

National Assembly for Wales
Research paper

Recall of MPs draft Bill

June 2012

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Recall of MPs draft Bill

June 2012

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This paper summarises UK Government proposals for the recall of MPs in the case of serious wrong doing and examines the possibility of the proposals being extended to devolved legislatures.

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Recall of MPs

1. Introduction

In the 2010 UK General Election the manifestos of both the Conservative and Liberal Democrat parties both contained proposals for the recall of MPs. The UK Government published a *Draft Recall of MPs Bill* ["draft Bill"]¹ in December 2011 which has been subject to pre-legislative scrutiny by the Political and Constitutional Reform Committee of the House of Commons. During the course of this Ministers have raised the possibility that the proposals could be extended to devolved legislatures. This paper provides background to the issue of recall in the UK; outlines the proposals; highlights the key issues that have been raised in the course of scrutiny and what Ministers have said about their application to devolved legislatures and looks at recall in other political systems.

2. Background

The Programme for Government which underpins the UK Coalition Government stated:

We will bring forward early legislation 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.²

The 2010 Conservative manifesto stated:

At the moment, there is no way that local constituents can remove an MP found guilty of serious wrongdoing until there is a general election. That is why a Conservative government will introduce a power of 'recall' to allow electors to kick out MPs, a power that will be triggered by proven serious wrongdoing. And we will introduce a Parliamentary Privilege Act to make clear that privilege cannot be abused by MPs to evade justice.³

The Liberal Democrat manifesto also contained a commitment to "sack MPs who have broken the rules."⁴

The question of the recall of MPs arose in the wake of the parliamentary expenses scandal which broke in 2009. This culminated in a number of MPs being tried and given custodial sentences. In most cases they received sentences in excess of 12 months, which meant they were disqualified as MPs under s1 of the *Representation of the People Act 1981*.⁵ However, Eric Illsley, the then-MP for Barnsley Central, was sentenced to 12 months in prison. Had he not stood down as an MP, he would not have been disqualified under the 1981 Act which only

¹ [HM Government, *Recall of MPs, Draft Bill, Cm.8241, December 2011* \[accessed 27 April 2012\]](#)

² [HM Government, *The Coalition: our programme for Government, May 2010* \[accessed 27 April 2012\]](#)

³ [Conservative Party, *Invitation to join the Government of Britain, 2010* \[accessed 27 April 2012\]](#)

⁴ [Liberal Democrat manifesto, 2010](#) [accessed 27 April 2012]

⁵ [Representation of the People Act 1981 \(chapter 34\)](#) [accessed 27 April 2012]

applies to custodial sentences which are indefinite or are of more than 12 months.⁶ There was growing feeling that there should be stronger powers for constituents to get rid of MPs guilty of wrong doing.

3. The Draft Bill

The draft Bill outlines the framework for a recall mechanism for MPs, by setting out the conditions for triggering a recall petition and a model for the conduct of the petition.⁷ Although not included in the draft Bill, it is proposed to make legislative provision in relation to the regulation of spending and donations during the recall petition period. These proposals are summarised below.

3.1. *Triggering a recall petition*

A **recall petition** will be triggered where:

- An MP is convicted in the United Kingdom of an offence and receives a custodial sentence of 12 months or less (the *Representation of the People Act 1981* only disqualifies MPs who receive custodial sentences of more than 12 months); or,
- The House of Commons resolves that an MP should face recall (this would be an additional disciplinary power for the House).

Suspended sentences of any length will trigger a recall petition, but detention on remand or solely on mental health grounds will not. The custodial sentence condition would apply only to offences committed after the coming into force of the recall provisions.

Convictions outside the United Kingdom will not trigger recall under the custodial sentence condition; but such convictions could be taken into account by the House of Commons under the second condition.

Under the custodial sentence condition, the petition process would only be initiated once the MP has exhausted their rights to make an 'in-time' appeal without the conviction being overturned or custodial sentence removed.

If either one of these conditions has been met the Speaker will notify the returning officer that a petition is to be opened.

3.2. *The petition*

The petition process begins with the **Speaker giving notice to the relevant returning officer**. The returning officer will have the general duty of effectually conducting the petition process.

⁶ [HM Government, *Recall of MPs, Draft Bill, Cm.8241, December 2011* \[accessed 27 April 2012\]](#)

⁷ [HM Government, *Recall of MPs, Draft Bill, Cm.8241, December 2011* \[accessed 27 April 2012\]](#)

Constituents may sign the petition if they are on the electoral register on the first day of the signing period or the day on which they sign (provided their application to join the register was made on or before the date of the Speaker's notice) and they would be entitled to vote in a United Kingdom parliamentary election in the constituency. Those who turn 18 during the petition period will be able to sign the petition.

The recall petition will be opened two weeks after receipt of the Speaker's notice and the petition will be available for signature for eight weeks.

In constituencies throughout the United Kingdom, constituents will be able to sign the petition by post or by postal proxy. In Great Britain (i.e. excluding Northern Ireland) constituents will also be able to sign in person or by proxy at a single designated location.

The petition will take the form of individual signature sheets to safeguard the anonymity of the signatories.

If at least 10 per cent of those on the electoral register for the constituency who are eligible, sign the petition, the MP's seat will be automatically vacated and a by-election will ensue.

There will be no legal barrier to the former MP standing for election at the resulting by-election unless they no longer meet the eligibility criteria for candidacy.

The result or conduct of the petition will be challengeable. The process is similar to that for challenging an election result by a complaint to a special court.

3.3. Campaign spending and funding

There will be two categories of campaigners – accredited and non-accredited:

Accredited campaigners will have to register with the returning officer, and will be able to spend up to **£10,000**; and,

Non-accredited campaigners will be able to spend up to £500 campaigning on the petition without having to make any declaration concerning spending.

In addition, accredited campaigners will have to:

- provide details about their spending to the returning officer, and provide receipts for items of £20 and over;
- verify donations of over £500; and,
- provide details of any donations over £500 to the returning officer.

4. Issues

4.1. *Width of the proposed power*

On 19 April 2012 the Rt. Hon Nick Clegg MP, the Deputy Prime Minister, gave evidence to the House of Commons Political and Constitutional Committee. Responding to a question querying the meaningfulness of the proposals, he defended the draft Bill against accusations that it was too narrow:

Q182 Fabian Hamilton: Deputy Prime Minister, good morning. We have had quite a few witnesses come to this Committee to talk about the powers of recall that the Government is proposing to introduce, and my question really is this: why are you bothering? It seems that the powers are very narrow. It seems that a lot of our witnesses-including people who are strong supporters of the Government-feel that they could be a lot wider, and wouldn't most MPs, if they were challenged in that way, simply want to resign and call a by-election rather than go through the tortuous process that you are proposing? Discuss.

Nick Clegg: Well, good morning. Plunging straight into the recall issue, I think the most candid answer is we are trying to strike a balance. I accept it is an art, not a science, and the balance is this: of course the political reality is that if an MP were to be accused of or found to have committed serious wrongdoing, even if they were not then subject to a custodial sentence, they might well fall on their sword politically anyway. The rules, as they currently exist, mean that if you are given a custodial sentence of more than 12 months, you are automatically excluded as well. So I accept that we are trying to fill the gaps, the holes that are left, and they are quite substantial. Firstly, of course, the current arrangements do not cover a custodial sentence of 12 months or less, and we are saying that one of the two triggers that could lead to a by-election would be if you are subject to a custodial sentence of 12 months or less. So that is one bit of the system which is at the moment unresolved that we are addressing.

The second one is that more complex area of serious wrongdoing, so that constituents don't just have to endure the continued presence of their local MP until the next General Election, when they might feel that that MP has forfeited a right to represent them because they have committed serious wrongdoing. The balance we are trying to strike is to make sure that constituents have the ability to trigger a by-election, sling that Member out, get a new MP in through a by-election, but not do so in a way that basically could allow the whole system to become-as it has done, frankly, in places, like California and elsewhere-just another kind of weapon for day-to-day, week-to-week political argy-bargy between the political parties. You have to have a certain degree of due process, otherwise the whole thing just becomes a sort of kangaroo court, really, where it is just whatever the opposition accuses you of doing, and before you know it you are subject to a by-election. So that is why we have put in place these checks and balances.⁸

Andrew Griffiths MP asked whether the public was still perceive the process as ultimately resting in hands of MPs. The Deputy Prime Minister replied:

⁸ [HC Political and Constitutional Reform Committee, *Inquiry on Reform of MPs*, Oral Evidence HC1758-iv, 19 April 2012 \[accessed 27 April 2012\]](#)

I totally understand the risk is that that is the perception. I guess the most important argument against that is that you have the Commissioner for Standards, the Standards and Privileges Committee, who I don't think have been slouches in highlighting wrongdoing and making it very difficult for the House to somehow brush anything under the carpet. So it is not entirely up to a subjective judgment of the House where, of course you are right in theory, the risk is that everybody constantly lowers the bar until it is meaningless. The fact that we have these belt-and-braces arrangements in place, which have strengthened considerably in recent years-through the independence of the Commissioner, the rigour with which the Commissioner is investigating allegations of wrongdoing, and the Committee has also taken pretty robust action and made pretty robust recommendations on individual cases-should provide comfort that it is not just going to be a, "You scratch my back, I will scratch yours"-type arrangement.⁹

4.2. *Serious wrongdoing*

The Deputy Prime Minister clarified that there are two triggers which would lead to a possible petition:

- a custodial sentence of 12 months or less, and
- the House of Commons finding a **serious wrongdoing** has been committed.

He noted that "there is a fair amount of discretion for the House to decide what warrants serious wrongdoing".¹⁰ There was some discussion of what behaviour might constitute "serious wrong doing". Fabian Hamilton MP asked:

let us say you have a Member who spends most of his or her time here in the House of Commons, as we should, but actually does not go the constituency that much, does the bare minimum of advice surgeries but not enough for most constituents' needs, and does not turn up to a lot of events but is actually a very good parliamentarian. How does your legislation act in that case? For example, if a group of constituents say, "I have been trying to see my MP in an advice surgery and he or she is just not there often enough, but is always in the headlines"?¹¹

The Deputy Prime Minister responded:

I have to say to you I would have thought it would be fairly unlikely that the House would regard just outright industrial-scale laziness as a matter of serious wrongdoing. I personally think someone who does that does not have much chance of getting re-elected in the next General Election.¹²

Simon Hart MP asked whether the provisions account for MPs who wish or do change parties in mid-term. The Deputy Prime Minister responded that it would not constitute "serious wrong doing" as envisaged in the Bill.

Mark Harper MP, the Minister for Political and Constitutional Reform summed up:

The way I look at it is this. We are all subject to a recall election once every five years. That is what should be the position for normal politics. This is really about: have you done

⁹ [HC Political and Constitutional Reform Committee, *Inquiry on Reform of MPs*, Oral Evidence HC1758-iv, 19 April 2012 \[accessed 27 April 2012\]](#)

¹⁰ Ibid.

¹¹ Ibid,

¹² Ibid.

something that is so serious that it is not appropriate to wait until voters have their normal opportunity to express an opinion on your performance? That is really the gap we are trying to close. The normal cut and thrust of politics, the voters always have an opportunity once every five years to say, "Do you want to continue with your MP or do you want to get a new one?" That is perfectly adequate for most things. This is about filling a gap, where someone has done something where people generally feel it is not appropriate-perhaps, if they did something at the early part of the Parliament-to wait four years to express a view. That is the gap we are trying to close. This is not a substitute for elections.¹³

The Parliamentary Commissioner for Standards, John Lyon, stated in his evidence:

...may I just say that I do not believe that "a serious wrongdoing" is in itself a description of any particular conduct? It is a description of the gravity of any breach of that conduct, which in this case, is a breach of the rules set out in the code. To establish serious wrongdoing in these circumstances would, in my judgment, require a three-stage process. Briefly, the first stage is to establish what wrongdoing is, and that is, or should be, clearly set out in the law or the relevant code. To say in the code that Members should not engage in serious wrongdoing would not, in my judgment, be sufficient. The second stage is deciding in any particular case if such wrongdoing set out in the code or the law has indeed taken place. The third stage is deciding if any such wrongdoing is serious-so serious as to merit triggering the recall process.

In my view, the first stage-establishing in a code what is right, as well as what is wrong-is a matter for the House. The second stage-establishing wrongdoing in any particular case-is initially for the Commissioner. The third stage-deciding on seriousness-is for the House. Now, I have a role in the first two stages: in advising on a code and investigating an alleged breach; but in my view I should have no role in deciding on or advising on any disciplinary sanctions, be it recall for serious wrongdoing or anything else.¹⁴

The Chair of the Standards and Privileges Committee Sir Keith Barron MP stated that the Committee on Standards and Privileges had "some grave concerns about exactly what serious wrongdoing means, outwith the criminal code".¹⁵

5. Provisions relating to Wales and the Assembly

Deliberations in the House of Commons have raised the question that, if the principle of recall of MPs is accepted for Westminster, it should also be extended to the devolved legislatures:

Thomas Docherty (Dunfermline and West Fife) (Lab): A number of Scottish newspapers have revealed a shocking history of domestic violence and child beating by a nationalist MSP, Mr Bill Walker, stretching over 30 years. Mr Walker, like all who commit domestic violence acts, has arrogantly refused to take responsibility for his actions and will not resign his seat. Will the Leader of the House confirm whether the Government will consult the Scottish Parliament on extending any new provisions for the recall of MPs to MSPs so that my constituents can be represented in the Scottish Parliament by a fit and proper person?

¹³ [HC Political and Constitutional Reform Committee, *Inquiry on Reform of MPs*, Oral Evidence HC1758-iv, 19 April 2012 \[accessed 27 April 2012\]](#)

¹⁴ [HC Political and Constitutional Reform Committee, *Inquiry on Reform of MPs*, Oral Evidence HC1758-ii, 19 January 2012 \[accessed 11 May 2012\]](#)

¹⁵ *Ibid.*

Sir George Young: I understand the hon. Gentleman's concern. He will know that we have published a draft recall of MPs Bill. In fact, this morning the Parliamentary Secretary, Cabinet Office, my hon. Friend the Member for Forest of Dean (Mr Harper), gave evidence to the Political and Constitutional Reform Committee, which is doing pre-legislative scrutiny. We have said that we will consider extending recall to the devolved legislatures, including the Scottish Parliament, as part of our overall consideration of responses to the inquiry. In the first instance we want to honour our commitment to the recall of MPs, but we have not ruled out extending it to the devolved legislatures at a later stage.¹⁶

In response to a query whether the principle would extend to other elected offices, Mark Harper MP, in evidence to the Political and Constitutional Reform Committee responded:

We set out MPs first, because that is what the commitment in our manifestos was about. We made it clear that we want to look at all the sponsors we have had to the consultation on this and what you have said, and then we will take a view of whether it is appropriate either at the same time to set out a recall mechanism for other officers in other roles, or whether that is something that ought to happen at a later stage. We certainly have not ruled it out, but we simply wanted to tackle MPs first, because that is what we have committed to do. We didn't make a commitment more widely. But clearly I know part of the evidence that you have taken, and whatever it will be, about other elective positions-and we will have to take a view when bringing forward proposals, do we want to basically deal with MPs first and leave others until later, or do we want to deal with them all at the same time? So obviously if you have thoughts about that, and about appropriate models about whether it is directly transferable or whether it needs to be different, that will of course be very helpful for the Government's deliberations.¹⁷

6. Recall in other political systems

Recall is used in comparatively few countries throughout the world, with the best known examples being certain states of the United States of America. It is also used in six of the 26 cantons in Switzerland, Venezuela, the Philippines, the Province of British Columbia in Canada, South Korea, Taiwan and Argentina amongst others.¹⁸

In the **United States of America**, 19 states permit the recall of state officials and 29 states allow for the recall of local officials. In many states the recall process has three steps:

- recall petition;
- recall ballot;
- new election. In some states steps (ii) and (iii) are taken at the same time.

¹⁶ [HC Debates, 19 April 2012 c540 \[accessed 27 April 2012\]](#)

¹⁷ [HC Political and Constitutional Reform Committee, *Inquiry on Reform of MPs*, Oral Evidence HC1758-iv, 19 April 2012 \[accessed 27 April 2012\]](#)

¹⁸ [HC Library, *Recall Elections*, Standard Note SN/PC/0589, 13 October 2011 \[accessed 7 June 2012\]](#)

Evidence suggests that recall has been more frequently used and successful at local rather than state level. To date there have only been two successful recalls of a State Governor; in North Dakota in 1921 with the recall of Lynn Frazier¹⁹ and in California in 2003 with the recall of Gray Davis on the basis of his management of the budget.²⁰ Governor Scott Walker of Wisconsin survived a recall election in June 2012. In this case the momentum behind the recall was motivated by opposition to changes he was implementing to employment rights and budget cuts.²¹

The recall procedure has been used more often in relation to state legislators, but is still seldom successful. In California, a state which does not require any specific grounds to commence a recall petition, many attempts have been made to trigger a recall election, but only five petitions have been successful in doing so. Following these recall elections, two senators have been recalled and three survived the recall vote.²²

Under the model used in **Venezuela**, any elected representative can be subject to recall, but only after half of the term of office has elapsed. For a recall petition to be successful it must gain the support of at least 20 per cent of registered voters from within the office holder's constituency.²³ Should this threshold be met, this ultimately triggers a referendum on whether the office holder should serve out the remainder of their term. Such a referendum was held in 2004 in relation to President Chavez.²⁴

The Canadian province of **British Columbia** adopted recall in 1995 through the *Recall and Initiative Act 1995*. This gave voters the power to remove their Member of the Legislative Assembly between elections. Under the *Recall and Initiative Act 1995*, a successful recall petition triggers the removal of a Member of the Legislative Assembly. If the Chief Electoral Officer determines that a recall petition has a sufficient number of valid signatures and meets the requirements of the Act, the Member ceases to hold office and the seat becomes vacant. A by-election must be called within 90 days.²⁵

24 recall applications have been approved since 1995 although 23 of the 24 petitions failed because they did not collect enough signatures. Two proceeded to verification. Of these one was found to not have enough signatures and the second was halted because the MLA concerned resigned.

¹⁹ [The Bismarck Tribune, "California Re-call drive puts former N.D. Gov. Lynn Frazier in spotlight", 5 July 2003 \[accessed 7 June 2012\]](#)

²⁰ [PBS, Online Newshour, The Recall of Gray Davis \[accessed 7 June 2012\]](#)

²¹ [One Wisconsin Now, 12 Reasons to recall Scott Walker in 2012 \[access 7 June 2012\]](#)

²² [HM Government, Recall of MPs, Draft Bill, Cm.8241, December 2011 \[accessed 27 April 2012\]](#)

²³ [Ibid.](#)

²⁴ [BBC News, Q & A: Venezuela's recall referendum, 16 August 2004 \[accessed 7 June 2012\]](#)

²⁵ [BC Elections, Recall webpage \[accessed 7 June 2012\]](#)

A key difference between practice in many other countries and what the UK Government is proposing is that recall of elected representatives in other countries, such as the examples above, allow recall for political reasons. The UK only proposes it for “serious wrongdoing”.