

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT RECALL OF MPS ACT 2015 (RECALL
PETITION) REGULATIONS 2016

Monday 25 January 2016

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Friday 29 January 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
FACILITATE THE PROMPT PUBLICATION OF
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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: MR DAVID NUTTALL

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| † Burrowes, Mr David (<i>Enfield, Southgate</i>) (Con) | Lewis, Mr Ivan (<i>Bury South</i>) (Lab) |
| Campbell, Mr Gregory (<i>East Londonderry</i>) (DUP) | † McGinn, Conor (<i>St Helens North</i>) (Lab) |
| † Caulfield, Maria (<i>Lewes</i>) (Con) | † Penrose, John (<i>Parliamentary Secretary, Cabinet Office</i>) |
| † David, Wayne (<i>Caerphilly</i>) (Lab) | † Pickles, Sir Eric (<i>Brentwood and Ongar</i>) (Con) |
| † Evans, Chris (<i>Islwyn</i>) (Lab/Co-op) | † Smith, Mr Andrew (<i>Oxford East</i>) (Lab) |
| † Fysh, Marcus (<i>Yeovil</i>) (Con) | † Solloway, Amanda (<i>Derby North</i>) (Con) |
| † Gibson, Patricia (<i>North Ayrshire and Arran</i>) (SNP) | Umunna, Mr Chuka (<i>Streatham</i>) (Lab) |
| † Haselhurst, Sir Alan (<i>Saffron Walden</i>) (Con) | |
| † Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con) | Glenn McKee, <i>Committee Clerk</i> |
| † Jenkyns, Andrea (<i>Morley and Outwood</i>) (Con) | |
| † Johnson, Gareth (<i>Dartford</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Monday 25 January 2016

[MR DAVID NUTTALL *in the Chair*]

Draft Recall of MPs Act 2015 (Recall Petition) Regulations 2016

4.30 pm

The Parliamentary Secretary, Cabinet Office (John Penrose): I beg to move,

That the Committee has considered the draft Recall of MPs Act 2015 (Recall Petition) Regulations 2016.

It is a pleasure to have you in charge of us this afternoon, Mr Nuttall.

Members of the Committee might recall the passage of the Recall of MPs Act 2015 during the previous Parliament. The Act set out three conditions that could result in a recall petition being triggered, with the potential result of an MP losing their seat and a by-election being held. The regulations fill in the fine details, with what electoral administrators call the conduct rules. They set out how a petition can be conducted, the signing arrangements, the mechanism for challenging the outcome and the creation of offences in relation to a petition.

The regulations are comprehensive, as their length and weight shows, and they are broadly the same as the election rules—particularly those for by-elections—with which we are all already familiar, with minor modifications to cater for differences such as that of the petition being open for six weeks. The read-across from by-election rules and regulations to petition regulations will, I hope, be clear for everyone here. The regulations reflect extensive consultation with the Electoral Commission, the Association of Electoral Administrators, returning officers, electoral registration officers, the chief electoral officer for Northern Ireland and the Electoral Management Board for Scotland, and comprehensive user testing has been undertaken on the key petition forms.

The regulations are extremely long and detailed, coming in at well over 100 pages, and since I am sure that everyone here will have read them in detail, in advance, I will not bore the Committee by going through them all now, but it might help if I briefly summarised them.

Part 1 sets out how the regulations apply to the different parts of the UK and also gives an interpretation of the common phrases contained in the different chapters. Part 2 deals with compiling a register of those eligible to sign a petition—equivalent to the electoral roll—and also with how such a register should be published three days before the start of a petition and be available for public inspection. The petition officer must publish the number of people allowed to sign the petition and the number that must sign for it to be successful. Those figures will be updated when a petition opens, to include any alterations to the electoral register because of last-minute applications made on or before the day of the Speaker's notice.

Part 3 forms the substantial part of the regulations. It deals with the conduct of a petition, and is broken into several chapters. Chapter 1 deals with general provisions such as the signing sheet and the official mark. The signing sheet is based on an election ballot paper. Each person wishing to add their name to a petition will sign an individual sheet and the sheets will then be counted in a fashion rather similar to that used for election ballot papers, to find out whether the petition has been successful.

Chapter 2 sets out the steps that the petition officer must take before a petition is available for signing. The regulations stipulate that a petition must be available for signing on each working day during the signing period—Monday to Friday, between 9 am and 5 pm. Additionally, the petition officer must make “reasonable” provision for the petition to be available for signing outside those times, which could include evenings and weekends. The regulations do not prescribe what the additional hours must be; they will be determined by local circumstances and covered by Electoral Commission guidance.

The petition officer is also required to issue official petition notices, so that electors know how to participate and know that signing is optional. The notices are in the form of letters and can be found in schedule 2. I can confirm that the wording has been user tested with members of the public at various locations across the UK, including with Welsh speakers.

Chapter 3 sets out the manner in which the petition is to be administered at the signing place, including regarding who can enter such a place, the delivery and receipt of signing sheets, and daily verification of the contents of the ballot box where electors will insert their completed sheets. Unlike at an election, accredited observers will not be allowed to be present at signing locations, or at any stage of the petition process other than the count. The reason is that, with a petition, only a single declaration can be made by signers. In other words, when they go into a petition-signing place, it is clear what they will do. It is not a question of a secret ballot where the vote is for one side or another. They will, by definition, be voting for just one side. A signer's presence at a signing place will inevitably be seen as an indication of their preferred outcome and, as a result, accredited observers would inevitably compromise the secrecy of the petition-signing station.

Chapter 4 details when and how the count should be conducted, including the timing, which must be as soon as possible after a petition closes and no later than one day afterwards. Accredited observers may be present at the count, along with the representatives of the Electoral Commission. The MP and representatives of the political parties will have to be accredited observers to be able to observe the count. Once the count has concluded, the regulations require the petition officer to publish a notice of the outcome, including whether the petition was successful and the number of electors who validly signed it.

Part 4, which is concerned with absent signers, sets out the eligibility criteria for anyone wishing to sign by post or by proxy, namely that they are successfully registered as postal voters on or before the cut-off date for publishing the register, or that they have registered to sign a petition by post or proxy.

Part 5 prescribes the issue and receipt of postal signing sheets, along with who can observe the proceedings. That is restricted to the petition officer, his staff and representatives of the Electoral Commission. We have ruled out accredited observers from attending those sessions as there is a need to protect the details of anyone who has signed the petition.

Part 6 of the regulations creates a number of offences relating to the petition process. The offences are created in line with those already in existence for other elections. Part 7 contains miscellaneous provisions, the most significant of which covers how to question the outcome of a petition. Broadly, it can be questioned by the MP subject to the petition process or any of his or her constituents if they believe that there was

“an undue outcome of the petition”.

A petition court examining a complaint brought within 21 days of the announcement of the outcome of the petition will have the power to void the result of that petition. If a complaint is brought after that period, a petition court may still convene, but it will not have the power to void the result.

In the previous Parliament, both governing parties and the Opposition all had manifesto commitments to introduce a power of recall. The Government continue to believe that this is one of many vital steps to help restore the public’s trust in politicians and the functioning of the House of Commons. The regulations, which will deliver that commitment, comprise a comprehensive set of provisions that will allow petitions to be administered fairly and effectively. With that mercifully brief summary of a very large wodge of regulations, I commend them to the Committee.

4.37 pm

Wayne David (Caerphilly) (Lab): It is pleasure to serve under your chairmanship, Mr Nuttall.

The Recall of MPs Act 2015 is an important piece of legislation. For the first time, Members of Parliament are subject to being recalled by their constituents if they have failed to uphold the standards expected of them in three key respects. They may be recalled if they have been convicted of an offence and received a custodial sentence of up to 12 months, if they have been barred from the House of Commons for 10 sitting days or 14 calendar days or more, or if they have been convicted of providing false or misleading information for allowance claims under the Parliamentary Standards Act 2009. The explanatory memorandum explains that if one of those transgressions has occurred, a recall petition is automatically triggered.

The regulations create the detailed procedures for that petition to occur during a six-week period. If 10% or more of the MP’s constituents sign the petition, there will be a by-election.

I have spent the past three days reading every single dot, comma and line of the regulations and I have some succinct questions seeking explanation and, I hope, clarification from the Minister. May I make it clear that, as the Minister suggested, the Opposition support the principle of recall? If the trigger is pulled, we want the process of the petition to be conducted fairly and to be expedited.

On the matter of signing by post, I understand that the electoral register will be published and distributed to each of the signing locations—one or 10, or any number in between—before the closing date for postal applications. If that is the case, no check can be made before the end of the process as to whether people have signed in person or by post. It is possible that, over a six-week period, some people may have inadvertently, or perhaps deliberately, signed twice. Am I correct in assuming that there will be a period of time before the result is announced to ensure that the necessary checks and safeguards were in place?

The second question concerns the running total of people who sign the petition. It is sensible not to make public the results of daily verification, as it might fuel a campaign rather than allow a genuine expression of public opinion. The Government have changed their position on that due to objections raised in the other place. I question the wording of the last sentence in paragraph 7.7 of the explanatory memorandum. I ask the Minister to read that sentence and agree with me that it is surely misleading at best or wrong at worst:

“Importantly, the results of daily verification will not be made public so as to allow for a tally to be made on the number of persons that have signed the petition.”

Surely the tally will take place afterwards, not during the course of events. I would like the Minister to comment on that, and provide some clarification.

Thirdly, I am pleased that the Electoral Commission was fully consulted, and that it is largely content with the regulations, but there are two issues on which the Electoral Commission’s advice was not accepted. The first relates to allowing accredited observers to observe all stages of the petition process. The statutory instrument allows for accredited observers to be present only at the count. The Electoral Commission has made the point that there is no real reason why petition observers should not have exactly the same access as observers at an election: that is, they should have access to postal petition packs and admission to the signing place as well as to the count.

The second issue relates to user testing of the petition notice letters. The explanatory memorandum says that the original intention was to have a notice card similar to a poll card. That was user tested with members of the public. Sensibly, as it was thought that the cards could inadvertently prompt electors into signing the petition, just as a poll card prompts electors to attend a polling station, it was decided to use a letter instead. That is all well and good, but the new letters are new voter materials. They may have the same wording as the notice cards, but it will be a new experience for electors to have such a letter. I therefore think that the letters ought to be user tested, as the Electoral Commission suggests. That seems to me to be a perfectly fair point.

Fourthly, on the more general point about petition notice letters, I understand that the Electoral Commission indicated to the Cabinet Office that the petition notice letters were “cluttered and too long”. As it stands, they still seem quite verbose, and possibly too long. How were the letters reduced and made more intelligible following the Electoral Commission’s representations?

Fifthly, I am glad to see that the letters to and forms for Welsh-speaking electors are included in the statutory instrument, and that we will not have the embarrassment that we had during the first police and crime commissioner

[Wayne David]

elections, when the Government did not realise until late in the day that they needed bilingual forms for people in Wales. Sadly, I am not very conversant in Welsh, the language of heaven, but I ask the Minister whether the various forms in Welsh have been properly tested with Welsh speakers. As I am sure the Minister knows, there is BBC Welsh and more colloquial Welsh, which many people in Wales speak. If the intention is to communicate effectively with people, it is often better to use the latter rather than pristine BBC Welsh.

The only sure way to determine the most appropriate form of Welsh to use is to test it with Welsh speakers. The Minister referred in passing to taking the needs of Welsh people into account, but will he indicate specifically whether proper testing has been done in all parts of Wales, with various Welsh speakers, to find the most appropriate Welsh to use on the forms? Assuming that the Minister will fully and comprehensively respond to these questions, we will support these regulations.

4.45 pm

John Penrose: I will endeavour to respond to each of those points as we go, and I am sure that the hon. Member for Caerphilly will interject if he feels that I am skating too lightly over any particular point of detail.

First, I offer huge congratulations to the hon. Gentleman on being one of the very few other people who have actually read this whole thing, including right down to the end of paragraph 7.7 of the explanatory memorandum. That attention to detail is very impressive indeed.

Let me start with the hon. Gentleman's point about signing by post. He will be aware that during any election there is a process, which is normally condensed into a single day, when people who have voted by post can, in theory, turn up on the day of the poll with their postal vote form and present it, saying, "I am eligible to vote by post, but I am choosing to vote in person. Here is my postal vote form." They hand it in at the polling station and that is then a valid vote.

The signing process takes place over a period of up to six weeks, and there will therefore have to be a continuous check to ensure that, when we get to the end, people have not had a chance to sign twice. As the hon. Gentleman will know, normally the registration forms that are held at individual local polling stations are adjusted to make sure that it is clear whether someone has a postal vote, so that the person who issues the ballot papers can make the necessary checks if required and then the necessary reconciliations can be made.

We will have to make sure that, in the case of signatories, the necessary reconciliations can happen, albeit over a longer period—so it is actually easier in some respects to ensure sure that these checks are being made. It should be easier to make sure that people cannot sign twice, in the same way that we do not allow people to vote twice on a polling day. However, the checks and the principle underlying the process—the mechanics—will, of course, still be the same.

The hon. Gentleman asked about running totals during the signing period of six weeks. He asked specifically about the final sentence in paragraph 7.7 of the explanatory memorandum. It might help the Committee if I read the entire sentence, which I think is clear. However, if

it is not clear, we may need to adjust latter guidelines and so forth to make sure that it is clear. The sentence reads:

"Importantly, the results of daily verification will not be made public so as to allow for a tally to be made on the number of persons that have signed the petition."

Providing that the emphasis is put in the right place as one reads that sentence out, I think that it is clear that the results are not being made public so that people cannot do that. However, if it later seems that there is scope for confusion among people outside this place, of course we will need to make sure that any advice and guidelines are adjusted as we go.

Wayne David: I appreciate what the Minister is saying, but having spoken to a number of people, I know that they share my concern that that is slightly unclear, at the very least, and slightly ambiguous. It would be helpful if he went away and devised a clearer form of words so that we do not have that ambiguity.

John Penrose: We will try to ensure that there is plenty of opportunity for further guidelines to be issued by bodies such as the Electoral Commission. We need to make sure that everyone is aware of this particular important point, so that future guidelines and commentary are as clear as they can possibly be.

The hon. Gentleman also mentioned a number of points that the Electoral Commission had suggested. While we followed the commission's advice in many areas, there were two areas where we differed slightly.

One was on the question of accredited observers and where they will be allowed to observe. We decided that they should be allowed in to things such as the count and so on and so forth, but not to the actual signing places themselves because, as I mentioned in my initial remarks, the difference between an election and a petition is that, if someone goes in to sign a petition, it is very clear which side of the argument they are on. Therefore, one of the central principles of our democracy—that every ballot should be secret—is very hard to maintain given the fact that, if someone goes in to sign a petition, they are, by definition, on one side, and if they do not turn up, they are on the other side. We thought that the danger of eroding the secrecy of the ballot box in an election, and not maintaining that properly in a petition, was quite great, and therefore we felt that it was inappropriate to have people observing that stage. Once a petition has been signed and safely consigned to the petition box, it becomes anonymous, and at later points in the process it is therefore safer to have accredited observers, such as at the count, in the way that the hon. Gentleman and I have just discussed.

Wayne David: Will the Minister clarify what would happen if a person went along to the signing station and signed the petition, but then decided to spoil their paper? Would their vote be counted one way or another?

John Penrose: The regulations lay out what has to happen. In the same way as for people who spoil a ballot paper in a regular election, I presume there will be the equivalent of a bad and doubtful ballot paper process, which the hon. Gentleman and I, and I am sure every other candidate, has had to go through—it would have to be clear that a clear opinion and a clear intention has been produced. If that is not clear on the signing

sheet, the presiding officer will have to take a view, and presumably the accredited observers in the room will also have to have a look. Broadly speaking, the same underlying principle, which is that a clear intention has to be visible, will be applied here, too.

The hon. Gentleman also asked about user testing the notice letters versus the notice cards. When the petition is first begun, we need to make sure that everybody knows that they can sign, but not that they need to sign, particularly if they disagree and feel that the MP concerned should not be subject to a recall by-election. As I mentioned earlier, the content of the words has been extensively user tested. As a secondary, follow-up point, he said that he feels that some of those words are perhaps a little verbose. All I can say is that they were extensively user tested. They may be longer than he and I might have started off with, but they were felt to be the ones that worked, with feedback from genuine voters, which is probably the safest and most fact-based approach that we could possibly take. The content was extensively user tested.

We went with letters rather than cards, principally to distinguish a petition from a poll. Clearly, many people will understand that those of us who are democratically responsive and responsible feel a certain duty to go and use our democratic rights when it comes to a poll, and we do not want to establish that when it comes to a petition because the very fact of feeling under pressure to go to sign a petition actually pushes people towards one side of the argument rather than the other, which could, if done wrongly, prejudice the underlying fairness of the petition. The letter was therefore felt appropriate, having road tested the contents of the piece of paper to ensure that its format is clearly different from a poll notice card so that people will have an additional, perhaps even subconscious, mental cue that this is not quite the same as an election, albeit that it is similar in many respects.

Wayne David: I agree with much of what the Minister says but, nevertheless, he is talking about a letter being used for the first time, rather than a polling card. As he tested the words on the poll card, surely it would have been sensible to test the words on the letter, too.

John Penrose: I find myself in something of a cleft stick at this point, because the hon. Gentleman and all here will realise that we are now several months on from

the end of the last Parliament. Everybody here wants to ensure that the Recall of MPs Act 2015 is fully in force promptly. We can carry on testing things until we are blue in the face, but we have tested an awful lot of this in huge detail and with huge care. At some point we have to stop testing and start doing. I am not aware, and I am sure he is not aware, of any pending cases, but it would be truly contrary to the spirit of democracy—he and I would both be very upset were this to happen—were we still to be dotting i's and crossing t's on this stuff if a case came up tomorrow, next week or soon without these regulations being in place. Both he and I would be accused of dereliction of duty were that to happen. We have tested the substance, the guts, of this in huge detail. If it later transpires that there is some question over this, of course we can come back to it, but at some point we just have to get on with it. Otherwise we will be accused of delaying things in an attempt to protect the livelihood of MPs, which of course is entirely contrary to the spirit of the Act.

Finally, the hon. Gentleman asked about Welsh forms. I am sad to hear that my ignorance of the language of heaven is perhaps only exceeded by his, but I can reassure him that the Joint Committee on Statutory Instruments now includes a Welsh speaker. I am not sure whether that member is familiar with what I hesitate to call the Queen's Welsh.

Wayne David: BBC Welsh.

John Penrose: BBC Welsh, as opposed to more colloquial Welsh. I am not sure whether that Welsh speaker can do either or both, but it is noticeable that the JCSI's scrutiny of such things has moved up a notch since that has happened. We are therefore probably better placed than we ever have been. Beyond that, as the hon. Gentleman might expect, we check with a number of other Welsh translation services, too. We have covered as many bases as we humanly can but, given the fact that neither he nor I are quite as fluent in Welsh as might be required to make this perfect, we will have to take it on trust. I am sure that the Welsh people will let us know very loudly if they feel that we have let them down in any way, but I hope that we have not.

Question put and agreed to.

4.56 pm

Committee rose.

