



HOUSE OF LORDS

Select Committee on the Constitution

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7th Report of Session 2014–15

# Recall of MPs Bill

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### *Committee staff*

The current staff of the committee are Antony Willott (Clerk), Dr Stuart Hallifax (Policy Analyst) and Hadia Garwell and Philippa Mole (Committee Assistants). Professor Adam Tomkins is the Legal Adviser to the committee.

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# Recall of MPs Bill

1. The Recall of MPs Bill was brought from the Commons on 25 November and is scheduled to have its second reading in the House of Lords on 17 December 2014. A draft bill was published in December 2011 and was the subject of pre-legislative scrutiny by the House of Commons Political and Constitutional Reform Committee (PCRC).<sup>1</sup> A Government response to the PCRC report was published in October 2012.<sup>2</sup> In preparing the bill the Government have accepted most, but not all, of the PCRC's recommendations.
2. In publishing this report, the Committee recognises that the bill relates to the House of Commons and that it received detailed scrutiny during its passage through that House. Nonetheless, the bill is a measure of constitutional importance which will affect the United Kingdom's representative democracy. For this reason we draw a number of the bill's implications to the attention of the House.

## The provisions of the bill

3. The bill provides that an MP may become subject to recall in three scenarios: first, that the MP is convicted of an offence and sentenced to a term of imprisonment;<sup>3</sup> secondly, that following a report of the Committee on Standards the MP is suspended from the House for a period of ten or more sitting days;<sup>4</sup> and thirdly, that the MP is convicted of an offence under section 10 of the Parliamentary Standards Act 2009 (offence of providing false or misleading information for allowances claims).
4. If one of these scenarios should occur, the Speaker gives notice to a petition officer (i.e. the returning officer for the relevant constituency or, in Northern Ireland, the Chief Electoral Officer for Northern Ireland). The petition officer then makes a petition available for signing at a maximum of four places in the relevant constituency and alerts registered electors to its existence. If within eight weeks the petition has been signed by at least 10% of the number of eligible registered electors (as defined in the bill), the petition officer gives notice accordingly and the MP's seat becomes vacant. The MP is permitted to stand in the ensuing by-election.
5. The bill makes provision for how a recall petition may be signed (in person, by post or by proxy), and makes "double signing" an offence. The recall process may not operate if there is less than six months to run before a general election is due to take place. The bill makes provision regarding expenditure, donations and loans in relation to recall petitions and imposes

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<sup>1</sup> Political and Constitutional Reform Committee, *Recall of MPs* (First Report, Session 2012–13, HC 373)

<sup>2</sup> Political and Constitutional Reform Committee, *Recall of MPs: Government Response to the Committee's First Report of Session 2012–13* (Second Special Report, 2012–13, HC 646)

<sup>3</sup> In effect this only applies for a sentence of one year or less, as a longer sentence would result in disqualification under the Representation of the People Act 1981, [Section 1](#).

<sup>4</sup> Or, if the period of suspension is not expressed in sittings days, that the MP is suspended for at least 14 days. These limits were reduced at Report stage in the House of Commons from 21 sitting days and 28 days, respectively.

reporting requirements in connection with the financial control of recall petitions.

6. Clause 18 provides that “The Minister may by regulations make further provision about the conduct of a recall provision” and that such regulations “may make provision creating a criminal offence”. Such regulations are to be made by statutory instrument, subject to the affirmative resolution procedure. **The House may wish to scrutinise why the Government consider it necessary to empower Ministers to create new election law offences by statutory instrument.**

### **The principle of representation**

7. Clearly the bill is a measure of constitutional reform, with the potential directly to influence the relationship between members of the public and their elected representatives in the House of Commons. As such the bill affects a fundamental principle of the United Kingdom constitution: representative democracy. In particular, it arguably runs counter to the long-established Burkean principle that Members of Parliament are not delegates. In 1774 Burke said this in his *Speech to the Electors at Bristol*: “Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you, if he sacrifices it to your opinion”.
8. The bill does not provide for what is sometimes referred to as ‘full recall’: the power that an MP may be recalled by his or her constituents for any reason. The absence of ‘full recall’ was an area of contention both with respect to the draft bill and during the bill’s passage through the House of Commons. In its scrutiny of the draft bill, the PCRC endorsed the Government’s view that:
 

“a system of full recall may deter MPs from taking decisions that are unpopular locally or ... in the short-term, but which are in the long-term national interest. It may also discourage them from taking on powerful interests ... 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.”<sup>5</sup>
9. There is a danger that the limited powers of recall for which the bill provides risk falsely raising the hopes of the electorate, creating an illusion that the public can do more than will be the reality.
10. In its report on the draft bill, the PCRC stated that “the Government has not made the case for introducing recall”, noting that the committee had “not seen enough evidence to support the suggestion that it will increase public confidence in politics”.<sup>6</sup> The committee noted that the aftermath of the expenses scandal had shown that “MPs can be, and are, removed by current processes as quickly as they would be by recall”.<sup>7</sup> The PCRC was also of the view that there is no gap in the disciplinary procedures of the House of Commons which needs to be filled by the introduction of recall. The House

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<sup>5</sup> Political and Constitutional Reform Committee, *Recall of MPs*, para 84

<sup>6</sup> Political and Constitutional Reform Committee, *Recall of MPs*, para 76

<sup>7</sup> Political and Constitutional Reform Committee, *Recall of MPs*, para 76

may already expel an MP, although this power was used only three times in the 20th century, most recently in 1954.<sup>8</sup>

### Other areas of consideration

11. In addition to these overarching comments, there are four particular features of the bill which the Committee wishes to draw to the attention of the House.
12. First, any sentence of imprisonment in respect of a conviction for any offence may trigger a recall petition. The constitutional issue arising in respect of this matter is what should happen if an MP commits an offence for political reasons. MPs have in the past engaged in public protest against aspects of Government policy and, on occasion, such protest has resulted in criminal proceedings. In the 1980s Unionist MPs were imprisoned for offences committed in protest at the 1985 Anglo-Irish Agreement. Likewise, Nationalist MPs were imprisoned for offences connected with processions that were contrary to law in Northern Ireland. A Labour MP (Terry Fields) was imprisoned for refusing to pay his 'poll tax' (community charge). The PCRC, in its report on the draft bill, considered whether there should be an exemption from a recall petition in a particular instance because of the political nature of an offence, although it noted "the difficulty of defining what constitutes a political crime or a crime of conscience".<sup>9</sup> The Government's response to the PCRC was that constituents should be left with the power to decide whether to recall their MP in these circumstances.
13. Secondly, the provision that an MP should be subject to recall where he or she is suspended from the House for ten sittings days or more means that it will be MPs themselves, rather than voters, who under this scenario determine whether the recall process can be triggered. The constitutional purpose of recall is to increase MPs' direct accountability to their electorates: it is questionable whether that purpose is achieved when the trigger is put in the hands of MPs rather than constituents. There is also a possibility that decisions taken either by the House of Commons Committee on Standards or by the House itself may become skewed by knowledge of the ten-day trigger. Ten of the 15 suspensions following Committee reports since 1992 would have triggered recalls and, of those, five have been for exactly ten sitting days or two weeks (the threshold for recall proceedings).<sup>10</sup> It could be that decisions are taken whereby MPs are suspended for a shorter period in order to avoid the prospect of their being recalled. Conversely, it could of course be that an unpopular MP is suspended for longer in the hope that he or she is recalled.
14. Thirdly, the PCRC recommended that an MP should be recalled only if there was "a significant level of dissatisfaction" with that MP.<sup>11</sup> Accordingly, they recommended that the threshold be raised from 10% to at least 20% of

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<sup>8</sup> Two of the three 20th century expulsions were of MPs who were sentenced to more than one year in prison (Horatio Bottomley in 1922 and Peter Baker in 1954) and who would thus have been disqualified under the law as it currently stands.

<sup>9</sup> Political and Constitutional Reform Committee, *Recall of MPs*, para 18

<sup>10</sup> House of Commons Library, *Recall of MPs Bill 2014–15*, Research Paper, [RP14/53](#); this bill would only trigger the recall process where a suspension results from a report from the Committee on Standards (i.e. not a suspension under Standing Orders).

<sup>11</sup> Political and Constitutional Reform Committee, *Recall of MPs*, para 63

eligible registered electors. The Government responded that they would give this and other views on the threshold “further consideration ... as part of the development of the recall policy”.<sup>12</sup> The bill retains the 10% threshold.

15. Fourthly, whereas voting is by secret ballot, signing a recall petition is a public act. Clause 18(3)(f) provides that the Minister may make provision by regulations about “the retention or disposal of documents or other information in relation to a recall petition”. The PCRC was concerned about the public nature of a recall petition, stating that “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”.<sup>13</sup> The Government’s response was that “it remains the Government’s view that there are ways in which privacy can be protected”.<sup>14</sup>
16. **We draw these matters to the attention of the House.**

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<sup>12</sup> Political and Constitutional Reform Committee, *Recall of MPs: Government response*, para 56

<sup>13</sup> Political and Constitutional Reform Committee, *Recall of MPs*, para 50

<sup>14</sup> Political and Constitutional Reform Committee, *Recall of MPs: Government response*, para 39