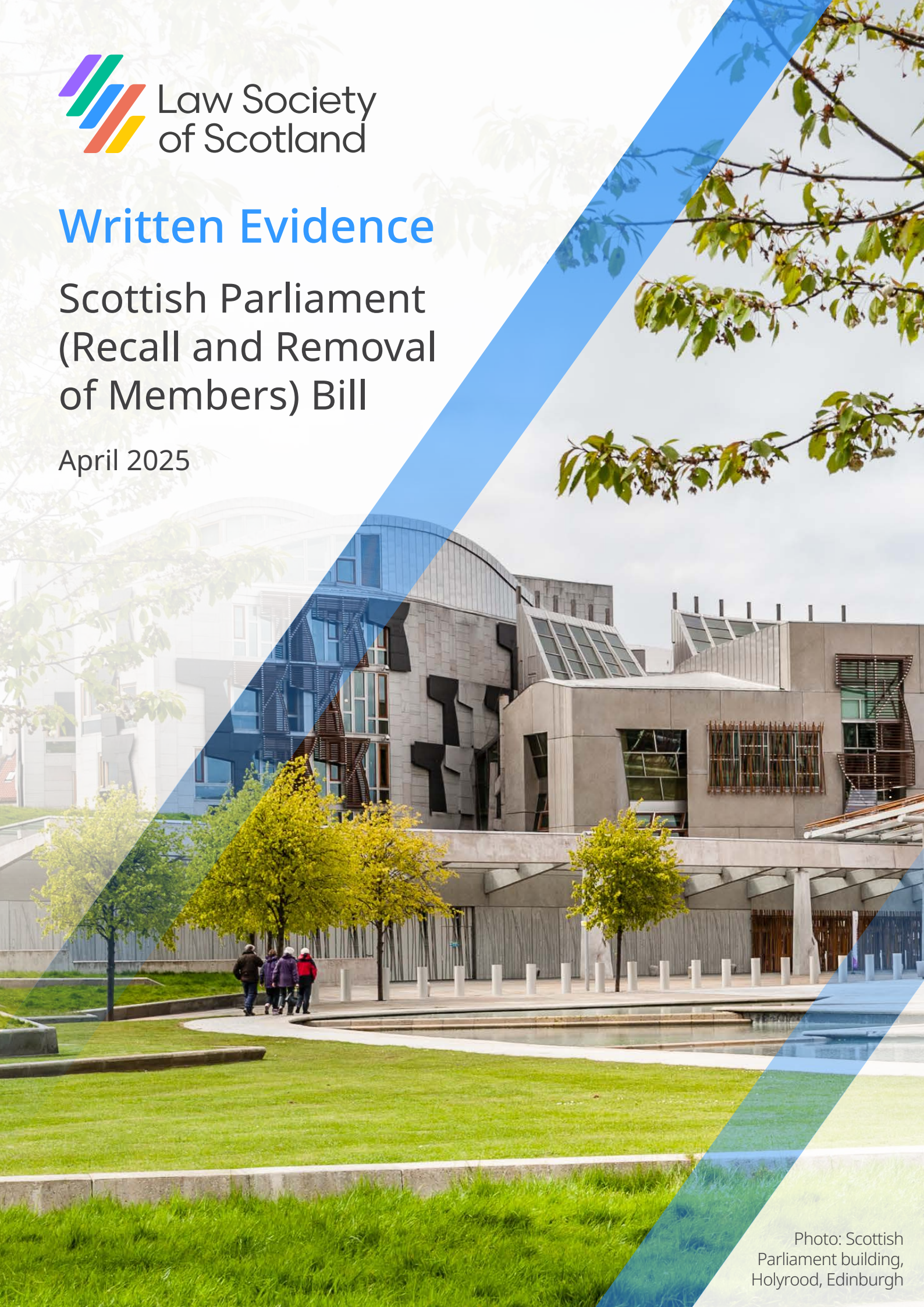


Written Evidence

Scottish Parliament (Recall and Removal of Members) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Constitutional Law and Human Rights sub-committee welcomes the opportunity to consider and respond to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament's call for views on the Scottish Parliament (Recall and Removal of Members) Bill ("the Bill").¹ The sub-committee has the following comments to put forward for consideration.

General Comments

On balance the Society supports legislating for recall of MSPs. There have been a few instances in recent years where an MSP has done something which would have allowed a recall petition under the Recall of MPs Act 2015 – this has led to a good deal of criticism. On the other hand, any change to an election result after the election is an interference with a democratic choice, and a restriction on who may stand for election is an interference with the electorate's right to elect whomsoever they choose. While a recall process has attractions, and has been introduced elsewhere, it is not without risk for example in Venezuela. In Venezuela (particularly Recall Processes against the sitting President) have been highly contentious and resulted in further constitutional disruption in the National Assembly and judiciary (e.g., the 2017 Venezuelan Constitutional Crisis).

The recall mechanism under the [Recall of MPs Act 2015](#)² has led to six recall petitions. In four cases the MPs were recalled and therefore lost their seats. One petition failed and the MP remained in place and in one case the MP resigned while the petition was open accordingly the petition was abandoned – only one Scottish MP has been recalled. In our view it is appropriate to have parallel processes applicable to MSPs. The Senedd Cymru Standards of Conduct Committee has called for a recall mechanism for recalling Members of the Senedd³.

¹ <https://yourviews.parliament.scot/sppa/sp-recall-and-removal-of-members-bill-cfvs/>

² <https://www.legislation.gov.uk/ukpga/2015/25/data.pdf>

³ <https://researchbriefings.files.parliament.uk/documents/SN05089/SN05089.pdf>

The Bill was introduced as a Member's Bill by Graham Simpson MSP on 17 December 2024.⁴ The Bill is in two parts; it has 32 sections and one schedule.

Part 1 provides the process by which an MSP can lose a seat through a recall petition. A recall petition process is initiated where:

- a. an MSP receives a relevant parliamentary sanction of exclusion for 10 sitting days or more (or 14 days or more if not expressed in sitting days),
- b. where an MSP receives a custodial sentence of six months or less.

Part 2 relates to disqualification from the office of MSP. The Bill proposes to change the law so that an MSP is:

- a. automatically disqualified where the MSP receives a custodial sentence of more than six months to a year,
- b. potentially disqualified (the Parliament must approve disqualification) where an MSP fails to attend proceedings of the Parliament in person without a valid reason for 180 days or more (around six months).

Whilst there is a strong case for Recall Processes, there is also a danger that politics becomes an activity in which allegations of rule breaking take precedence over debate and competition in matters of public policy. The Bill should ensure that Recall does not trump democratic principles.

Questions in the call for views

Q1. Do you support the principle that voters should be able to recall one of their Members of the Scottish Parliament?

Our Comment

Yes, the proposals in the Bill reflect those in the Recall of MPs Act 2015 which is a reasonably effective mechanism for recall of MPs at the UK Parliament. That and the fact that similar proposals are moving forward in Wales are persuasive reasons for supporting the Bill.

Q2. Do you support the criteria that the Bill sets out for triggering a recall petition?

Our Comment

Yes. The criteria are contained in Section 2 - Parliamentary sanction ground; and Section 3 - Criminal offence ground. In our view these are reasonable criteria.

⁴ <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-parliament-recall-and-removal-of-members-bill/introduced/bill-as-introduced.pdf>

Q3. Do you support the thresholds for a recall petition being successful as set out in section 14 of the Bill?

Our Comment

Yes.

Section 14 (3) sets out the success threshold for a constituency member recall of 10% of those who were entitled to sign the petition.

Section 14 (4) sets out the success threshold for a regional member recall of 10% of those in the region as a whole who were entitled to sign the petition and in at least 3 constituencies included in the region, the petition was validly signed 25 by at least 10% of those who were entitled to sign the petition by reason of being entitled to vote at an election for membership of the Parliament held in the constituency. The 10% of those eligible to vote reflects the threshold set out in section 14 of the Recall of MPs Act 2015. We note that urban seats generally have larger electorates than rural seats, it could be potentially easier to oust MSPs in rural areas, as it would be easier to attain 10% of the electorate to sign the petition. The disadvantage in rural constituencies might have some validity for example Na h-Eileanan Siar constituency is proposed to have a population of 21,769 whereas Central Edinburgh has 59,203.⁵ It might be easier to get 10% of the smaller number. This provision needs more thought to ensure fairness.

Q4. Do you have any comments on the practical operation of the recall process proposed in the Bill including, the recall petition, constituency by-elections or the regional poll?

Our Comment

No.

Q5. Do you support the criteria that the Bill sets out for the removal of MSPs?

Our Comment

Yes.

Section 25 provides that an MSP is disqualified from membership of the Parliament if convicted of an offence subject to a custodial sentence of between six months and one year in the British Islands or Ireland. This ground of disqualification from being an MSP does not apply however if: the conviction was pronounced before section 25 came into force or the person's detention has been ordered on mental health grounds and no underlying sentence or order has been imposed.⁶

⁵ https://boundaries.scot/sites/default/files/Provisional_Proposals_Electorate.pdf

⁶ <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/scottish-parliament-recall-and-removal-of-members-bill/introduced/explanatory-notes-accessible.pdf>

Q6. Do you agree with the requirement to physically attend or should participation in proceedings by video conference be considered as attendance for the purposes of the Bill?

Our Comment

Personal attendance and participation by video should be equally valid means of attendance.

Q7. Is there anything the Committee should consider about privacy concerns if MSPs are required to disclose potentially sensitive personal information about themselves or others (such as a spouse or partner, child or other close relative)?

Our Comment

Yes, it is important that the personal information of the MSP, the MSP's spouse or partner, child or other close relative are protected by statute.

Q8. Do you agree that a parliamentary committee should have responsibility for considering and reporting to the Parliament on whether an MSP's absence is for justifiable grounds?

Our Comment

Yes. It is important that there is democratic input in the consideration and reporting to Parliament on whether an MSP's absence is justifiable – subject to ensuring that personal information is not disclosed.

Q9. Is there anything the Committee should consider about the potential impacts of the proposed Bill on MSPs who have protected characteristics under equalities legislation or personal responsibilities, such as being a carer?

Our Comment

The Committee should ensure that the bill complies with the Equality Act 2010. Special care should be taken when considering the personal responsibilities of the MSP such as being a carer.

Q10. Please use the text box below to set out any further comments you wish to make about the Bill.

Our Comment

We have no comment to make.



For further information, please contact:

Michael P Clancy
Director, Law Reform
Law Society of Scotland
michaelclancy@lawscot.org.uk