

# Citizen Participation and Public Petitions Committee

3rd Meeting, 2023 (Session 6), Wednesday  
22 February 2023

## PE1987: Amend the Scotland Act 2016 to automatically trigger a by-election if an MSP/Councillor leaves their party

<b>Petitioner</b>	James Cassidy
<b>Petition summary</b>	Calling on the Scottish Parliament to urge the Scottish Government to amend the Scotland Act 2016 to automatically trigger a by-election by compelling an MSP or Councillor to resign if they leave the party they were elected under.
<b>Webpage</b>	<a href="https://petitions.parliament.scot/petitions/PE1987">https://petitions.parliament.scot/petitions/PE1987</a>

### Introduction

1. This is a new petition that was lodged on 6 December 2022.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 235 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

### Action

6. The Committee is invited to consider what action it wishes to take on this petition.

**Clerk to the Committee**

## Annexe A

# PE1987: Amend the Scotland Act 2016 to automatically trigger a by-election if an MSP/Councillor leaves their party

### Petitioner

James Cassidy

### Date Lodged:

08/11/22

### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to amend the Scotland Act 2016 to automatically trigger a by-election by compelling an MSP or Councillor to resign if they leave the party they were elected under.

### Previous action

I have contacted the following MSPs in my region:

Neil Gray MSP (SNP) - Indicated the Scottish Government have no plans to pursue this legislation, suggested I pursue a public petition.

Stephen Kerr MSP (Cons) - Referred me to Graham Simpson.

Graham Simpson MSP (Cons) - Not currently looking at this issue.

Gillian Mackay MSP (Green) - No plans to pursue but supportive

Meghan Gallacher MSP (Conservative), Richard Leonard MSP (Lab)

Monica Lennon MSP (Lab), Mark Griffin MSP (Lab) - All failed to respond.

### Background information

In the UK political system there seems to be no set standards pertaining to what should happen when an elected MSP, MP or Councillor leaves or otherwise no longer belongs to the party that they were elected to represent.

Whenever such an act occurs there is usually shouting from supporters of the party they have left that they should “do the decent thing”, stand down and hold a by-election. This is a hypocritical stance as almost every party contains some representatives who have done the same thing.

The electorate seem however to be left out of this whole process and there is a real democratic deficit which should be addressed. We understandably lose trust in the politicians and the political system when such an act takes place.

I feel that it is now time that the Scottish Parliament addressed this and rebalanced the issue in the favour of the people and make the "decent thing" a legal requirement. We cannot reform Westminster, but we can clean up the Scottish system.

## Annexe B

The logo for SPICe, featuring the text 'SPICe' in a white, sans-serif font on a dark purple background.

**The Information Centre**  
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1987](#): Amend the Scotland Act 2016 to automatically trigger a by-election if an MSP/Councillor leaves their party, lodged by James Cassidy

### **Brief overview of issues raised by the petition**

- The Scotland Act 1998 provides for the holding of ordinary and extraordinary general elections to return members of the Scottish Parliament.
- Scottish Ministers have powers to make provision through secondary legislation on issues related to the conduct of elections.
- The Scotland Act 1998 is not concerned with local government elections in Scotland.
- The electoral system used at Scottish Parliament general elections allows electors to vote for:
  - an individual candidate to represent them at constituency level (such a candidate may also be a member of a political party)
  - a political party or independent candidate to represent the region.
- It is individual candidates and not parties which are returned to constituency seats.
- Recall is a process through which an electorate can trigger a special election to remove an elected representative from office before the end of their term, usually through a petition. Around 20

countries worldwide have some form of recall mechanism which can be applied either to individuals or to particular offices.

- Mechanisms in place to allow for recall elections globally do not allow recall to be triggered automatically.
- Since 2016, there has been a [mechanism in place to recall MPs from the House of Commons](#) under the [Recall of MPs Act 2015](#). The conditions required to initiate a recall petition against an MP are related to criminal sentences, suspension from the House of Commons, and convictions under the Parliamentary Standards Act 2009.
- There is no recall mechanism in the Scottish Parliament at present.
- There is existing provision for the automatic removal from office of Councillors in Scotland. Councillors may be removed from office if they fail to attend meetings of the council for six months consecutively without the approval of the council. In such circumstances, a vacancy is created which would usually trigger a by-election.
- Removal from office does not necessarily constitute disqualification (a disqualified person is not able to stand for election).

### **Scottish Parliament Action**

- Graham Simpson MSP has [lodged a draft Member's Bill proposal](#) on recall and removal from office.
- Mr Simpson's proposal indicates an intention to create a mechanism for the automatic removal from office of MSPs.

**Sarah McKay**  
**Senior Researcher**  
22/11/2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot) Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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## Annexe C

### Scottish Government submission of 22 November 2022

#### PE1987/A: Amend the Scotland Act 2016 to automatically trigger a by-election if an MSP/Councillor leaves their party

The Government notes the petitioner's *calling on the Scottish Parliament to urge the Scottish Government to amend the Scotland Act 2016 to automatically trigger a by-election by compelling an MSP or Councillor to resign if they leave the party they were elected under.*

The Government has consistently held the view that the Parliament is responsible for all matters relevant to its internal operation, including the terms of its membership.

Turning to the position of councillors, the current regulations do not prevent a councillor remaining in post following their resignation from the political party they were representing when elected. However, the Government have no current plans to change the electoral system in this respect.