

David Rees MS

Chair, Reform Bill Committee

4 December 2023

Dear Chair,

Senedd Cymru (Members and Elections) Bill: recall of Members of the Senedd

Thank you for your letter of 24 November affording me the opportunity to comment on the possible inclusion in the Bill of a recall mechanism and for the three questions you have posed in relation to it.

Whilst as Commissioner for Standards I welcome any measure that would increase the accountability of Members I am not sighted on what other options the Committee has considered to achieve that end. The main weaknesses in the present Senedd systems for oversight of a Member's conduct would seem to me to be the absence of any way to remove from office a Member –

1. who has been convicted of a serious offence but sentenced to imprisonment for a period of one year or less; or
2. who has simply stopped carrying out the duties of a Member for a prescribed period.

Whilst the introduction of a recall mechanism similar to the one in place in the House of Commons has superficial attraction there would be potential difficulties. Under the Commons process the Member who is the subject of a successful recall petition is able to stand at the forthcoming by-election. Assuming Clause 9 of the Bill is enacted in its present form, there will be no by-elections in Wales. That would mean that 10% of the eligible electorate would be able to remove a Member from office. And where the Member was an independent, it would mean that the electorate would be represented by one fewer Member than previously until the next election which could be several years away.

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We welcome correspondence in both English and Welsh

Alternative ways of dealing with the first weakness identified might be to amend paragraph 6(1) of Schedule 1A to the Government of Wales Act 2006 Act to provide that a lesser, or perhaps any, sentence of imprisonment would result in automatic disqualification.

Dealing with the second perceived weakness would be more difficult. Although paragraph 7 of the Code of Conduct does not apply "*iii) in relation to the standard of service and outcomes received from a Member*" I am satisfied that a total failure by a Member to carry out the duties of a Member could amount to a breach of Rule 1 of the Code (Duty to uphold the Overarching Principles) and that it could be dealt with in the same way as any other complaint against a Member. If the Standards of Conduct Committee was satisfied that a breach had occurred it would be open to it, under SO 22.10(iii) to recommend to the Senedd a sanction which could include withdrawal of rights and privileges and exclusion for a specified period. There is no prescribed maximum period for these sanctions.

That approach would go some way to deal with the second issue but it would mean that the Member remained in office and the constituents were deprived of at least part of the representation that should be available to them. Whilst it might be possible to amend SO 22 to include a new sanction of removal from office, I suspect that such a change would require primary legislation. The Committee would have to consider the need to guard against the risk of the majority party abusing the process to remove opposition Members. One option could be a provision that a motion to remove could only be carried if at least a prescribed percentage of Members voted for it. There is precedent for such a provision. The Committee will be aware that section 1(7) of the National Assembly for Wales Commissioner for Standards Measure 2009 provides that a resolution to remove the Commissioner from office is passed only if "*the number of votes in favour of the resolution is not less than two thirds of the number of votes cast.*"

Whether you think it would be appropriate for there to be a recall mechanism for Members of the Senedd?

For the reasons set out above, I have serious concerns about the inclusion in the Bill of a recall mechanism similar to the one in Recall of MP's Act 2015.

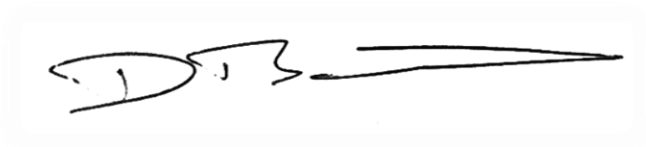
If there were to be such a mechanism, do you have a view on what conditions should be required to be met in order to trigger a recall?

I do not favour any recall mechanism. If it is decided to include one in the Bill, it would be possible to set out criteria such as having taken part in proceedings on 'x' occasions during the previous 'Y' months. However, I believe that doing so would be likely to result in an inflexible approach which might well not cover every situation. I believe that a better approach would be to leave it to the Standards of Conduct Committee to recommend to the Senedd, on a case-by-case basis, whether the Member's established misconduct was sufficiently serious to justify a recall petition.

Any other matter relating to either recall for Members of the Senedd, or the Senedd Cymru (Members and Elections) Bill more generally.

There is nothing I wish to add.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Bain', with a long horizontal stroke extending to the right.

Douglas Bain CBE TD

Y Comisiynydd Safonau/Standards Commissioner