

Respondent - Claire Wardle

To assist with our inquiry, the Committee would welcome your views on any or all of the following points:

- Recall
- Triggers for a recall process
- Signing a petition
- Length of the recall process
- A system for Wales
- Disqualification
- Making of False or Deceptive Statements of Fact by Members and Candidates
- Sanction of removal of a Member

Some helpful things to be aware of before you start answering the consultation questions:

- You do not need to answer every question, only those on which you wish to share information or have a view.
- If you provide any information that you feel is not suitable for public disclosure, please indicate which parts should not be published and give your reasons for this.

Recall

Recall mechanisms are the means by which an elected politician can be removed from office by their constituents between elections.

The UK Parliament was the first legislature in the UK to introduce a system of recall for Members of Parliament (MPs) in 2015. If certain conditions are met, voters in the relevant constituency have six weeks to sign a "recall petition" if they wish for their MP to be removed from office. If at least 10 per cent of eligible registered electors sign the petition, there will be a by-election in that constituency via the First Past the Post (FPTP) electoral system. The recalled MP may stand in the by-election.

From 2026, all Members of the Senedd will be elected via a closed list proportional representation system. If a recall mechanism is to be adopted by the Senedd then it must be designed in accordance with the new electoral system. Under the new arrangements, there is no provision for a by-election in the event of a vacancy during a Senedd term; a vacant seat will be filled by the next eligible and willing person on the list instead.

10. Should there be a power to remove a Member of the Senedd during a Senedd term when a complaint of misconduct has been upheld?

- Yes
- No
- Don't have a view

11. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

This is a matter of policy for the Welsh Government.
However, if introduced, we would welcome engagement on the conduct legislation relating to the running of recall petitions.

12. The following questions in this section are based on the practical implications of recall, if you do not think that a recall system should be introduced, you do not have to answer these questions.

Would you like to answer questions on the practical implications of recall?

- Yes
- No

Triggers for a recall process

13. In the House of Commons recall system, an MP will be subject to recall if, following a report from the Committee on Standards, the House of Commons orders the suspension of the MP from the House for at least 10 sitting days or 14 calendar days.

What is your view on how long a period a Member of the Senedd should be suspended for in order to trigger a recall process?

- Fewer than 10 sitting days
- 10 sitting days
- More than 10 sitting days
- Suspension should not trigger a recall process
- Don't have a view
- Other

14. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

This is a matter of policy for the Welsh Government.

However, if a recall process is introduced, we would urge consideration of using the same trigger as for the House of Commons. Wherever possible, we advocate consistency in electoral processes for the benefit of all stakeholders.

Welsh Government could consider alternative means of removing members without the need for a recall process. For example, amending the disqualifications for holding office to include where a Member of the Senedd is suspended for 10 sitting days or 14 calendar days. This would mean a member automatically losing their seat and avoid the need for a recall process. Every recall petition held in Great Britain to date has resulted in the sitting MP losing their seat. Automatic disqualification removes the chance of the Member remaining elected, but removes the administrative burden for Petition Officers and the cost to the public purse.

15. In the House of Commons recall system, an MP will be subject to recall if, after becoming an MP, they have been convicted of providing false or misleading information in support of an expenses claim under the Parliamentary Standards Act 2009 (provision of information they know to be false or misleading in a material respect in support of a claim for allowances).

What is your view on whether the upholding of a complaint about misuse of expenses or allowances (i.e. a breach of Rule 9 of the Code of Conduct) should potentially trigger a recall process?

- A breach of Rule 9 should automatically trigger a recall process
- A breach of Rule 9 should not result in a recall process
- Triggering a recall process should be an option available to the Standards of Conduct Committee to recommend if a complaint about a breach of Rule 9 is upheld.
- Don't have a view

16. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

This is a matter of policy for the Welsh Government.

However, if the disqualifications for holding office were amended to include conviction of providing false or misleading information in support of an expenses claim, this would avoid the need for any recall process.

17. At the moment there are no sanctions if a Member leaves, joins or changes political group during a Senedd term.

What is your view on whether changing political groups should trigger recall processes (i.e. moving from party group A to party group B within a Senedd term, or moving from party group A to sit as an independent)? Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

We have no comment on the policy, but note it could lead to more recall petitions, creating administrative and financial burdens. We would also highlight there is no requirement for recall or by-election in any other British governance system if a member changes their political group. If changes were made at Senedd level, and corresponding changes were to follow for local government, this could have a significant impact.

18. What is your view on whether a lack of attendance and participation in proceedings without good reason for a period of six months or more trigger recall procedures? Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

We have no comment on the policy, but again this could lead to more recall petitions. Alternatively Welsh Government could consider mirroring existing local government provisions. An individual who fails to attend meetings for a period of six months without prior approval ceases to be a member (Section 85 Local Government Act 1972). In principal council areas, this would automatically lead to by-election. If a similar rule was introduced for the Senedd, this would avoid the need for a recall process.

19. At present, Members of the Senedd who are convicted of a criminal offence and sentenced to a period of imprisonment or detention of 12 months or more are disqualified from being Members or candidates. In the House of Commons recall system, an MP will be subject to recall if they have, after becoming an MP, been convicted of an offence and sentenced to be imprisoned or detained for a period of less than 12 months (including suspended sentences).

What is your view on whether a Member of the Senedd convicted of a criminal offence with a sentence of less than 12 months should be subject to a recall petition? Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

We have no additional comment on the policy further to the points previously made. We would once again stress though that consideration should be given to whether automatic dismissal should exist in certain scenarios rather than reliance on a recall process.

20. Should there be any other triggers for a recall process?

(We would be grateful if you could keep your answer to around 500 words)

Signing a petition

21. In the House of Commons system, eligible voters only sign the petition if they are in favour of recalling the MP. This means that there is no option for voters to show support for the MP to remain in post and that, when entering a polling station, their intention to sign the petition is known to others.

Should the recall petition provide an option for showing support for the recalled Member to retain their seat?

- Yes
- No
- Don't have a view

22. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

We are aware some electors are concerned about the public nature of signing a petition, as doing so demonstrates they are in favour of recalling the Member.
There may be merit in providing an option for showing support for the recalled Member to retain their seat. This would also enable more people to participate in the process, and could reflect a truer public viewpoint.
However, we are not sure how this would work in practice, or whether it could be administratively complicated and confusing for electors.

23. In the House of Commons system, if 10 per cent of eligible electors sign a recall petition, there will be a by-election in that constituency and the outgoing MP may contest that election if they wish to. The Senedd Commissioner for Standards has highlighted that if the threshold was set at the same level for a Senedd recall process, 10 per cent of the electorate could directly remove a Member, as there is no provision to replace Members of the Senedd through by-elections.

What are your views on the threshold of signatures that should be required in order for a petition to remove a Member?

(We would be grateful if you could keep your answer to around 500 words)

This is a matter of policy for the Welsh Government.
However, as the recall process will not result in a by-election, this highlights the limitations of recall in the context of the Senedd.
People may be inclined to sign a recall petition for UK Parliament as it will trigger a by-election where they can impact the outcome. At Senedd elections, there may be little motivation to sign when it simply results in the next candidate on a party list being elected, or in the case of an independent, not having a representative until the next scheduled Senedd election.
If a recall process is introduced, there would be merit in using the same threshold as for the House of Commons.

24. In the House of Commons system, eligible voters may sign a recall petition in person at a designated signing place, by post, or by appointing someone as a proxy to sign the petition on their behalf.

What are your views on how an eligible voter should electors be able to sign a petition?

(please select all options that you think should be available to voters)

- In person
- By post
- By proxy
- Don't have a view
- Other

25. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

To allow electors to fully participate, the same methods should be available as for voters at an election.
Furthermore, if electors are concerned about the public nature of signing a petition, they could opt to sign by post.

Length of the recall process

26. In the House of Commons system, electors have six weeks to sign a recall petition. Evidence suggests that the majority of people who have signed recall petitions do so early in the six-week period. Concerns have been raised about the practicalities of providing designated signing places for a six week period.

Should a recall petition be open on a single day, across a greater number of designated areas, or over a multi-week signing period in fewer areas?

- A single day across a greater number of designated areas
- A multi-week signing period in fewer areas
- Don't have a view
- Other

27. If the petition should be open for a multi-week signing period, how long it should be open for?

(We would be grateful if you could keep your answer to around 500 words)

We do not believe a single day signing period is sufficient or in the best interests of the electorate, unless there were to be as many signing stations as polling stations. Booking large number of venues at short notice for one day would prove challenging for Petition Officers, as would employing the required number of staff to work at large number of signing places.

We believe flexibility in the number of signing places to be designated is sensible so as to reflect the geography of the area. In the House of Commons system, a maximum of 10 signing places in the constituency are provided. This allows Petition Officers to make decisions based on local circumstances and the availability of venues. For example, an urban constituency might need less than ten, but a rural one the maximum.

At UK Parliamentary recall petitions, it has been difficult to secure venues as signing places for the six-week period. Taking this, along with evidence the majority of people sign early in the recall process, we would recommend petitions ending as soon as the threshold is reached. For example, in the Rutherglen and Hamilton West recall petition, the threshold was met in first two weeks of petition opening. This was also the case at the Peterborough and Brecon and Radnorshire petitions. Once a petition has the required number of signatures, there is no point continuing to collect signatures at significant cost.

Based on UK Parliamentary evidence, we believe there would be merit in reducing the signing period from the current six weeks. However, regardless of the prescribed period, the petition should end when the threshold is reached.

28. Are there any other issues that you would like to raise regarding how constituents can access or participate in the process?

(We would be grateful if you could keep your answer to around 500 words)

Petition Officers should be able to open signing places at a weekend, if their local circumstances allow.

Consideration should be given to supporting blind and partially sighted electors to sign a petition, as the current Tactile Voting Device is only designed for use with ballot papers.

A system for Wales

Early work by the Committee has identified two initial options for consideration:

Option 1: A recall petition is run asking only whether the Member should be recalled. In the event a Member is recalled, the next eligible and willing candidate from the party's list on which the removed Member was elected would fill the vacant seat. This approach means that signing the petition would remove the Member, rather than result in a by-election in that constituency.

Option 2: A retain or remove and replace petition is run, asking whether the Member should remain in place, or be removed and replaced (if possible) with the next candidate on the party's list. This would be subject to a campaign period, allowing the Member subject to the 'recall' process an opportunity to defend their position with the electorate.

With either option, vacancies could be filled quickly and the proportionality of the last election result could be maintained. However, Members elected as independents, or those elected to represent political parties that have no remaining candidates on their lists, would not be replaced. This could affect the proportionality of the Senedd.

29. What are your views on these two options?

(We would be grateful if you could keep your answer to around 500 words)

This is a matter of policy for the Welsh Government. However, as neither process would result in a by-election, this highlights the limitations of recall in the context of the Senedd. There may be less motivation to sign a petition when it simply results in the next candidate on a party list being elected, or in the case of an independent, not having a representative until the next scheduled Senedd election. There may be merit in providing an option for showing support for the recalled Member to retain their seat. This would also enable more people to participate in the process, and could reflect a truer public viewpoint. However, we are not sure how this would work in practice, or whether it could be administratively complicated and confusing for electors.

30. Is there an alternative system which could be explored?

(We would be grateful if you could keep your answer to around 500 words)

Welsh Government could consider alternative means of removing members. Amending the disqualifications for holding office would mean a member automatically loses their seat if they become disqualified, removing the need for a recall process. Every recall petition held in Great Britain to date has resulted in the sitting MP losing their seat. Automatic disqualification removes the chance of the Member remaining elected, but removes the administrative burden for Petition Officers and the cost to the public purse.

Disqualification

A person must meet certain qualifications to be eligible to be a Member or stand for election to the Senedd. These are set out in section 16 and Schedule 1A to the Government of Wales Act 2006, and include criteria such as age, citizenship, not being registered on an electoral register in Wales, bankruptcy status, certain criminal convictions or sentences, membership of other UK legislatures, and holding of certain offices.

31. A Member is disqualified from being a Member of the Senedd if, after being elected, they are convicted of a criminal offence and sentenced to imprisonment or detention for 12 months or more. We have heard some suggestions that this should be reduced, for example, to six months.

What are your views on the length of prison sentence that should trigger disqualification?

(We would be grateful if you could keep your answer to around 500 words)

This is a matter of policy for the Welsh Government. However, to note, the length of the sentence triggering disqualification at a UK Parliamentary election is 12 months (Representation of the People Act 1981), but at local government elections, including for Welsh councillors, it is 3 months (Local Government Act 1972).

32. Other than deception, which is dealt with in the next section, are there any other grounds which should result in disqualification from membership of the Senedd?

(We would be grateful if you could keep your answer to around 500 words)

Making of False or Deceptive Statements of Fact by Members and Candidates

The Code of Conduct already requires Members to be truthful and act truthfully. However, the Committee has heard suggestions that Members and candidates should be disqualified if they wilfully make false or deceptive statements with the intent to mislead.

Early work by the Committee has identified three initial options for consideration. More detail on these options is set out in the consultation document:

<https://business.senedd.wales/documents/s152624/Inquiry%20into%20Individual%20Member%20Accountability%20-%20Consultation.pdf>

Option 1: Create a criminal offence of deception, which would be investigated by the police and tried before the criminal courts. People convicted would be disqualified.

Option 2: Create a civil offence of deception, which would be investigated by an existing investigative body such as the Public Services Ombudsman and an independent Welsh Tribunal, such as the Adjudication Board for Wales.

Option 3: Amend the existing Code of Conduct to more explicitly prohibit wilful lying or deception and strengthen the potential sanctions. Alleged breaches would be investigated by the Senedd Commissioner for Standards, and, if upheld, referred to the Standards of Conduct Committee and Senedd. Extending this option to cover candidates as well as Members could give rise to significant practical implications.

33. What are your views on whether making of false or deceptive statements by Members of the Senedd or candidates to become Members should be grounds for disqualification?

- Grounds for disqualification for Members only
- Grounds for disqualification for candidates only
- Grounds for disqualification for Members and candidates
- Not grounds for disqualification
- Don't have a view

34. Please outline your reasons for your answer. If you have indicated that candidates should be included, please indicate at what point you think candidates should be subject to potential liability.

(We would be grateful if you could keep your answer to around 500 words)

Again, this is a matter of policy and governance. However, if introduced, clear legislation and guidance would be needed for stakeholders such as candidates, agents and the police.

35. If making of false or deceptive statements were to be grounds for disqualification, what are your views on any risks that could arise (such as the potential for malicious complaints to be made against Members), the effect of such risks, and how any such risks could be mitigated?

(We would be grateful if you could keep your answer to around 500 words)

This is a governance matter. We would want to make sure Returning Officers, Petition Officers and electoral administrators do not get embroiled in such issues. Their role is simply to administer the electoral process.

36. Section 42 of the Government of Wales Act 2006 provides that statements made during Senedd proceedings are 'absolutely privileged' for the purposes of defamation. Section 43 provides that statements made during Senedd proceedings have limited protections from contempt of court.

What are your views on whether any prohibition on the making of false or deceptive statements of fact could have consequences for these 'privileges'?

(We would be grateful if you could keep your answer to around 500 words)

37. Would introducing a criminal offence or a civil sanction system give rise to any human rights issues, for example in relation to rights of freedom of expression (Article 10 of the European Convention on Human Rights) and freedom to stand in an election (Article 3 of Protocol No. 1 to the ECHR - Right to free elections)?

(We would be grateful if you could keep your answer to around 500 words)

38. What are your overall views on the three options outlined above (more detailed questions on specific issues are set out below)? Are there any other options that would be more appropriate or effective?

(We would be grateful if you could keep your answer to around 500 words)

39. Should making a false or deceptive statement of fact be made a crime or be made subject to civil sanctions?

- Crime
- Civil sanctions
- Don't have a view

40. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

41. What are your views on the nature of an independent judicial process that should be used if option 2 were pursued (i.e. a civil sanction investigated by an existing investigative body such as the Public Services Ombudsman for Wales or an independent Welsh Tribunal)?

(We would be grateful if you could keep your answer to around 500 words)

42. If the making false or deceptive statements is made subject to a civil sanction, what standard of proof would be most appropriate - the civil standard (i.e. "on the balance of probabilities") or the criminal standard (i.e. "beyond reasonable doubt")? Although not common, there have been instances where professional disciplinary bodies have operated to the criminal standard.

- Civil standard
- Criminal standard
- Don't have a view

43. If option 3 were pursued (i.e. strengthening the existing Code of Conduct and sanctions) what are your views on the measures and mechanisms that could address the issue of deception or false statements? For example, through existing standards procedures or potential recall mechanisms.

(We would be grateful if you could keep your answer to around 500 words)

44. If a disqualification is introduced, what length of disqualification would be appropriate? For example, should there be a fixed period of disqualification, or a period (within a set range) to be determined on a case-by-case basis so that any mitigating circumstances that could reduce the period of disqualification are taken into consideration?

(We would be grateful if you could keep your answer to around 500 words)

45. What sanctions other than disqualification might be an appropriate penalty for the making of false or deceptive statements of fact?

(We would be grateful if you could keep your answer to around 500 words)

46. What defences should be available to an allegation of deception?

(We would be grateful if you could keep your answer to around 500 words)

47. Please outline any views you have on the interaction between proceedings for making false or deceptive statements (whether it is civil or criminal) with the rules set out in the Senedd Members' Code of Conduct which already require Members to always act truthfully.

(We would be grateful if you could keep your answer to around 500 words)

48. Please outline any views you have on the resource implications for existing bodies or bodies that might be created to investigate and decide complaints of false or deceptive statements of fact.

(We would be grateful if you could keep your answer to around 500 words)

Sanction of removal of a Member

If a complaint against a Member of the Senedd is upheld, the Committee may recommend one or more sanctions as set out in Standing Orders. These include exclusion from Senedd proceedings for a specified period and/or the withdrawal of certain rights and privileges. The Committee cannot currently recommend the removal of a Member.

The Senedd must debate any reports published by the Committee, and decide whether to give effect to any recommended sanctions. At present, such decisions are taken by simple majority.

49. Should the Committee have the power to recommend sanctions of disqualification or recall of a Member of the Senedd?

(We would be grateful if you could keep your answer to around 500 words)

50. Are there any other sanctions that should be available to the Committee?

(We would be grateful if you could keep your answer to around 500 words)