclusion from the Parliament for a certain length of time or conviction.

<sup>6</sup> [Recall elections - House of Commons Library \(parliament.uk\)](#)

Graham Simpson MSP

19 January 2022

## How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<https://parliament.scot/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.



Additional copies of this paper can be requested by contacting me on 0131 348 6983 or at [graham.simpson.msp@parliament.scot](mailto:graham.simpson.msp@parliament.scot)

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website at under Parliamentary Business / Bills / [Proposals for Members' Bills](#) or here at /MSP-removal-from-office

# Aim of the Proposed Bill

## Background

### **Role of an MSP**

The Consultative Steering Group on the Scottish Parliament ("[CSG report](#)") (pp21-22) sets out in its report from January 1999 a series of principles by which MSPs are expected to abide, when working in Parliament and in their constituencies or their regions. These principles, based on the report of the Nolan Committee on Standards in Public Life, remain relevant today:

- Members have a duty to uphold the law and to act in accordance with the public trust placed in them; and a duty to act in the interests of the Scottish Parliament as a whole and the public it serves.
- Members have a duty to be accessible to their constituents. Members should consider carefully the views and wishes of their constituents; and, where appropriate, help ensure that constituents are able to pursue their concerns.
- Members should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- Members should not place themselves under any financial or other obligation to any individual or organisation that might influence them in the performance of their duties.
- Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Members should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands. Where a Member has received information in confidence, or where disclosure of information might breach an individual's privacy, that confidence or privacy should be respected, unless there are overwhelming reasons in the wider public interest for disclosure to be made.

- Members remain responsible for any decision they take. In carrying out public business Members should consider issues on their merits taking account of the views of others.
- Members are accountable for their decisions and actions to the Scottish people and should submit themselves to whatever scrutiny is appropriate to their office.
- Members should promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of Members in conducting public business.”

[Section 7](#) of the Guidance accompanying the Code of Conduct for Members of the Scottish Parliament sets out standards to which MSPs are expected to adhere. The introduction to that section states:

“Members of the Scottish Parliament (MSPs) are accountable to the Scottish electorate who will expect them to carry out their Parliamentary duties in an appropriate manner consistent with the standing of the Parliament and not to engage in any activity as a member that would bring the Parliament into disrepute.”

### **Current legislation at local authority level – vacation of office due to lack of attendance at council meetings**

[Section 35 of the Local Government \(Scotland\) Act 1973](#) requires that a councillor vacates their office if they fail to attend council meetings for a period of six consecutive months. This includes any committee or sub-committee of the council. The council can approve the councillor’s absence in the event of a valid reason, such as illness or maternity leave. This approval means they can continue in office, even if they do not attend a council meeting for six months.<sup>7</sup> This legislation has been used recently, with Glasgow City Council removing two of its members on 11 and 27 January 2021 respectively.<sup>8</sup> Section 35 is reproduced in full below:

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<sup>7</sup> *Local Government (Scotland) Act 1973*, Section 35 [link](#).

<sup>8</sup> Tony Curtis vacated office on 11 January 2021 (report available at : <https://www.bbc.co.uk/news/scotland-scotland-politics-55619795>). James Coleman vacated office on 27 January 2021 (report available at: <https://www.glasgowtimes.co.uk/news/19043027.long-serving-labour-councillor-sacked-non-attendance/>)

### **35 Vacation of office by failure to attend meetings.**

(1) Subject to subsections (2) to (4) below, if a member of a local authority fails throughout a period of six consecutive months to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority, cease to be a member of the authority.

(2) Attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, and attendance as representative of the authority at a meeting of any body of persons, shall be deemed for the purposes of subsection (1) above to be attendance at a meeting of the authority.

(3) A member of any branch of Her Majesty's naval, military or air forces when employed during war or any emergency on any naval, military or air force service, and a person whose employment in the service of Her Majesty in connection with war or any emergency is such as, in the opinion of the Secretary of State, to entitle him to relief from disqualification on account of absence, shall not cease to be a member of a local authority by reason only of a failure to attend meetings of the local authority if the failure is due to that employment.

(4) The absence of a member of a local authority from a meeting of the authority during a period of suspension imposed on the member under section 103F or 103G of this Act or section 19 or 21(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) is not, for the purposes of this section, a failure to attend the meeting."

For MSPs and MPs there is no disqualification provision for non-attendance. In theory, they could fail to attend any meeting of parliament or its committees throughout a parliamentary session and remain in post.

## **Current legislation on vacation of office due to imprisonment - MSPs**

The Representation of the People Act 1981 sets out that an MP would be disqualified from their position if they were sentenced to prison for more than one year.<sup>9</sup>

This requirement is in effect applied to MSPs via section 15(1)(b) of the Scotland Act 1998 (sections 15 to 17 deal with disqualification and its effects). In addition, the Scotland Act 2016 extended the Scottish Parliament's powers to modify the Scotland Act in the area of the Parliament regulating its own affairs, to include the Scotland Act provisions on term of office and disqualification.

The provisions on disqualification as a result of a prison sentence received focus when Bill Walker was convicted in 2013.<sup>4</sup> He was sentenced to one year in prison, just below the threshold set out above that would have led to him being disqualified from holding office as an MSP. Therefore, Mr Walker did not need to resign, even after a Scottish Parliament motion was passed calling for him to resign<sup>5</sup>.

When reviewing what the minimum prison sentence should be to remove an MSP from office I have considered whether:

- an individual convicted of a criminal offence of sufficient seriousness to receive a prison sentence should be able to hold public office;
- such an individual is entitled to be funded by taxpayers when they are not performing their role as an MSP; and
- an MSP's constituents can reasonably expect, in voting in a general election, that the successful candidate will actively represent them throughout the entire parliamentary session.<sup>10</sup>

## **Recall of MPs Act 2015**

Oversight of the performance of MPs was significantly strengthened in the UK Parliament with the passing of the Recall of MPs Act 2015.<sup>11</sup> This

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<sup>9</sup> *Representation of the People Act 1981*, [link](#).

<sup>10</sup> *BBC*, 7 September 2013, [link](#).

<sup>11</sup> [Recall of MPs Act 2015 \(legislation.gov.uk\)](#)

meant that voters in a constituency could trigger a by-election if at least 10% of them signed a recall petition within six weeks. Previously, under the Parliamentary Standards Act 2009<sup>12</sup>, the ability to have a recall petition was only triggered if an MP received a custodial sentence, was barred from Parliament for 10 sitting days or 14 calendar days or was convicted.

The 2015 Act does not apply to MSPs. I know there are mixed views on whether such a system could work in Scotland. This consultation considers in detail below the distinct nature of the electoral system in Scotland, specifically the existence of regional and constituency seats and the extent to which the Recall of MPs Act could be mirrored for the Scottish Parliament. This consultation also looks at international examples to inform thinking on what a system tailored to Scotland could look like in practice, where it is not possible or preferable to mirror the UK Parliament recall system. This is an area where views gathered through consultation would be very valuable in considering whether to take forward this element of the proposed bill.

As set out in this consultation, it is my belief that there are some circumstances where the need for an MSP to be removed from office are pretty clear cut. In these circumstances, requiring a judgment call from the electorate on whether to have an election to assess whether a member can retain their seat is an unnecessary process. For example, where an MSP is not completing key elements of their role (element one of my proposal) or receives a prison sentence under element two. On that basis, my proposal deliberately diverges from certain elements of the Recall of MPs Act.

## **Existing checks and balances on MSPs**

### **MSPs Code of Conduct**

The [MSPs Code of Conduct](#) sets out the requirements for members when they are acting as members of the Parliament. Complaints can be made by any individual against any member<sup>13</sup>. Most of the sections of the Code require the [Commissioner for Ethical Standards in Public Life in Scotland](#) to formally investigate admissible complaints against members. Among other

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<sup>12</sup> [Parliamentary Standards Act 2009 \(legislation.gov.uk\)](#)

<sup>13</sup> Complaints made against Government ministers, when acting in their capacity as ministers, are considered under the Scottish Government Ministerial Code

matters, this includes complaints relating to paid advocacy, and declaration and registration of financial interests.

Complaints under some sections of the Code fall to the [Presiding Officer](#) or other elements of the Parliament to investigate, such as the [Scottish Parliamentary Corporate Body](#). Serious complaints, for example where criminal behaviour is suspected, might be referred to the Crown Office and Procurator Fiscal by the Commissioner.

There are different parliamentary sanctions available where MSP conduct issues arise. Paragraphs 52 to 70 of [the Guidance on the Code of Conduct](#) set out the sanctions applicable under the Interests of Members of the Scottish Parliament Act 2006 ([sections 15 to 17A](#)). Potential existing sanctions for breach of this legislation include:

- Restriction on participating in proceedings of the Parliament in relation to specific matters (where an interest hasn't been registered) (S15).
- Exclusion from proceedings of the Parliament (S16).
- A fine of up to level 5 on the standard scale (£10,000) (S17).
- Withdrawal of use of services and facilities of the Parliament (S17A).
- Removal of salary and allowances for period of exclusion from the Parliament (S17A).

With the exception of the level 5 fine (which would require a report to the Procurator Fiscal and criminal proceedings), the above sanctions would follow a resolution of the Parliament on a motion of the Standards Procedures and Public Appointments Committee<sup>14</sup>.

The Parliament also has powers to withdraw rights and privileges from members further to Rule 1.7 of the Standing Orders, again on a motion of the Standards, Procedures and Public Appointments Committee. These have previously been used to exclude members for specific time periods.

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<sup>14</sup> [Standards, Procedures and Public Appointments Committee | Scottish Parliament Website](#)

## **Interaction of my proposals with existing checks and balances on MSPs**

My proposals would not impact on the operation of the current standards process. They do not seek to alter any of the specific rules in the Code on how members should conduct themselves when acting as parliamentarians.

The current checks and balances of the standards regime impose sanctions on a member during their time in office. My proposals sit above these measures as they enable removal from office entirely.

However, a system of recall for MSPs could potentially mean that sanctions imposed by Parliament as a result of a breach of the rules of the Code could become the basis for a recall petition being triggered.

## **Detail of the Proposed Bill**

I would be seeking in this Bill to make three substantial changes that would significantly tighten the rules. These would create processes for the removal from office of MSPs who:

- fail to participate sufficiently in formal parliamentary proceedings (which is a core element of the role of a parliamentarian);
- are imprisoned; or
- receive serious sanctions for breaching parliamentary rules.

### **Element one: Removing an MSP from office for a lack of participation in parliamentary proceedings**

As stated above, under section 35 of the Local Government (Scotland) Act 1973 a councillor who failed to attend council meetings for six consecutive months could automatically be removed from office, unless the failure was due to some reason approved by the council.

My Bill would seek to replicate elements of the current process for local authority councillors for MSPs. This would mean that MSPs who do not



take an active part in any formal public parliamentary meetings, be they of the whole parliament or its committees, for a set period automatically are removed from office unless they have provided a valid reason to Parliament in advance. I am suggesting the same period would apply for MSPs as is the case for councillors, six months. However, I am open to responses to this consultation that make the argument for alternative timescales.

### **How can participation be measured in practice?**

A key question in considering this is, what constitutes sufficient activity to indicate that a member is undertaking their role as a parliamentarian? Additionally, for this proposal to work in practice, which of these activities can be easily measured?

For example, while it is easy to monitor whether an MSP, who is not a minister, is lodging written parliamentary questions, I do not consider remotely lodging motions and written parliamentary questions alone to be a sufficient means of demonstrating that an individual is representing those whom they are elected to represent. Active participation in proceedings such as Chamber business or committee meetings is also an important element of the role that has to be undertaken by the individual themselves (as opposed to their staff lodging questions or motions on their behalf).

In my view, members can only be considered to be in attendance at the Parliament if they actively participate in formal parliamentary proceedings.

The COVID-19 pandemic required the Parliament to move to virtual proceedings for committees and for meetings of the Parliament as a whole. This involves either meetings to be entirely virtual with all members attending online, or hybrid meetings with some members participating remotely and others attending in person.

On that basis, the question of what constitutes active attendance at meetings of the whole Parliament or its committees is less straightforward than when all proceedings were conducted in person. Assuming virtual or hybrid proceedings continue to be used or continue to be an option as a format for parliamentary scrutiny, it is more challenging to define presence and participation. The ability to take part in meetings virtually does complicate matters as members could, in theory, log on, but say nothing

and do nothing at a meeting - and log on from anywhere in the world. This, in my view, does not constitute actively taking part in formal meetings.

Possible measures of active participation include votes cast by a member, either remotely or in person. While this is certainly active participation in Chamber proceedings and easily measurable, would a member who only voted on motions and amendments for a prolonged period be considered to be actively participating in parliamentary proceedings? Actively participating in proceedings would in my view include speaking in Chamber debates and asking questions in committee evidence sessions. Members speaking in public committee or chamber proceedings is also an easily measurable reflection of participation, with every contribution recorded in the substantially verbatim record of proceedings, which is known as the *Official Report*.

Another consideration is whether always attending virtually is sufficient for an MSP. Should a member be required to attend Chamber and/or committee proceedings in person, for example at least once every six months.? This consideration is of course dependant on the Parliament complex being open, which was not the case during periods of lockdown.

It is clear to me that, in the modern era of virtual proceedings, a rule that requires in-person attendance for every meeting of a committee or of the whole Parliament is not a practicable option. On that basis I cannot absolutely mirror the provisions of section 35 of the 1973 Act. In addition, in introducing a process for removal from office based on participation, I consider there is scope to create a more nuanced approach to defining participation than the approach taken in the 1973 Act.

For the purpose of generating discussion in responses on this issue, I am proposing that a member must, at least once every six months:

- Attend chamber business or public committee business in person;
- Lodge a written parliamentary question (if the member is not a Scottish Government minister);
- Speak in public proceedings in committee or in the chamber; and
- Vote on a motion or amendment in a meeting of the whole Parliament.

There may be other measurable ways of assessing whether a member of the Parliament is undertaking their duties at the Parliament and I am open to suggestions in responses to this consultation.

Of course, taking an active part in proceedings at the Parliament is only one core element of the role of a parliamentarian. Constituency or regional work is another crucial element. An MSP who does not actively work in and represent their constituency or region cannot reasonably be considered to be fulfilling their role. Constituency work takes a wide variety of forms, including surgeries and casework and also visits to local schools, businesses etc to fully understand the nature of the needs of a constituency or region.

I consider this element of an MSP's role to be more challenging to measure in terms of tangible indicators that MSPs are fulfilling their role. There are rules in the Code of Conduct that enable people to formally complain where they do not consider their MSP is fulfilling their role in their constituency or region, for example there are rules on;

- ensuring regional members undertake work in more than one of the constituencies in their region; and
- ensuring members take on constituency casework where there are reasonable grounds for them to do so.

In terms of complementary measures to sit alongside my Bill, it may be that the elements of the Code that relate to how MSPs represent their constituents in practice could be strengthened.<sup>15</sup> However, I do not propose to bring forward changes to this element of the Code within this proposal, as this is a proposal for legislation. It is for the Standards, Procedures and Public Appointments Committee to review and recommend to Parliament changes to the Code wherever it considers changes necessary.

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<sup>15</sup> See, for example, the requirement in [Section 8\(5\)](#) of the Code of Conduct for Members of the Scottish Parliament for regional MSPs to work in two or more constituencies in that region.

## **Process to require vacation of office**

### **Reasons for absence**

One key consideration in assessing how the removal process could work in practice is the need to be sensitive where an MSP has a valid reason for their absence and does not wish these personal details to become widely known. For example, if someone has a serious illness and it is entirely understandably their wish for their and their family's privacy to be respected.

Please note that in this respect and in relation to other provisions in this proposal I will be giving careful consideration to the data implications of the provisions of the Bill as they take shape. I will also be highlighting this consultation, including the specific areas where there may be data protection considerations, to the Information Commissioner's Office to ensure detailed scrutiny of these matters from the outset.

One feature of the system I am proposing, that would seek to ensure privacy where entirely justified, would be to ensure that wherever possible an MSP could have a pre-arranged leave of absence that is approved in advance by the Parliament and that this process could protect confidentiality. For example, a member could potentially be required to inform the Standards, Procedures and Public Appointments Committee on a confidential basis.

A further feature could be to establish criteria that would be considered by Parliament to be a justified reason for a pre-arranged leave of absence (an obvious example being maternity leave).

Where a member has not highlighted a leave of absence to Parliament, and they are deemed to have been inactive against an agreed set of measures for a period of six months, I propose that they should be removed from office. However, I consider that providing an MSP with a process, should they wish to use it, to explain the basis for their absence, would be a reasonable feature to factor into this process.

There are examples of this being a consideration in local government processes under section 35 of the 1973 Act. South Ayrshire Council's Standing Orders state:

“Subject to the provisions of Section 35 of the 1973 Act and Section 19 of the 2000 Act [Ethical Standards in Public Life (Scotland) Act], if a Councillor fails throughout a period of six consecutive months to attend any meeting of the Council, **the Chief Executive will, unless such Councillor has been granted leave of absence by the Council, inform the Council who will consider whether the failure to attend was due to some reason approved by them and, if they are not satisfied as to the cause of such failure, that Councillor will cease to be a member of the Council.**”  
[emphasis added]

Where a member has been inactive in Parliament without prior agreement, the Standards, Procedures and Public Appointments Committee could be involved in taking representations from the member<sup>16</sup>. In my view the presumption could be that the member is automatically removed from office unless they:

- a) seek to make representations to Parliament (for example to the SPPA Committee);
- b) are deemed from these representations to have an exceptional reason why their absence was justified; and
- c) are deemed from these representations to have an exceptional reason why they had not received prior approval.

One further potential feature of such a system could be an element of independence to the process separate to politicians. For example, where a member wishes to make representations against the presumption of automatic removal, a small independent panel or similar body with independence of decision making could be appointed. This independent panel or body could then deliberate privately and make recommendations to the Parliament, for example to the SPPA Committee, on this matter.

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<sup>16</sup> The SPPA Committee considers matters relating to member conduct, including reports from the Commissioner for Ethical Standards following formal complaints against MSPs. Other bodies within Parliament that could have a role in the process include the Scottish Parliamentary Corporate Body.

I note in making this suggestion the increasing number of parliaments and governments that have incorporated or are considering incorporating independent elements to their decision-making processes. This is to seek to ensure that political motivations are not an abiding factor in decision making.

For example, the House of Commons Committee on Standards, which is responsible for considering reports from the relevant Commissioner on complaints against MPs has a membership that is half MPs and half lay members (14 members in total).

I consider there is merit in having an independent element to the process I am proposing and would welcome views on how this might operate in practice.

## **Monitoring**

I propose that one model for monitoring participation could require Parliament staff to monitor members' activity in parliamentary proceedings against whichever measure or measures are settled upon following the completion of the consultation. When the relevant persons identify that an MSP has not met the requirements that would represent active participation for the required period (for example six months), they would need to highlight this to the relevant authority in the Parliament.

My intention would be that this monitoring would be done internally by SPCB-appointed impartial staff. This approach would seek to ensure all members are assessed equally and on a confidential basis. Under this proposed system for monitoring, there would be no role for external individuals to highlight perceived inactivity by a particular member as a trigger for the process for removal from office. This reduces the potential for politically motivated reporting of individuals.

## **Timescales for vacation of office**

I would anticipate that, once a member has been confirmed as being inactive in terms of the measures set out in the proposal, and where they

have not had grounds acknowledged by the Parliament as justifying their absence, that their vacation of office would be immediate or would take place as soon as is practicable.

## **Element two: removing an MSP from office for receiving a prison sentence**

As set out above, at present an MSP is automatically removed from office if they are sentenced to more than a year in prison. My Bill would introduce the automatic removal of an MSP if they are convicted of a crime and sentenced to a prison sentence, including of less than one year.

In deciding on the exact period of prison sentence, there are a number of considerations:

- Firstly, whether an individual convicted of a criminal offence should be able to hold public office at all,
- Secondly, whether such an individual is entitled to be funded by taxpayers when they are in prison and not performing their role as a parliamentarian and
- Thirdly, given the member's constituents voted for someone to actively represent them throughout the parliamentary session, whether those constituents would be well served having an individual unable to visit and represent their constituency/region for a period of time.

I am open to suggestions as to what the new lower minimum length of prison sentence should be that triggers automatic removal from office. My suggestion for the purpose of consultation is that the threshold should be lowered substantially. My suggestion is that a member should be required to vacate office if they are sentenced to any length of time in prison.

## **Appeals**

The 2015 Act for MPs specifies that “a recall petition is triggered if an MP has been convicted of an offence and received a custodial sentence where the appeal period expires without the conviction, sentence or order having been overturned or all appeals have been heard and dismissed”. While I understand the need to ensure the potential for a conviction being

overturned is factored into any system, it strikes me that an appeals process could be lengthy and therefore a member who was guilty of the relevant offence could remain in office for an extended period of time during an appeals process. I would welcome views on this complex issue in response to the consultation.

### **Process for replacement once an MSP has been removed from office under elements one or two of the proposed Bill**

Under the two elements of my proposal set out above, where a member is required to vacate their seat, the seat then immediately becomes vacant. I do not propose to make any changes to the process for replacing an MSP who has been removed from office.

So, in the event of a constituency seat becoming vacant a by-election will be held unless there are less than six months to the next full Scottish Parliament Election. In the event of a regional list seat becoming vacant then, further to section 10 of the Scotland Act 1998, the regional returning officer will notify the Presiding Officer of the person from the party's regional list who is to fill the vacancy (unless the vacating member was an independent member). In respect of a regional MSP vacating office, the process would be very quick and would not have any cost of any note associated with it.

To avoid the same individual running for Parliament again having been removed from office, my proposal could also include provisions that prevent the individual in question being able to stand for Parliament for the remainder of the relevant parliamentary session. This would be on the grounds that they have been deemed to be unable or unsuitable, certainly in the short to medium term, of fulfilling the role of a parliamentarian. It would then be for a political party to consider whether this person should reasonably be considered for office again in future general elections through each party's candidate selection processes.

### **Convention rights**

In order to be within legislative competence, Bill provisions must be compatible with Convention rights (section 29(2)(d) of the Scotland Act 1998). As draft Bill provisions are developed to give effect to this proposal later on in the process they will be considered against any relevant



Convention rights. For example, the right to free and fair elections in Article 3 of Protocol 1 to the ECHR.

### **Element three: Recall of MSPs**

A vote on a recall petition can be viewed as the consideration of whether a member of Parliament has done something sufficiently serious to warrant them having to seek re-election through a by-election. It provides the electorate with the opportunity to trigger such an election where a number of candidates can be considered for their respective merits, including the member who was the subject of the recall petition.

As noted above, there are some situations where the actions of an MSP would, in my view, be sufficiently serious that the requirement to remove them from office would be clear-cut. In those circumstances there would be no need to seek the views of the electorate on whether a member should be allowed to continue in office through a recall system. However, a recall system might be used for MSPs for certain actions covered below.

**I wish to make clear that, in seeking to explore the potential of establishing a recall system, I absolutely appreciate that the potential to introduce a recall system tailored to the Scottish Parliament has been deliberated on by academics and politicians amongst others before now. No workable model has ever been identified as far as I am aware. I am therefore realistic about the scale of the challenge in seeking to establish such a model. This is far from straightforward given the complexity of applying recall to the regional list system.**

**Any recall system would need to include processes that treat constituency and regional members equally. This is what makes designing it so difficult.**

#### **What could trigger a recall petition?**

As set out in the background section, there are sanctions under the existing standards regime where MSPs are found not to have complied with the rules of the Code of Conduct for MSPs.

I consider that appropriate triggers for a recall petition could be:

- where the sanctions imposed by Parliament are sufficiently serious reflecting a serious breach of conduct by an MSP, or
- where fines are imposed on an MSP as a result of criminal proceedings, then these may be the appropriate trigger for a recall petition.

I am suggesting, for the purposes of consultation, that where a member receives one or more of the following sanctions, a recall petition could automatically be triggered:

- Excluded from proceedings of the Parliament for 10 parliamentary sitting days or more;
- Fined, as a result of court proceedings, any amount up to the maximum fine on level 5 of the standard scale (£10,000).

In setting thresholds for the sanction of exclusion from parliamentary proceedings, I am proposing the threshold of at least 10 sitting days as the trigger for recall. This mirrors, to a degree, the terms of the Recall of MPs Act 2015 but I am open to arguments for different thresholds being set.

### **How could the recall process for MSPs work in practice?**

I consider that a number of elements of my proposal for the recall process could usefully mirror the processes established under the UK Act. This includes the key roles of the Presiding Officer (as opposed to the Speaker at the House of Commons), the relevant local authority and the Electoral Commission. Specifically, I suggest the following elements of a process in Scotland that could potentially mirror the process under the Recall of MPs Act 2015:

- the Presiding Officer informing a petition officer that one of the criteria for a recall petition has been met;
- the petition officer would be the returning officer for the relevant constituency or region and would be responsible for identifying signing locations (similar to polling stations);
- The petition officer would open a petition (unless a member vacates their seat, there is already a petition open or there is a parliamentary election in the next six months);

- The petition would run for a set period unless there is an early general election or the MSP vacates their seat;
- Votes can be made by post or by proxy as in elections;
- The petition officer would notify electors that a recall petition is open and amongst other roles is responsible for notifying electors who can sign the petition;
- The Electoral Commission would oversee the process, including the rules regarding how much campaigners can spend on a petition campaign and the process for receiving donations.

### **How could recall work for constituency and regional MSPs respectively?**

The recall system used by the UK Parliament, and many of the other international recall processes set out in [information from SPICe](#) work on the basis that should a recall petition receive a sufficient amount of support within a constituency (10% of eligible voters for MPs) then this would trigger a by-election. This model could be used for MSPs who hold constituency seats. Elections to constituency seats for the Scottish Parliament use the first-past-the-post system, and this system is also used for all members elected to the House of Commons and in numerous other legislatures.

How a recall system would work for MSPs in seats gained using the regional list system is a much more complex consideration. All regional members are elected at the general election through a system of proportional representation based on a variation of the D'Hondt formula<sup>17</sup>. At present, if a regional member leaves the Scottish Parliament for any reason, then the relevant returning officer confirms who the next person on the regional list is to the Presiding Officer and that individual becomes an MSP. Therefore, while it is possible to envisage how a recall petition could be run across a region, it is challenging to establish how the member, and other candidates seeking election to their seat could compete in any form of by-election.

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<sup>17</sup> [Electoral Commission guide to elections to regional seats](#)

In considering this problem, I have considered a range of international approaches. I have identified elements of the approaches adopted in California, Colorado and Japan that have features that could be worth considering in devising a Scottish system.

The National Conference of State Legislatures in the United States of America sets out that:

“In California and Colorado, the ballot includes two questions. The first question is whether the official should be recalled. Voters are then asked to vote for a candidate for the office. The official who is the subject of the recall may **not** be among the listed candidates. If a majority votes "yes" on the recall question, then the incumbent is recalled and the successor is elected via the second part of the ballot. If a majority votes "no" on the recall question, the incumbent remains in office and the second portion of the ballot is moot”<sup>18</sup>

Recall has been successful twice in Colorado, both in 2013. There were two successful recalls of two State legislators, John Morse and Angela Giron, over gun control. This was the first time that State Senators had been recalled. <sup>19</sup>

In California, there have been two attempts to recall Governors, in 2003 and 2021. The 2021 attempt was unsuccessful. However, the 2003 Gubernatorial recall attempt was successful, with Governor Gray Davis being recalled and replaced by Arnold Schwarzenegger.<sup>20</sup>

For a single ballot including two questions to have any potential to work in Scotland, it would, in my view, need to be altered to reflect the regional system. Specifically, the first question could need to have a threshold set for required support for a regional petition comparable to any for constituency MSPs. The second question on any ballot could need to include the MSP who is the subject of the recall and the name of the candidate at the top of the regional list who would replace that MSP. In other words, the electorate could have a choice of candidates to elect and

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<sup>18</sup> [Recall of State Officials \(ncsl.org\)](https://www.ncsl.org/legislative-process/recall)

<sup>19</sup> [Recall of State Officials \(ncsl.org\)](https://www.ncsl.org/legislative-process/recall)

<sup>20</sup> [Recall of State Officials \(ncsl.org\)](https://www.ncsl.org/legislative-process/recall)

the MSP subject to recall would have the right to seek re-election (as would be the case for a constituency MSP). However, both of these candidates

would be from the same political party and I appreciate this is a limitation to a model of this kind. One of a number of other considerations would be what would happen using this approach if the regional member subject to recall was an independent MSP. This is the beginnings of one potential approach that I have identified based on my analysis of a variety of international examples of recall systems.

One other relevant consideration in seeking to devise an equitable system is whether the percentage of required support for a recall petition should be the same across a region as for a constituency or whether these percentages should be distinct.

In Japan, there are distinct thresholds of required support for recall for different sizes of constituencies<sup>21</sup>. This is also the case in California where different periods of time are also allowed for different recall petitions in recognition of the different sizes of the areas in question. Specifically:

- Time for gathering signatures is 40 to 160 days (depending on the size of the jurisdiction).
- Signature requirement varies according to the number of registered voters in the jurisdiction: 30% if registration is less than 1,000; 25% if registration is between 1,000 and 9,999; 20% if registration is between 10,000 and 49,999; 15% if registration is between 50,000 and 99,999; 10% if registration is 100,000 and above.<sup>22</sup>

It may be that different percentages thresholds could be required for different areas in Scotland. For example, one option might be, distinct thresholds being required for constituency and regional MSPs respectively, as opposed to requiring different thresholds based on population within a particular area. Finally, it might be useful to consider allowing different lengths of time for recall petitions to be open, depending

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<sup>21</sup> [National Referendum and Popular Sovereignty in Japan \(cwsf.edu\)](http://cwsf.edu)

<sup>22</sup> [Recall of State Officials \(ncsl.org\)](http://ncsl.org)

on whether the member potentially being recalled is a constituency or a regional MSP.

I would welcome views on all of these issues in response to my consultation, including references to other international examples that I might not have considered.

## Financial Implications

There are not expected to be any notable financial costs as a result of this legislation.

In relation to recall the proposal above envisages that the process for a recall petition would most likely operate in a similar way for MSPs as for MPs under the recall Act 2015. Specifically, the electoral commission's role and the petition officer (the returning officer for the relevant constituency or region) would mirror those in the Recall of MPs Act 2015.<sup>23</sup>

Where a member is removed from office, either as a result of recall or due to removal under elements one or two of my proposal, the process to be triggered for a constituency member would result in a by-election. Costs would primarily fall on the Electoral Commission, the relevant local authority and the political parties with candidates in the by-election. In relation to costs on the public purse, the Electoral Commission and local authority costs are the main costs to be considered.

As an example of potential cost for a constituency by-election, for the August 2019 Shetland by-election, the cost to Shetland Islands Council of running the was reimbursed by the Scottish Government. The cost t was £63,704.92.

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<sup>23</sup> [Introduction to the Recall of MPs Act 2015 \(electoralcommission.org.uk\)](http://electoralcommission.org.uk)

For the replacement of a list member, as noted above, there would be no costs where a regional MSP automatically has to vacate their seat as they would simply be replaced by the next person on the relevant party's regional list. The cost of the replacement of a regional list member through the recall process would be dependent on the model adopted. Given that I am seeking views on the most appropriate model, I think that it is too early to provide a range of estimated costs for this process.

The potential financial implications of the specific process to be followed where Parliament requires to consider whether a member should automatically be removed from office can be established once the specifics of the process have taken shape informed by insights from the consultation process. For example, should the final proposal that forms the basis for a bill include an independent panel to deliberate on any matters (as suggested above as an option) then there would be costs associated with employing such a panel, presumably on a daily basis. There may also be a cost associated with Parliament staff monitoring whether members have been active in terms of the measures set out in my final proposal. However, I would not anticipate these or other costs related to Parliament staff time to be notable, for example it would not in my view justify an additional member of staff.

## Equalities

In setting conditions that members would be required to fulfil to demonstrate active participation, criteria should not impact disproportionately on any particular individual. For example, some MSPs may also be carers for relatives or making attending Parliament in person more challenging.

In addition, if someone was required to disclose details of a medical condition, including one linked to a protected characteristic, in order to justify an absence from Parliament, this element of the proposal would need to be sensitively designed. This condition might be a physical one such as recovering from an operation, receiving ongoing treatment for a medical condition, or long term mental ill health. The capacity for any process to cause additional distress must be considered to ensure it is designed and works in a proportionate way.



I aim to mitigate any potential negative impact and am seeking options to ensure that the personal data of the member can be as protected as much as possible to prevent any unnecessary distress to them or their families.

## Data protection

As mentioned earlier, data protection issues will also be a key consideration in relation to this part of my proposal and I will seek to navigate the development of the detail of the policy to ensure privacy is protected wherever required and data is only collected where necessary for the purpose of the processes this bill would establish. I intend to inform the Information Commissioner on publication of this document to ensure GDPR considerations are a focus from the start.

## Sustainability

Principles of sustainable development include: ensuring a strong, healthy and just society; and promoting effective, participative systems of governance

MSPs are elected to office by the public and part of their duties is to represent the rights and wellbeing of their constituents. If an MSP is absent for a continued long period of time, then this will affect the ability of constituents to consult them. It means that any issues directly affecting the constituency cannot be taken forward to be highlighted in Parliament by said Member. My proposed Bill would help move towards ensuring that where a member cannot or is not performing their duties then they are removed from office and replaced quickly. This is to ensure that constituents have access to their elected representative.

In addition, MSPs are part of the valuable link between local community discussions and decision making and decision making at a national level. On that basis ensuring MSPs are working regularly enables this link to the community to be as constant and valuable as possible.

The proposed Bill should also be viewed as a positive move for the Parliament and democracy as it may improve transparency and trust in politicians if it is seen that they are subject to effective sanctions, for example for failing to actively participate in formal parliamentary proceedings.

# Questions

## About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
  - on behalf of an organisation? – in which case go to Q2B
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
- Politician (MSP/MP/peer/MEP/Councillor)
  - Professional with experience in a relevant subject
  - Academic with expertise in a relevant subject
  - Member of the public

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

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
  - Commercial organisation (company, business)
  - Representative organisation (trade union, professional association)
  - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
  - Other (e.g. clubs, local groups, groups of individuals, etc.)

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

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously
- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

Please tick this box if you are under 12 years of age.

## Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

### Aim and approach

1. Which of the following best expresses your view of the proposed Bill? **Please note that this question is compulsory.**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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

3. What are your views on the proposal to remove MSPs from office if they do not participate sufficiently in parliamentary proceedings?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

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

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

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

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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

Please explain the reasons for your response

6. What is your view on the proposal to introduce a system of recall for MSPs?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

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.

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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Skip to next question

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

## Financial implications

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
- a significant reduction in costs
- skip to next question

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.

## 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?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Skip to next question

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.

## 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?

- Yes
- No
- Skip to next question

Please explain the reasons for your response.

## 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)?





## How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

### Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

#### *Online survey*

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/RemovalfromOffice/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here [Privacy Notice](#).

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

#### *Electronic or hard copy submissions*

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

[graham.simpson.msp@parliament.scot](mailto:graham.simpson.msp@parliament.scot)

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Graham Simpson MSP  
Room 3.14  
Scottish Parliament  
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the [Privacy Notice](#) (set out below).

You may also contact my office by telephone on (0131) 348 6983.

## Deadline for responses

All responses should be received no later than **13 April 2022**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

## How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <https://www.grahamsimpson.org.uk/consultation-responses>

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than "not for publication" responses) to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

## Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or "not for publication", please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

## Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

## Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated

above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

## **Freedom of Information (Scotland) Act 2002**

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

[www.itspublicknowledge.info](http://www.itspublicknowledge.info).