



House of Commons
Political and Constitutional
Reform Committee

Recall of MPs: Government Response to the Committee's First Report of Session 2012–13

**Second Special Report of Session
2012–13**

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The Political and Constitutional Reform Committee

The Political and Constitutional Reform Committee is appointed by the House of Commons to consider political and constitutional reform.

Current membership

Mr Graham Allen MP (*Labour, Nottingham North*) (*Chair*)
Mr Christopher Chope MP (*Conservative, Christchurch*)
Paul Flynn MP (*Labour, Newport West*)
Sheila Gilmore MP (*Labour, Edinburgh East*)
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Mrs Eleanor Laing MP (*Conservative, Epping Forest*)
Mr Andrew Turner MP (*Conservative, Isle of Wight*)
Stephen Williams MP (*Liberal Democrat, Bristol West*)

Powers

The Committee's powers are set out in House of Commons Standing Orders, principally in Temporary Standing Order (Political and Constitutional Reform Committee). These are available on the Internet via <http://www.publications.parliament.uk/pa/cm/cmstords.htm>.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pcrc. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Joanna Dodd (Clerk), Helen Kinghorn (Legal Specialist), Lorna Horton (Committee Specialist), Louise Glen (Senior Committee Assistant), Jim Lawford (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

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Special Report

The Political and Constitutional Reform Committee published its First Report of Session 2012-13, *Recall of MPs* on 28 June 2012, as House of Commons Paper HC 373. The Government Response to this Report was received on 25 September 2012 and is published below.

Appendix: Government Response

Introduction

1. The Government is grateful to the Political and Constitutional Reform Committee for its detailed and considered scrutiny of the Recall of MPs White Paper and Draft Bill and for its subsequent report published on 28 June 2012.
2. We are also appreciative to those who gave very detailed and informative evidence to the Committee during its inquiry on the proposals. There have been many interesting points raised by witnesses and Committee members alike during the pre-legislative scrutiny process.
3. The Government remains committed to establishing a recall mechanism which is transparent, robust and fair. However, we set out in the White Paper that we would consider the results of this process with great care. In order to fulfil that pledge, and to give due consideration to the Committee's conclusions and recommendations, the Government wishes to take the proper time to reflect on this policy and determine its future direction. That way we can be sure of introducing the most appropriate mechanism for our constitutional framework.
4. This paper therefore provides the Committee with an initial response and addresses the conclusions and recommendations as they appear in the report itself. We will aim to send the Committee a further response in due course setting out our proposals in more detail.

Background

5. Following the expenses crisis during the last Parliament, all three main political parties included a commitment in their respective manifestos at the last general election to establish a recall mechanism to hold MPs to account for financial misconduct or serious wrongdoing.
6. We all recognised that it is wrong that, once an MP is elected, he or she can in certain circumstances be guilty of serious wrongdoing but still continue in office with impunity.

7. Building upon this, the coalition's Programme for Government included a commitment to "introduce a power of recall, allowing voters to force a by-election where an MP is found to have engaged in serious wrongdoing and having had a petition calling for a by-election signed by 10% of his or her constituents".
8. The White Paper and draft Bill published on 13 December 2011 set out the Government's proposals to deliver this commitment. They set out the model for a recall mechanism which the Government believed best ensured that MPs are subject to increased accountability to their constituents without leaving them vulnerable to attack from those who simply disagree with them or think that they should have voted a different way on a particular measure.
9. The White Paper made clear that the proposals were intended to facilitate a wider debate about what would be the most appropriate model for a recall mechanism. As part of this process, the Government invited the Political and Constitutional Reform Committee to carry out pre-legislative scrutiny on the draft Bill.

Response to conclusions and recommendations

The "triggers" for recall

Custodial sentence of 12 months or less

10. **Recommendation 1: We recognise the difficulty of defining what constitutes a political crime or a crime of conscience. However, we recommend that, for the purposes of the first trigger of a custodial sentence of 12 months or less, the Government change its decision not to take account of the motivation of the MP in committing the offence. One possibility would be to enable the House itself to decide whether there should be an exemption from a recall petition in a particular instance because of the political nature of the crime. (Paragraph 18)**
11. We note the views of the Committee and of those who gave evidence on this point. The Committee acknowledges that the draft Bill takes no account of an MP's political motivation in committing an offence, as, under the proposals, constituents will ultimately have the power to decide if they agree with any political motivation or moral reasoning by signing or not signing a recall petition.
12. The Government's intention is that constituents should be left with this power and, whilst we do not consider that any substantially new arguments have been advanced which would alter our position at this stage, we will give further consideration to the Committee's recommendation before determining how to proceed on this point.

A resolution of the House of Commons

The role of MPs in the process

13. Recommendation 2: We welcome the inclusion of lay members on the new Standards Committee and consider that this change strengthens it, and arguably further legitimises it, as an arbiter of MPs' conduct. (Paragraph 26)
14. Recommendation 3: It is not easy objectively to judge the conduct of one's colleagues, but, overall, we consider that the Committee on Standards and Privileges has done so successfully. We are confident that it would continue to be able to do so were one of the sanctions that it could recommend a recall petition. This is particularly the case given that in future lay members will be included on the Committee. (Paragraph 27)
15. We welcome and endorse the Committee's comments on the participation of lay members in the new Standards Committee's work.
16. We support the view of the Committee on Standards and Privileges, and also that of the Committee on Standards in Public Life, that the inclusion of lay members will significantly enhance public acceptance of the robustness of the House's disciplinary processes.

What is serious wrongdoing?

17. Recommendation 4: We understand why the Government does not want to define "serious wrongdoing". However, it is not clear from the draft Bill and White Paper whether the Government intends serious wrongdoing to be restricted specifically to breaches of the code of conduct for MPs and its associated rules, as the Parliamentary Commissioner for Standards suggested to us. (Paragraph 36)
18. Recommendation 5: Restricting wrongdoing to breaches of the code of conduct for MPs and its associated rules would certainly not cover everything that the public might consider to be conduct meriting recall. However, it would provide a rational and comprehensible basis for making a judgement about conduct. Members of the public who felt that their MP had behaved improperly, but who found that such behaviour did not fall within the scope of the code of conduct, would have the opportunity to express their views at the next general election. Recall should not be a substitute for elections. (Paragraph 37)
19. Recommendation 6: We consider that wrongdoing in the context of recall constitutes a breach of the code of conduct for MPs, while "serious" implies a breach of sufficient gravity that the Committee on Standards and Privileges would currently consider it merited more than a period of suspension. (Paragraph 38)

20. We agree that recall should not be a substitute for elections.
21. The proposed second trigger was that the House of Commons resolves that a petition should be opened. It was envisaged that the House should have a power to initiate a recall petition where it is found that an MP has engaged in serious wrongdoing which does not warrant immediate expulsion but may lead constituents to lose faith in their MP.
22. We are pleased that the Committee acknowledges the difficulty of defining what constitutes “serious wrongdoing” for the purposes of the second trigger and we are grateful for the Committee’s understanding that it would be undesirable to include such a definition in the Bill, a view also shared by the Clerk of the House.
23. Whilst we acknowledge the merits of the Committee’s suggestion of restricting wrongdoing to a breach of the code of conduct for MPs, we also note that there were mixed views generally in relation to the proposed second trigger, and that the Committee itself sees arguments both for and against such a restriction.
24. We will consider further the Committee’s recommendations alongside consideration of the other views expressed in respect of the second trigger in order to advance the policy.

Conduct of the recall petition

Single designated location

25. **Recommendation 7: Even a small increase in the number of designated locations would be likely to increase participation. The Government should replace the requirement for a single designated location for signing the petition with a requirement for at least two and no more than four designated locations. The locations should be selected with regard to making signing the petition in person as convenient as possible for everyone in the constituency. Provision must be made to ensure that duplicate signatures are discounted. (Paragraph 42)**
26. We note the Committee’s recommendation for an increase in the number of designated locations to assist with increasing participation of those constituents wishing to sign in person.
27. The Committee cites the arguments in support of an expansion made by several of its witnesses who felt that participation might be impeded, especially in the geographically larger constituencies, if only one location was available.
28. We said we would show consideration to other recommendations, and the Committee has presented a case for the larger and more rural constituencies to have more than one designated location.

29. We will consult further with the Association of Electoral Administrators, the Electoral Commission and Returning Officers, as to the feasibility of increasing the number of locations.
- 30. Recommendation 8: The Government should include in the final Bill a specific duty on returning officers to ensure, as far as is reasonable and practicable, the designated locations for signing the petition are accessible to constituents who are disabled. (Paragraph 43)**
31. We welcome the Committee's comments and agree that accessibility for all constituents is a key consideration.
32. The Government's view was that the duty recommended by the Committee would already be covered by existing equalities legislation and guidance, and that repeating it on the face of this Bill would be an unnecessary duplication.
33. However, we will consult relevant stakeholders further to ensure that they are content with this approach.

Postal voting

- 34. Recommendation 9: We believe that constituents who have an existing postal vote should be sent a postal signature sheet automatically if there is a recall petition. The risk of being seen to solicit signatures, or of constituents feeling compelled to sign, should be minimised by clear accompanying instructions and information about the purpose of the petition. (Paragraph 46)**
35. The Government set out in its evidence to the Committee the reasons why it considered that automatically sending signature sheets to existing postal voters could be seen as soliciting signatures, and that some people might feel obliged to sign without a full understanding of what it was they were signing.
36. Clear guidance and instructions can assist people in their understanding of what they are signing, and may in part mitigate the risk of being seen to solicit signatures.
37. We will consult relevant stakeholders to develop this point further.

Secrecy and intimidation

- 38. Recommendation 10: A petition is a public document and, given that the Government itself admits that it would be possible to observe people signing it or taking steps to sign it, it may be more likely to inspire public confidence in the long run if the Government were to acknowledge that it is not possible to protect the privacy of people who sign the petition and to be open about its public nature. (Paragraph 50)**

39. Whilst we acknowledge the Committee's comments about the public nature of a petition, it remains the Government's view that there are ways in which privacy can be protected.

Northern Ireland

40. Recommendation 11: The Government's proposal to restrict the methods of signing the petition in Northern Ireland to postal signing is not a proportionate response to concerns about intimidation. Everyone who is eligible to sign will be able to do so by post if they wish, so nobody in Northern Ireland would have to sign the petition in person unless they actively chose to do so. We recommend that constituents in Northern Ireland should be able to sign the petition in person if that is what they wish to do. (Paragraph 53)

41. We note the view of the Committee which was equally shared by, among others, the Alliance Party for Northern Ireland in evidence presented to the Committee by Naomi Long MP.
42. In its development of this measure, the Government responded to concerns about intimidation at polling stations and, as a consequence, set out in the White Paper that no requirement would be placed on the Chief Electoral Officer for Northern Ireland to provide a designated location for signing.
43. However, we acknowledge and understand the concerns of the Committee on this point and will take these into account in looking again at the detail.

Signatures

44. Recommendation 12: The requirement for eligible constituents to sign the petition in order to show they support it seems to us reasonable. However, the Government must ensure that suitable alternative arrangements are made for disabled people who are unable to sign the petition. (Paragraph 55)

45. We welcome the Committee's comments and agree that accessibility for all constituents is a key consideration.
46. The Bill makes provision for signing by proxy, and the Government's intention is that the secondary legislation will include provision regarding signing with assistance, similar to that made for voting with assistance in the Parliamentary Election Rules.
47. The Government is fully committed to further consultation to develop these proposals.

Wording of the petition

48. **Recommendation 13: The clarity of the wording of the petition, and of the accompanying information about the process, should be tested by the Electoral Commission before it is agreed. (Paragraph 56)**
49. We agree with the Committee's recommendation and will work closely with the Electoral Commission on this measure.

Henry VIII powers

50. **Recommendation 14: We are uncomfortable with sweeping powers to amend primary legislation by means of secondary legislation in a Bill of a constitutional nature and we recommend that the Government remove these powers from the final Bill. (Paragraph 57)**
51. The Government acknowledges the Committee's concerns and will further consider the inclusion of these powers in the Bill.

Campaigning

52. **Recommendation 15: We recommend that the Government reconsider whether returning officers are the best people to be responsible for the regulation of petition expenditure and donations, or whether the Electoral Commission might be better placed to undertake this role. (Paragraph 60)**
53. The Government will consult further with returning officers and the Electoral Commission to develop this measure.

The 10% threshold for signatures

54. **Recommendation 16: If the Government takes the steps we have recommended to make signing the petition easier—having several designated locations and those who have an extant postal vote automatically being sent a postal signature sheet—it should raise the threshold from 10% to at least 20%. We believe this would represent a significant level of dissatisfaction with the sitting MP. (Paragraph 63)**
55. The Government acknowledge the Committee's comments and its previous recommendations concerning making signing the petition easier.
56. There were a range of views provided by respondents on the signing threshold and we will give further consideration to these alongside the views of the Committee as part of the development of the recall policy.

The rationale for introducing recall

What impact would the proposals have on the political landscape?

57. **Recommendation 17: The Government has not made the case for introducing recall. We have not seen enough evidence to support the suggestion that it will increase public confidence in politics, and fear that the restricted form of recall proposed could even reduce confidence by creating expectations that are not fulfilled. The aftermath of the expenses scandal has shown that MPs can be, and are, removed by current processes as quickly as they would be by recall. (Paragraph 76)**

58. The Government remains committed to introducing a power of recall which is transparent, robust and fair. We were encouraged by sight of the YouGov poll included in the Committee's report which indicates the proposals would lead to an increase in confidence in Parliament, which remains a key aim of this draft legislation.

59. These proposals are about ensuring MPs remain accountable to their constituents and it is right that constituents should be able to express their view on their MP when that MP has committed serious wrongdoing.

Full recall

60. **Recommendation 18: There is not a single, clear job description for an MP and everyone will have their own idea about what behaviour constitutes being a "good MP". To an extent, individual MPs must decide for themselves what their job entails. If their constituents disagree, they have an opportunity to vote for someone else at the next general election. Differences of opinion about what constitutes the proper role of an MP should not be allowed to trigger recall petitions. (Paragraph 83)**

61. We thank the Committee for its comments and endorse its view. It is crucial that MPs remain accountable to their constituents. At the same time, MPs must not be left vulnerable to attack from those who simply disagree with them or think they should have voted in a different way.

62. **Recommendation 19: We believe that a system of full recall may deter MPs from taking decisions that are unpopular locally or unpopular in the short-term, but which are in the long-term national interest. It may also discourage them from taking on powerful interests, or expressing controversial or unusual opinions. The Government argues that a recall mechanism should not leave MPs vulnerable to attack from those who simply disagree with them. We agree. For these reasons, we cannot support a system of full recall. (Paragraph 84)**

63. The Government welcomes the Committee's conclusion on a system of full recall.

The existing disciplinary powers of the House of Commons

- 64. Recommendation 20:** We do not believe that there is a gap in the House's disciplinary procedures which needs to be filled by the introduction of recall. The House already has the power to expel Members who are guilty of serious wrongdoing. This should be regarded as an active option; rather than a theoretical possibility. We note that expulsion would not prevent the person concerned standing in the resulting by-election. We recommend that the Government abandon its plans to introduce a power of recall and use the parliamentary time this would free up to better effect. (Paragraph 89)
65. The Government wishes to ensure that the House of Commons has a full range of powers at its disposal to deal with behaviour which is of a serious nature, but does not merit immediate expulsion.
66. In developing its proposals, the Government's view has been that the House should have a power to initiate a recall petition where it is found that an MP has engaged in serious wrongdoing which does not warrant immediate expulsion but may lead constituents to lose faith in their MP.
67. The Government remains committed to introducing a recall mechanism and we will consider further the Committee's views as part of the development of our recall policy and respond further in due course.

Conclusion

68. We are very grateful to the Committee for its detailed consideration of the Government's proposals and its acknowledgement of the coalition commitment to introduce a mechanism for the recall of MPs.
69. The proposals set out in the White Paper were intended to facilitate a wide debate on the best model for a recall mechanism and the variety of responses received by the Committee during the pre-legislative process has certainly satisfied that intention.
70. The Government recognises that this is an entirely novel mechanism for our political landscape and it is important that we take time to find the best possible approach.
71. We remain committed to introducing a mechanism for the recall of MPs and will consider further the Committee's recommendations alongside detailed and careful consultation with our stakeholders in determining our policy on recall.