

Recall of MPs Draft Bill



HM Government



Recall of MPs Draft Bill

Presented to Parliament
by the Deputy Prime Minister
by Command of Her Majesty

December 2011

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Foreword

The Programme for Government set out the key principles that underpin the Government's work: freedom, fairness and responsibility. For our democracy that means restoring faith in the political process after the expenses scandal that mired the last parliament, and to do so we must ensure that politicians are accountable to the people they serve.

Politicians are held accountable at elections for the way in which they have voted or their record in office. However, at present a Member of Parliament may have been found to have engaged in serious wrongdoing but would not have to account to their constituents until the next general election, which could be up to five years away. These recall proposals are about ensuring MPs remain accountable to their constituents. It was the behaviour of individual MPs which rocked confidence in Parliament over the expenses scandal and it is right that constituents should be able to express their view on their MP when they have committed serious wrongdoing.

There are numerous models used to recall politicians around the world and, in developing these proposals, we have drawn on the experiences of other countries. However, we have not sought to mirror the arrangements in other countries. Our proposals must work within our unique constitutional framework, and that is why we are proposing a model which is suitable for our system of representative democracy. In particular, the Government has not sought to redesign the disciplinary arrangements for the House of Commons or abridge that House's historic privileges in order to establish a recall mechanism. However, whilst it should be acknowledged that the House of Commons has agreed to modernise its disciplinary arrangements, including by introducing lay members to the Committee on Standards and Privileges, the House needs to ensure that its internal arrangements are robust enough and must consider whether any changes are required in the light of these proposals. It is vital that the House of Commons is able to deal with disciplinary issues effectively and transparently.

It is crucial we do all we can to ensure 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 that they should have voted a different way on a particular measure. We believe that the proposals outlined here address this issue in the right way.

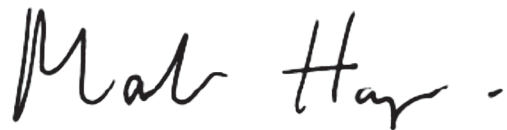
By its very nature, the subject of recall can be emotive and there will be divergent views on how we should proceed. There is also no precedent for a working mechanism of recall in the United Kingdom. We are in uncharted territory. The draft Bill sets out one possible approach in some detail, but in

bringing forward the draft Bill the Government hopes to trigger a debate on what would be the best model for a recall mechanism.

We publish this White Paper and draft Bill for pre-legislative scrutiny, and will consider the results of this process with great care. As part of this process we will be willing to consider alternative models that are put forward. The detail in the draft Bill will aid deliberation, but should not be read as ruling out any alternative. We invite everyone's comments on the draft Bill, whether made to the Cabinet Office or in evidence during pre-legislative scrutiny.

A handwritten signature in black ink, reading "Nick Clegg". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rt Hon Nick Clegg MP
Deputy Prime Minister

A handwritten signature in black ink, reading "Mark Harper". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark Harper MP
Minister for Political & Constitutional Reform

Executive Summary

1. 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. These proposals are summarised below.
2. 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 also summarised below.

Triggering a recall petition

3. 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).
4. 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.
5. 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.
6. 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.
7. If either one of these conditions has been met the Speaker will notify the returning officer that a petition is to be opened.

The petition

8. 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.
9. 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.
10. 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.
11. 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.
12. The petition will take the form of individual signature sheets to safeguard the anonymity of the signatories.
13. If at least 10% 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.
14. 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.
15. The result or conduct of the petition will be challengeable in a process similar to that for challenging an election result by a complaint to a special court.

Campaign spending and funding

16. 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.
17. 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.

Background

Coalition Programme for Government

18. At the last general election all three of the main political parties in the House of Commons committed themselves to establishing a recall mechanism which would be triggered either where an MP had been found guilty of financial misconduct or had been found to have engaged in serious wrongdoing¹. Building upon this the coalition's Programme for Government included the following commitment:

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.

19. This means a double set of conditions must be met before an MP has to face a by-election. First, they should have been found to have engaged in serious wrongdoing and, second, at least 10% of that MP's constituents should have signed a petition calling for the recall.
20. Central to any recall mechanism are the conditions triggering a petition. In designing the conditions for a recall mechanism, the Government has taken account of the current disciplinary arrangements in the House of Commons and statutory provision concerning disqualification from membership of the House of Commons. There are no examples of recall mechanisms currently in use within the United Kingdom, so this paper also looks at models of recall used elsewhere in the world.

The role of the House of Commons

21. The United Kingdom Parliament is sovereign and the House of Commons retains exclusive cognisance over its internal affairs, including in relation to disciplinary issues. Following the Glorious Revolution, the Bill of Rights 1689 (and the Claim of Right in Scotland) enshrined Parliament's right to regulate its own affairs without interference from the Crown or the courts. To this end Article 9 of the Bill of Rights provided that proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament. The Bill of Rights 1689 and Parliament's right to regulate its own affairs are cornerstones of our constitutional arrangements and guarantee Parliament's role in holding the executive to account. The House of Commons' disciplinary powers

¹ Conservative Party manifesto (*Invitation to Join the Government of Britain*) pp.65-6; Liberal Democrat Party manifesto p.89; Labour Party manifesto (*A Future Fair for All*) ch. 9, p.2.

are exclusively a matter for the House and are not set out in statute. As such the exercise of these powers may not be questioned, reviewed or reversed by the courts.

22. Whilst the House of Commons regulates its own disciplinary arrangements, these have periodically been subject to review by the independent Committee on Standards in Public Life, most notably in 1995 and 2009.²
23. The main pillars of the disciplinary arrangements in the House of Commons include the Committee on Standards and Privileges, the Parliamentary Commissioner for Standards, the Code of Conduct for MPs and the disciplinary powers available to the House. There are also a number of statutory provisions that disqualify a person from membership of the House of Commons.

The House of Commons Committee on Standards and Privileges

24. The current disciplinary arrangements in the House of Commons were established in November 1995³ when the House voted to implement the recommendations set out in the 1995 report by the Committee on Standards in Public Life. One of the key aspects of the revised arrangements is the House of Commons Committee on Standards and Privileges. That Committee assumed the responsibilities of both the Committee on Members' Interests and the Committee on Privileges.
25. In line with the recommendations in the 1995 report of the Committee on Standards in Public Life, the remit of the Committee on Standards and Privileges in relation to the conduct of MPs is to:
 - Oversee the work of the Parliamentary Commissioner for Standards;
 - Oversee the maintenance of the Register of Members' Financial Interests;
 - Consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner;
 - Consider conduct matters concerning Members, including specific complaints in relation to alleged breaches in the Code of Conduct; and,
 - Recommend changes to the Code of Conduct.
26. In relation to complaints about an MP's conduct, the Committee considers reports from the Commissioner and representations from the MP in question. In the light of this the Committee will then decide what sanction, if any, it recommends should be imposed upon an MP. Whilst disciplinary sanctions are imposed by resolution of the House of Commons, in practice the House only uses its disciplinary powers upon the recommendation of the Committee, except where it relates to disorderly conduct in the Chamber or in committee. The Committee currently consists of ten MPs, and by convention, the Committee's Chair comes from the largest opposition party.
27. In the wake of the MPs' expenses scandal the Committee on Standards in Public Life conducted an inquiry and published a report⁴ which examined the arrangements for handling expenses claims, and examined the House's disciplinary arrangements. One of the recommendations of the report

² MPs, Ministers and Civil Servants, Executive Quangos (Cm 2850, 11 May 1995) and MPs' Expenses and Allowances (Cm 7724, November 2009).

³ House Commons Official Report vol.265, coll.610-82 (6 November 1995).

⁴ MPs' Expenses and Allowances (Cm 7724, November 2009).

was that the Committee on Standards and Privileges should in future include two lay members who have never been MPs. The report also recommended that the lay members should have full voting rights and stated that the purpose of this recommendation was “*enhancing public acceptance of the robustness and independence of the disciplinary process*”.⁵ This recommendation mirrored a recommendation to include lay members on the Speaker’s Committee for the Independent Parliamentary Standards Authority.

28. In the last Parliament the Committee on Standards and Privileges published a report on the implementation of these recommendations.⁶ In that report, the Committee endorsed the recommendation that its membership should be supplemented with two lay members. In addition, the Committee also agreed:
- That lay members should have full voting rights concerning conduct matters;
 - That the quorum for discipline issues should consist of five elected members and one lay member to ensure that no decision on a standards matter could be taken without direct input from one of the lay members; and,
 - While recognising the privilege issues, “a means of bringing participation of lay members in this Committee’s work within the ambit of privilege must be found, and we are ready to work with the Government and with the House authorities to that end”.⁷
29. On 2 December 2010, the House of Commons agreed in principle the 2009 report by the Committee on Standards in Public Life in relation to lay members. The House invited the Procedure Committee to bring forward proposals to implement the report, and they responded in a report published on 7 November 2011.⁸

The Parliamentary Commissioner for Standards

30. Allegations that an MP has breached the Code of Conduct are investigated by the Parliamentary Commissioner for Standards who is appointed for a five year non-renewable term. Most of the Commissioner’s investigations are initiated by a complaint from a member of the public, but he can also investigate any matter that has come to his attention in any other way. The Commissioner can be dismissed only if unfit or unable to carry out his duties. The Commissioner’s main responsibilities include:
- Overseeing the Register of Members’ Financial Interests;
 - Providing advice on a confidential basis to individual Members and to the Committee on Standards and Privileges about the interpretation of the Code of Conduct and Guide to the Rules relating to the Conduct of Members;
 - Monitoring the operation of the Code of Conduct and Guide to the Rules and, where appropriate, proposing possible modifications of it to the Committee on Standards and Privileges;

⁵ Paragraph 13.67.

⁶ House of Commons Committee on Standards and Privileges, Implementing the Twelfth Report from the Committee on Standards in Public Life, Second Report of Session 2009-10, HC 67.

⁷ Paragraph 9.

⁸ House of Commons Procedure Committee, Lay membership of the Committee on Standards and Privileges, Sixth Report of Session 2010-12, HC 1606.

- Preparing guidance and providing training for Members on matters of conduct, propriety and ethics;
 - Receiving and investigating complaints about Members who are allegedly in breach of the Code of Conduct and Guide to the Rules, and reporting their findings to the Committee on Standards and Privileges; and,
 - The Commissioner also presents an annual report to the House of Commons on the work of their office.
31. During the investigation of a complaint, the MP in question is able to make representations to the Commissioner. At the conclusion of an investigation, the Commissioner submits a report setting out the facts of the case to the Committee on Standards and Privileges. A few cases of minor and inadvertent breaches of the Code are resolved by the Commissioner himself, with no report to the Committee. Details of these cases are published on the Commissioner's website.⁹
32. In its 2009 report on MP's expenses,¹⁰ the Committee on Standards in Public Life recommended that the Commissioner should have the authority to conduct investigations without a formal complaint. The House implemented this recommendation in 2010. In line with a further recommendation in the report, the Commissioner's reports now provide an indication as to whether a complaint amounted to a serious breach of the Code of Conduct.
33. Anyone may bring an allegation of misconduct and ask the Commissioner to investigate.

The Code of Conduct for MPs

34. The Code of Conduct for MPs sets out the standards of conduct expected of MPs during the course of their parliamentary duties. The Code includes a requirement to register and declare all relevant interests that might be thought to influence their actions during the course of their parliamentary activities. The information which is required to be registered is published in the Register of Members' Financial Interests which is regularly updated and available to the public.
35. The current Code also encapsulates the Nolan Principles on conduct in public life.¹¹ The Code applies to MPs in all aspects of their public life but does not seek to regulate what MPs do in their purely private and personal lives.¹² The current Code goes on to stipulate that:

Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute (paragraph 15).

36. Whilst the Code of Conduct has been amended on a number of occasions in recent years, there has not been a wholesale review of the Code since 2004. In March 2011 the Parliamentary

⁹ <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/pcfs/publications/inquiries/matters-rectified/> (accessed 5 December 2011).

¹⁰ Recommendation 50, MPs' Expenses and Allowances (Cm 7724, November 2009).

¹¹ The 'Nolan Principles' were published by the first report by the Committee on Standards in Public Life (Cm 2850, 11 May 1995). The principles can be found on the website of the Committee on Standards in Public Life: www.public-standards.org.uk/Library/Seven_principles.doc (accessed 5 December 2011).

¹² Paragraph 2. The Code of Conduct for Members of Parliament, House of Commons, 22 June 2009.

Commissioner for Standards launched a consultation seeking views on the scope and content of the Code as part of a wider review of the Code. A report on the review of the Code was published by the Committee on Standards and Privileges on 8 November 2011.¹³

The House of Commons' disciplinary powers

37. The House of Commons retains the power to reprimand or admonish, withhold a salary, and suspend or expel MPs. Where money has been wrongfully claimed, the House can require its repayment. The 1999 report of the Joint Committee on Parliamentary Privilege¹⁴ concluded that each House of Parliament should retain the right to discipline its Members.
38. Standing Order No. 44 provides that where an MP is 'named' by the Speaker for disorderly conduct, they will be suspended for five sitting days on the first occasion and twenty sitting days on the second occasion. Standing Orders do not set out the periods of suspension where an MP is suspended as a result of some other misdemeanour. Standing Order No. 45A provides that an MP's salary is to be withheld during a period of suspension. In 2003 the House of Commons passed a resolution¹⁵ providing that an MP's salary could be withheld as a penalty even where an MP had not been suspended.

The use of disciplinary powers

39. Whilst the House of Commons has a wide range of disciplinary powers, it has exercised these powers cautiously. However in the wake of the expenses crisis in the last Parliament a large number of MPs were disciplined. The following disciplinary sanctions, admonishments and directions were recommended by the Committee on Standards and Privileges in the 2005-2010 Parliament:
 - 4 MPs were suspended;
 - 25 MPs were required to repay money or expenses;
 - 5 MPs were made to apologise to the House; and,
 - 1 MP's resettlement grant was withheld.
40. The House of Commons rarely uses the power to expel MPs. In the last century the House has used the power to expel an MP on three occasions:
 - August 1922, Horatio Bottomley (Independent, South Hackney) was expelled following a conviction for fraud and sentence of seven years imprisonment;
 - October 1947, Garry Allighan (Labour, Gravesend) was expelled after lying to a committee and for gross contempt of the House after the publication of an article accusing MPs of insobriety and of taking bribes for the supply of information; and,
 - December 1954, Peter Baker (Conservative, South Norfolk) was expelled after receiving a custodial sentence of seven years following a conviction for forgery.

¹³ House of Commons Committee on Standards and Privileges, Review of the Code of Conduct, Nineteenth Report Session 2010-12, HC 1579.

¹⁴ Paragraphs 274-276, HL 43-I / HC 214-I, 9th April 1999.

¹⁵ House of Commons Official Report vol.407, col.1239 (26 June 2003):

41. In two of these cases, the MP would now automatically lose his seat under the Representation of the People Act 1981 (see below).

Statutory disqualifications

42. The Forfeiture Act 1870 disqualifies a person from sitting or voting as a Member of either House of Parliament where they have been convicted of treason.
43. The Representation of the People Act 1981 provides that an MP is disqualified from the House where they are found guilty of an offence and receive a custodial sentence which is more than 12 months and are detained in the British Isles or the Republic of Ireland, or they are unlawfully at large.
44. As the law stands, an MP may receive a custodial sentence of 12 months or less and retain their seat. Where previously an MP has been convicted and detained, the sentencing judge has informed the Speaker and the text of the letter from the sentencing judge has been published in the Official Report.¹⁶
45. The last time a sitting MP received a custodial sentence was in 1991 when Terry Fields was given a custodial sentence of 60 days for refusing to pay the Community Charge. Mr Fields retained his seat. In addition, 14 other serving MPs from Northern Ireland have also served custodial sentences in recent history.¹⁷
46. In January 2011, Eric Illsley was found guilty of false accounting, an offence which can carry a prison sentence of up to 7 years. Whilst he remained an MP at the time of conviction, he stood down as an MP prior to being 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 applies to custodial sentences which are indefinite or are of more than 12 months.
47. Other statutory disqualifications which can lead to a sitting MP losing their seat include:
- Disqualification if found guilty of corrupt or illegal electoral practices (section 173 of the Representation of the People Act 1983);
 - Disqualification if subject to a bankruptcy restrictions order or a debt relief restrictions order in England and Wales, or the equivalent in Scotland or Northern Ireland;
 - Disqualification from the House of Commons if they are detained for treatment on mental health grounds for six months or more (section 141 of the Mental Health Act 1983); and,
 - Disqualification where an MP holds an office which is listed in the House of Commons Disqualification Act 1975.
48. Section 141 of the Mental Health Act 1983 sets out a process by which MPs are to vacate their seats if they have a mental health condition and are authorised to be detained under mental health legislation for a period of six months or more. Although the provisions in section 141 have never been used, this section is symptomatic of an attitude towards mental illness which is out of touch

¹⁶ This was the case following the imprisonment of Terry Fields in 1991. Cf. House of Commons Official Report, vol.195, col.1 (15 July 1991).

¹⁷ House of Commons Library Standard Note, Members Imprisonment Since 1979, SN/PC/04594 (23 January 2008).

with the modern understanding of mental health. In a Written Ministerial Statement to the House of Commons on 3rd February 2011, the Government signalled its agreement with the all-party parliamentary group on mental health that section 141 should be repealed.¹⁸ The Government intends to repeal section 141 as soon as a suitable legislative opportunity arises.

¹⁸ This view was expressed by the Speaker's Conference on Parliamentary Representation. Cf. its Final Report, HC 239-I, paragraph 327 (6 January 2010).

The Proposals

49. The proposals set out in this paper mirror the provisions in the accompanying draft Bill which sets out a legislative framework for triggering (Part A) and conducting (Part B) a recall petition. Whilst not set out in the draft Bill, in this paper the Government also outlines proposals for a regime to regulate campaign spending and donations during the recall petition process (Part C).
50. In certain circumstances, the draft Bill provides powers for further details of the petition process to be set out in secondary legislation. This follows the model set by the existing legislative framework for most elections and referendums; nevertheless, this paper sets out the principles behind how the proposed model would operate.

Part A: Triggering a recall petition

Summary

A recall petition will be triggered where:

- An MP is convicted in the UK of an offence and receives a custodial sentence of 12 months or less (the Representation of the People Act 1981 only disqualifies members 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 commencement of the recall provisions.

Convictions outside the UK 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 his or her rights to make an 'in-time' appeal without the conviction being overturned or custodial sentence removed.

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

A diagram setting out the processes for triggering a recall petition can be found at Annex A.

Defining serious wrongdoing

51. The Government does not believe that a recall petition should be triggered for purely political reasons but only where an MP's conduct falls below the standards expected of those elected to public office. Therefore, before a recall petition is initiated the Government believes there should be a finding of serious wrongdoing.
52. Any statutory definition of 'serious wrongdoing' would be limited in scope and open to interpretation by the courts. It is also likely that such a definition would need updating on a regular basis. Therefore in designing a recall mechanism the Government has considered the existing disciplinary arrangements of the House of Commons and statutory provision governing membership of the House of Commons.
53. The draft Bill sets out two conditions for initiating a recall petition:
 - Where an MP is found guilty of a criminal offence and is sentenced to a custodial sentence (if they are not otherwise disqualified); or;

- Where the House of Commons resolves that a petition should be opened.

Condition 1: a custodial sentence

54. Currently, if an MP is found guilty of a criminal offence and receives a custodial sentence of 12 months or less they may retain their seat.
55. A broad range of offences could attract a maximum sentence of 12 months, including the offence contained in the Parliamentary Standards Act 2009 of providing false or misleading information for allowances claims. In the case of offences with a maximum sentence in excess of 12 months, case law demonstrates that lesser sentences of up to 12 months are often imposed by the courts.
56. Imprisonment would most likely lead to a serious loss of faith in a particular MP and, if they were entitled to retain their seat without any further consequence, in Parliament as a whole. If detained an MP would be unable to carry out their responsibilities as an elected representative.
57. The Government considers that any custodial sentence is an indication of serious wrongdoing and believes that an MP should not be able to retain their seat with impunity having received a custodial sentence. Therefore the draft Bill provides that a recall petition will be initiated when an MP is found guilty of an offence and receives a custodial sentence. This will ensure that if an MP receives such a custodial sentence, and if they are not otherwise disqualified or expelled from the House (for example because the sentence received is greater than 12 months), their constituents will have the final say on whether the MP should retain their seat. If 10% or more of those on the electoral register for the MP's constituency sign the petition, the MP's seat will become vacant and a by-election will be held.
58. The draft Bill does not take account of the motivation of the MP in committing a crime. It is possible that an MP may commit a crime for the purpose of making a wider political point. If an MP were convicted of an offence and received a custodial sentence in those circumstances, it would be up to their constituents to judge in the recall petition process whether the MP should retain their seat.

Non-custodial sentences and misconduct not resulting in a conviction

59. A range of non-custodial sentences are available to the courts and the Government has given careful consideration to them when drawing up these proposals. Whilst it is possible that an MP may receive a non-custodial sentence for behaviour which brings the House of Commons into disrepute, the Government believes that it would be a disproportionate response to commence a recall petition in all such cases.
60. If an MP is the subject of a criminal investigation that does not result in a custodial sentence, it is still open to the House to take disciplinary action against them if the conduct in question represents a possible breach of the Code of Conduct. However, criminal investigations will always take precedence over disciplinary procedures of the House, under a 2008 agreement between the Committee on Standards and Privileges, the Parliamentary Commissioner for Standards and the Metropolitan Police Service.¹⁹ Where an MP is accused of criminal behaviour, but the accusation does not lead to a custodial sentence, the House of Commons is still able to investigate the

¹⁹ House of Commons Committee on Standards and Privileges, The Complaints System and the Criminal Law, Eighth Report of Session 2007–08, HC 523.

allegation as a potential breach of the Code of Conduct. Such proceedings may be triggered by a complaint by a member of the public to the Parliamentary Commissioner for Standards.

Suspended prison sentences

61. Courts in England and Wales and in Northern Ireland have the power when passing a custodial sentence to suspend its effect. The effect of suspension is that the offender does not immediately serve the custodial sentence. However, if the offender breaches the terms of the suspension, they may be required to serve that sentence. Courts do not impose a suspended sentence order unless they are satisfied that the offence is sufficiently serious that, were the suspension option not available, they would have passed a custodial sentence. Given that the imposition of a suspended custodial sentence signifies that an offence is serious, the Government believes that any MP who receives a suspended custodial sentence should face a recall petition.
62. The effect of the draft Bill would be that a custodial sentence of any length which was suspended would trigger a recall petition. In England and Wales at present, the maximum length of a custodial sentence which may be suspended is a sentence of not more than 12 months, imposed by the Crown Court. Proposals in the Legal Aid, Sentencing and Punishment of Offenders Bill would mean that in the future it would be possible for courts to suspend a custodial sentence of up to two years. Any MP so sentenced would not be disqualified on account of that suspended sentence under the Representation of the People Act 1981 because that disqualification only applies where an MP is actually imprisoned or unlawfully at large. However, a suspended sentence order where the underlying custodial sentence was more than 12 months would also trigger recall.

Detention on remand or on mental health grounds

63. The draft Bill provides that detention on remand would not trigger a recall petition. This is because remand in custody following conviction lacks the finality of a custodial sentence. A recall petition would also not be triggered where an MP has been found guilty of an offence and, instead of being sentenced to imprisonment, is detained in hospital on mental health grounds. This is because such a detention would be solely on mental health grounds rather than on the grounds of the seriousness of the offence.
64. Section 45A of the Mental Health Act 1983 allows a Crown Court in England and Wales, in addition to sentencing an offender to a term of imprisonment, to direct that the offender be detained in hospital for treatment prior to transfer to prison to serve the custodial sentence. In such a case, the existence of the custodial sentence would trigger a recall petition even though there had also been a direction on mental health grounds. Similar provision exists for Scotland in section 59A of the Criminal Procedure (Scotland) Act 1995.

Appeals against convictions or sentences

65. Where an MP receives a custodial sentence as a result of a criminal conviction, they will be able to appeal against the conviction or sentence through the courts. The Government has given careful consideration to the scenario where an MP's conviction, which could lead to a recall petition, is overturned on appeal, either by the conviction being quashed or the sentence being replaced with a non-custodial sentence. In 1999 Fiona Jones MP was convicted of corrupt electoral practices under the Representation of the People Act 1983 and therefore disqualified from sitting as an MP. Her conviction was subsequently overturned, and she re-took her seat before a by-election had been held.

66. To ensure that an MP is not fighting both an appeal and a recall petition at the same time, the draft Bill provides that a recall petition may only be opened under the first condition once appeal rights have been exhausted and if the conviction has not been quashed or the custodial sentence replaced with a non-custodial sentence. Appeals must be brought within the standard set time periods. These periods may be extended or an appeal may be brought late in certain circumstances. In order not to prolong indefinitely the triggering of a recall petition, the recall petition process will be triggered if the usual period for lodging an appeal (or a further appeal) expires without the MP having lodged such an appeal. Where an 'in time' appeal is lodged, the petition process will not start until that appeal (and any further 'in time') appeal is determined.
67. An alternative approach would be to provide that there be a one month period following an MP's conviction during which the recall petition process will not commence. If, during this period, the MP takes no action, the recall petition process would commence at the end of the one month period. However, if before the end of the one month period, the MP appeals the conviction or sentence, the recall petition process would be halted until that appeal was disposed of. However, while this may minimise delay to the start of a recall petition, it may increase the prospect of an appeal being lodged after the petition process has been initiated.
68. The draft Bill provides that where a court convicts an MP and a custodial sentence is imposed, the court shall notify the Speaker of this fact and whether an appeal may be brought in respect of the conviction or sentence. The draft Bill also provides that the courts must notify the Speaker if an appeal has been lodged, what the outcome of the appeal is, and whether any further appeal may be lodged.

Convictions overseas

69. Custodial sentences imposed by courts outside the United Kingdom would not automatically trigger a recall petition. However, this would not prevent the House of Commons from using the new power under the second condition in the draft Bill to resolve that an MP should be the subject of a recall petition where they had been given a custodial sentence by a court overseas.

Condition 2: a resolution of the House of Commons

70. The House of Commons has a range of disciplinary powers at its disposal and has used these powers for a variety of reasons, including in relation to MPs' conduct within Parliament and in relation to conduct not directly connected with MPs' Parliamentary duties.²⁰ The Code of Conduct sets out the standards of behaviour the House expects of its MPs and there is a well established set of processes in place for investigating misconduct. These procedures allow any member of the public to lodge a complaint with the Commissioner and for the Commissioner to initiate an investigation where no complaint has been made.
71. While the House uses the power to admonish or suspend an MP, it rarely uses the ultimate sanction at its disposal: the power to expel an MP. The Government believes that the House should have a full range of powers at its disposal to deal with behaviour which is of a serious nature, but does not merit immediate expulsion. To this end the House should have the 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. Therefore the draft Bill provides that a recall petition may be triggered by a resolution of the House of Commons.

²⁰ For example, Peter Baker was expelled from the House in December 1954 after being sentenced to seven years imprisonment following a conviction for fraud.

Importantly, such a power would allow constituents to have the final say on an MP's conduct in such cases.

Parliamentary Privilege

72. The draft Bill is designed to work alongside the House of Commons' own arrangements for dealing with discipline. These arrangements are a matter for the House, so are not set out in statute. It is a fundamental part of the United Kingdom's constitutional arrangements that each House of Parliament must be free from interference from the executive and the courts in arranging their own internal affairs. This is known as the doctrine of exclusive cognisance.
73. The second condition will ensure that the House may trigger a recall petition to deal with disciplinary issues effectively and at an early stage, but the legislation would not trespass upon the House's exclusive cognisance.
74. In practice the Government expects that the Committee on Standards and Privileges will inevitably play an important role in this process. The Government welcomes the decision of the House to include lay members on that Committee and agrees with the Committee on Standards in Public Life, and the Committee on Standards and Privileges itself, that the inclusion of lay members will significantly enhance public acceptance of the robustness of the House's disciplinary processes.
75. The House's Standing Orders set out the period of suspension where an MP has been 'named' for disorderly conduct in the Chamber. The Government invites the House of Commons to consider formulating a clear set of criteria governing the circumstances in which the House would trigger the use of a recall petition to promote transparency and public confidence in the recall process. It could provide greater certainty for MPs, as well as for the public, about the kind of conduct which could lead to recall, though each individual case would still have to be considered on its merits, having regard to all the relevant circumstances. This in turn could be considered by the Committee on Standards and Privileges when making a recommendation on the use of disciplinary powers. The development of such criteria would be a matter for the House.
76. Although the power to resolve that a recall petition is to be opened in respect of an MP is not formally limited, the Government expects that it will be reserved for serious disciplinary matters. An alternative approach would be to provide explicitly in statute that the new power for the House to trigger a recall mechanism could only be used in exercise of the House's disciplinary powers. However, given that the exercise of this power would amount to proceedings in Parliament, which the courts are prevented from reviewing by article 9 of the Bill of Rights 1689, such a provision could not be enforced by the courts, nor would this be appropriate. Moreover, the House's disciplinary powers are generally not limited by statute. The House has already put in place specific procedures for investigating alleged serious wrongdoing before any disciplinary sanctions are imposed.
77. While recommendations concerning the use of disciplinary powers are implemented by a resolution of the House, the Government is not aware of a case where the House has failed to implement a recommendation of the Committee on Standards and Privileges in relation to discipline.

The process for notifying a returning officer to open a recall petition

78. As with an election, returning officers will need formal notification that they are to open a recall petition. The draft Bill provides that where one of the conditions for triggering a recall petition has been met, the Speaker of the House of Commons will give notice to the relevant returning officer to confirm that a petition should be opened.

The role of the public

79. The public will also have an important role to play throughout the entire process. The process can be initiated by any member of the public, who can lodge a complaint against an MP with the Parliamentary Commissioner for Standards or make a criminal allegation to the police. In recent years there has been an increase in such complaints, but the proposals in the draft Bill would for the first time give the public a role to play in deciding whether an MP's conduct meant that they should forfeit their seat.
80. During the eight week petition period, members of the public will be able to campaign for their fellow constituents to sign the petition or to support the incumbent by encouraging others to refrain from signing the petition.
81. In the average constituency, 10% of those registered on the electoral roll will equate to 7000-8000 people after the implementation of the boundary review. Whilst a threshold of 10% is relatively low in comparison to other models used around the world, it is important to remember that most other regimes do not have the equivalent of the recall petition conditions. The Government believes that a threshold of 10% will ensure that a by-election is triggered where a sufficient number of constituents have lost faith in their MP's suitability to serve as their elected representative because they have committed serious wrongdoing.

Alternative models

82. In publishing the draft Bill, the Government hopes to initiate a debate about what the best model of recall would be. The Government is willing to consider other models and, in particular, different proposals for triggering a recall petition.
83. The Government considered whether conviction for any imprisonable offence should trigger a recall petition, even if the court did not impose a custodial sentence on the MP. There is a case to argue that any offence, no matter how trivial, should lead to an MP having to account to their constituents in a recall petition. However, this model would not take account of any mitigating factors or the seriousness of the case in question, so could result in fairly minor misdemeanours triggering a recall petition.
84. To remove these less serious cases, we considered whether the draft Bill should list certain types of non-custodial sentence which would trigger a recall petition, as well as a custodial sentence. However, we concluded that it would not be sensible to do this by reference to the level of any fine imposed, because this does not give a clear indication of the seriousness of an offence, but is partly linked to an offender's means and ability to pay. Likewise, the number of conditions imposed as part of a community sentence does not indicate the seriousness of an offence.
85. A further alternative would be to provide for an additional petitioning stage, whereby local constituents could petition the House of Commons to initiate a full recall petition if an MP had been found guilty of serious wrongdoing. However, this would either require there to be some

form of statutory definition of 'serious wrongdoing', which would be open to interpretation by the courts, or for the House of Commons to decide if a misdemeanour amounted to 'serious wrongdoing' before acting upon a petition. It would also lengthen the process by requiring there to be two petitions, and would correspondingly increase costs.

86. The Government is willing to consider alternative models and we would welcome views on the model we have set out in the draft Bill.

Part B: The recall petition

Summary

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.

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% 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 in a process similar to that for challenging an election result by a complaint to a special court.

A timeline for the conduct of recall petitions can be found at Annex B.

87. The Government's intention is to establish a recall mechanism which is transparent, robust and fair to all concerned. This means that constituents should be able to access the petition if they wish to sign, that the process should be sufficiently robust to deter or detect abuses, and that there should be a means of appeal against the result of the petition.
88. Concerns about possible intimidation of constituents, about undue influence on the outcome of the petition, and about protecting personal data have influenced the Government's proposals in a number of areas, from the provision for signing the petition by post to restrictions on public inspection of petition documents.
89. Under the model set out in the draft Bill, the experience of constituents signing the petition will be very much like their experience of voting in an election. The Government believes this is a more

secure model for recall petitions than one where the proponents of a petition are responsible for organising it.

90. Our general approach is that the provisions for the conduct of the recall petition should mirror, as far as possible, those in place for the conduct of parliamentary elections. The draft Bill sets out the basic framework of the proposed recall petition process, and gives Ministers a power to make regulations setting out more detailed conduct provisions in secondary legislation. Annex D sets out the split that the Government is proposing between the primary and secondary legislation.

Entitlement to sign and the electoral register

91. The Government proposes that a person should be entitled to sign a recall petition if they are on the register of United Kingdom parliamentary electors for the relevant constituency on the first day of the signing period or on 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 if they would be entitled to vote in a parliamentary election in the constituency. Any young person on the register who turns 18 during the signing period may sign the petition before their birthday, if they would otherwise be eligible to sign.
92. The 'cut-off' in relation to applications for registration is set as the date of the Speaker's notice in order to prevent attempts at 'roll-stuffing' – the fraudulent addition of names to the register. Because the outcome of the recall petition is determined by reference to the number of people on the register, the recall process is perhaps particularly vulnerable to this type of abuse. The cut off would not prevent constituents from continuing to apply during the petition period to register to vote in subsequent elections.
93. If a person becomes subject to a legal incapacity to vote during the signing period, they will also be ineligible to sign the petition from that point. A person may only sign the petition once on their own behalf, and it will be an offence to sign the petition more than once.
94. The draft Bill includes provisions to ensure that applications for registration received shortly before the Speaker's notice can be processed swiftly, so that the registration is effective in time to permit the applicant to sign the petition. The draft Bill has been prepared on the basis of the registration scheme as it now exists. It could be amended in due course to reflect the proposals to adopt an individual electoral registration scheme as set out in the White Paper on Individual Electoral Registration published in June 2011.²¹

Opening a petition – the Speaker's notice

95. The recall petition process begins with the Speaker giving notice to the relevant returning officer that one of the conditions which trigger recall has been met. The petition will be administered under the supervision of the returning officer. This process of giving notice mirrors provision in electoral legislation for a writ to be issued to the local returning officer for a by-election when a seat becomes vacant.
96. This provision has been designed to work in conjunction with the Fixed-term Parliaments Act 2011, and provides that even if a recall condition is met, the Speaker need not give notice for the opening of the petition if a general election is to take place within the next six months. This is to avoid the expense of holding a recall petition when constituents are shortly to be given an opportunity to

²¹ Individual Electoral Registration (Cm. 8108, June 2011).

decide who should represent them. Other exceptions provide that the Speaker does not have to give notice for the opening of a petition if a recall petition for that MP is already underway, or if the MP's seat has already become vacant.

Duties of the returning officer

97. The returning officer is given the general duty of conducting the recall petition process. The detailed steps which they must take will be set out in the regulations to be made by the Minister under the power contained in the draft Bill. It is anticipated that these will replicate, with only essential modifications, many of the steps which a returning officer must take when conducting the poll at an election.
98. The returning officer will be able to appoint administrators to assist in running the process, just as they may do for elections. To formalise this aspect of the process, provision is made requiring a local authority whose area falls within the relevant constituency to place its officers at the disposal of the returning officer.
99. The returning officer will be reimbursed for services rendered and expenses incurred up to a maximum recoverable amount which will be specified in a fees and charges order to be made by the Minister under powers given in the draft Bill. Any such payments will be paid out of the Consolidated Fund.

The preparation period

100. The draft Bill provides that the returning officer must make the petition available for signature two weeks after receiving the Speaker's notice (or as soon as reasonably practicable thereafter). During this two-week preparation period, the returning officer will be responsible for a number of actions which it is anticipated will be set out in the regulations made under the power contained in the Bill. These include publishing a public notice of petition, appointing and training petition administrators, and providing any necessary equipment.

Duration of the petition

101. The petition is to be available for signature for a period of eight weeks. It is proposed that the regulations to be made in relation to the conduct of the petition process will contain more detailed provision in relation to, for example, the days of the week and hours during which the petition must be available for signing. An eight-week period should ensure that all constituents have an opportunity to sign the petition, even in the largest constituencies.
102. The petition will be available for signature for the full eight weeks, regardless of the number of signatures submitted. This is intended to reflect the role of the recall petition as a means of democratic expression; indicating the strength of feeling of constituents in relation to the issue in question. However, if the seat becomes vacant during the eight week period, if an early general election is called, or if the MP's conviction or custodial sentence is overturned as a result of an appeal made after the usual appeal period then, in these circumstances, the returning officer must terminate the petition process and notify the Speaker.
103. It is anticipated that the regulations will make the returning officer responsible for a number of actions during the signing period including: the signing procedures, ensuring the exclusion of those who should be excluded from the designated location, the keeping of order at the designated location, the sealing of the petition box, and the issue and receipt of postal signature sheets.

The designated location for constituencies in Great Britain

104. The draft Bill provides that in constituencies in Great Britain the returning officer must provide a single designated location at which persons entitled to sign the petition may do so. Whilst there is no requirement that this location should be within the constituency, because the most suitable building may be just outside, the returning officer must consider accessibility when deciding on which location to choose.
105. A crucial difference between a recall petition and an election is the length of time the recall process takes. While polling at an election is limited to one day, a recall petition will be open for eight weeks. Throughout those eight weeks the returning officer will have to ensure that the designated location is open and manned with trained staff, that order is maintained, and that the conduct of the recall petition does not interfere with the provision of other services to the public. It will also be necessary to ensure that completed petition sheets are securely stored in order to ensure that constituents' personal details and views are not made public. Given the length of the signing period, buildings used as polling stations for elections, such as schools, are unlikely to be suitable as designated locations for the recall petition. Requiring only one designated location will make the task of the returning officer in finding a suitable location easier and less expensive than if a number of locations were required throughout the constituency. Moreover, making the petition available for signature in a single location will minimise the potential for a person to attempt to sign the petition more than once.
106. One possible alternative would be to provide that where a parliamentary constituency covers more than one local authority, a location for signing the petition could be designated in each local authority in that constituency. However, this would increase the cost and logistical burden of administering a petition. Moreover, such a rule would not accommodate constituencies which are covered by a large local authority which encompasses numerous constituencies, such as the Highlands Council.

Arrangements concerning secrecy and intimidation

107. In the case of an election, a constituent's voting intentions upon entering the polling station are kept secret not only by the polling booth, but also by the fact there are multiple options on the ballot paper. By contrast, in a recall petition a constituent can only sign the petition to say that they would like their MP to lose their seat; therefore any observer seeing constituents sign the petition, seeing returned petition sheets, or even the issue of incomplete petition sheets to constituents can deduce their views. This gives rise to concerns about maintaining secrecy and preventing the intimidation of signatories, as well as the potential that this may discourage signatories who do not wish to disclose their identity.²²
108. The Government believes a number of consequences flow from this. First, while accredited observers at elections may attend proceedings at the issue or receipt of postal ballot papers, proceedings at the poll, and proceedings at the counting of votes, the Government does not intend to create a system for accredited observers during the recall petition process. Propriety will be maintained by allowing representatives of the Electoral Commission to observe working practices during a recall petition.

²² A related recommendation, following the experience of a number of recall petitions, about removing a requirement for recall petitions to be made available for public inspection in order to protect the equivalent of the secrecy of the ballot was made in the Elections BC paper *Report of the Chief Electoral Officer on the Recall Process in British Columbia*, pp. 16-7: <http://www.elections.bc.ca/docs/rpt/rclrpt03.pdf> (accessed on 5 December 2011).

- I 09. Secondly, the Government envisages that secondary legislation will strictly limit access to documents relating to a recall petition after its conclusion.
- I 10. In response to concerns about intimidation at polling stations, the legislation does not place a requirement on the Chief Electoral Officer for Northern Ireland to provide a designated location for signing in person in constituencies in Northern Ireland. Instead, only postal signing will be available.

Absent signing in Great Britain

- I 11. The draft Bill provides that there should be provision for signing the petition by post or by proxy. This will ensure that those who are unable, or would prefer not, to attend and sign the petition in person will still be able to participate. Absent signing will also allow electors who wish to sign the petition a means to do so privately, without concern that they may be observed.
- I 12. The detailed provision for absent signing will be contained in the regulations to be made by the Minister under the power given in the draft Bill. However, it is proposed that persons who are entitled to a postal vote or proxy vote at a parliamentary election in the relevant constituency will be entitled to sign the petition by post or proxy, provided that their postal or proxy vote is effective before the signing period ends. There will also be an option to make independent applications for an absent signature for the petition only. In contrast to the position at elections, it is envisaged that constituents who have an extant postal vote will not be sent a postal signature sheet automatically, but will be sent one only upon request.

Absent signing in Northern Ireland

- I 13. Postal voting in Northern Ireland, unlike in the rest of the United Kingdom, is available only on a restricted basis. To obtain a postal vote, the elector must satisfy one or more of a restricted list of reasons why they cannot vote in person. By contrast, in the rest of the United Kingdom there is a presumption that postal voting will be available if requested. Given that the petition may only be signed by post in Northern Ireland, to adopt the existing model for postal voting in Northern Ireland would severely limit who could sign the petition.
- I 14. The Government therefore proposes that electors in Northern Ireland should be able to make an independent application for a postal signature specifically for the recall petition and that this will be permitted on demand. We do not, however, propose to alter the arrangements for access to absent voting in elections in Northern Ireland.

The petition itself

- I 15. The draft Bill sets out the wording of a recall petition, which will differ depending on which of the two triggering conditions was met. It is anticipated that the regulations on the detailed conduct of the petition process will require that this wording, which is objective and factual only, must be replicated on individual petition sheets. Each sheet will be submitted individually, in a process intended to protect the identity of those who have signed the petition and minimise the risk of intimidation. It is our intention that the regulations will provide for signature sheets to display a unique number to guard against fraud.

The signatory threshold

116. The Government proposes that the required threshold for a petition to trigger a by-election will be 10% of those on the parliamentary electoral register for the relevant constituency at any time during the signing period provided that their application to join the register was made on or before the day on which the Speaker gave notice for the opening of the petition (and, if under 18, provided that they will reach 18 by the end of the signing period). At the end of the signing period the returning officer must determine whether the petition has been successful, and notify the Speaker of the House of Commons of the result.

The effect of reaching the signatory threshold

117. If the number of signatures on a recall petition has reached or surpassed the required threshold at the end of the signing period, the draft Bill provides that the seat of the MP will become vacant when the result of the petition is laid before the House of Commons by the Speaker. Where this occurs, normal by-election procedures will take effect.

The former MP may stand in the subsequent by-election

118. 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.

Retention, inspection and disposal of documents

119. Parliamentary elections rules make detailed provision regarding the retention, inspection and disposal of documents relating to the election following polling day. Using the regulation-making power contained in the draft Bill, the Government proposes to make similar provision, for:
- The sealing up of petition signature sheets, marked registers and lists;
 - The retention of the petition documentation; and,
 - Court orders for the production and inspection of petition documentation where required for the purpose of prosecuting an offence or challenging the outcome of the petition.
120. However, the Government considers that different provision will be required in relation to inspection of petition documentation from those for the inspection of election documents. For elections, the general rule is that documents other than the ballot papers, the completed corresponding number lists and the certificates as to employment on the day of the poll are available for public inspection. However, whilst these documents may indicate whether a person has voted in an election, they do not indicate a person's preference when voting. By contrast, the nature of the petition process means that it will not be possible to make a copy of petition documents available for public inspection as this would indicate whether a person had signed the petition. Propriety will be ensured by allowing the Electoral Commission to observe the process.

Role of the Electoral Commission

121. The draft Bill imposes duties on the Electoral Commission, parallel to those which the Commission holds in relation to elections under the Political Parties, Elections and Referendums Act 2000.
122. The Bill provides that the Commission:

- May prepare and publish a report on the administration of a recall petition;
- Must keep arrangements for administering a recall petition under review and from time to time report to the Secretary of State;
- May, by representative, attend recall petition proceedings;
- Must be consulted on changes to the law governing the conduct of the recall petition; and,
- May provide assistance and guidance to returning officers on the conduct of recall petitions.

Questioning the petition

123. Part 3 of the Representation of the People Act 1983 sets out the procedure for questioning a parliamentary election – by way of a parliamentary election petition. The Government proposes that there should be an equivalent procedure for questioning a recall petition. The details of this procedure will be set out in regulations. Careful consideration will need to be given to the question of how the time limit for a challenge to the conduct of the petition should relate to the likely timing of a by-election following a successful recall petition.
124. The Government proposes that the only persons who may complain about a recall petition are: a person who was entitled to sign the petition (whether or not they did so) and the MP in question.
125. The draft Bill does not alter the arrangements for the Speaker to make out a warrant for the issue of a writ for a by-election. In the past the average time taken between vacancies arising and writs being moved is 30 days.²³ The Government expects that in practice the writ for a by-election would not be moved if the result of a successful recall petition was being challenged in the courts. However, the timing of such writs is a matter of privilege and we invite the House of Commons to consider whether provision should be made in the House's Standing Orders concerning the rules about when a writ for a by-election may be moved following a successful recall petition.

Offences in relation to conduct during the recall petition process

126. The draft Bill makes it an offence for a person to sign the petition more than once on their own behalf, or more than once as proxy for the same person. The penalty and incapacities imposed on a person convicted of this offence reflect those that are imposed by existing electoral legislation on a person who votes twice in the same election. Therefore, anyone convicted of the offence of double signing will be liable on summary conviction to a fine not exceeding level 5 on the standard scale and will be unable to register as an elector or vote in any parliamentary or local government election, unable to be an MP, and unable to hold elective office in England, Wales or Northern Ireland for a period of three years.
127. It is anticipated that other offences will be set out in the regulations made under the power given to the Minister to make further provision about the recall petition process. Parliamentary and local elections legislation includes a number of offences that are fundamental to ensuring the proper conduct of an election, most importantly to protect the integrity and fairness of the procedure. We consider that the same issues will arise in relation to conduct during the recall petition process. The intention is therefore that where behaviour is made criminal in relation to an election,

²³ Average over the current and previous sessions.

the equivalent conduct during the recall petition process should also be made criminal. These provisions are aimed at ensuring the integrity of the recall petition process.

Cost of the recall petition process

- I 28. The cost of the recall petition process has been looked at closely and an initial screening of costs appears at Annex G.
- I 29. These calculations are based on the real data from the 2010 general election; an appropriate platform on which to base a comparative exercise. The data used includes statistics on the patterns of voting in person and by post.
- I 30. The cost attributed to the proposed model of the recall petition process is estimated between £37,700 and £100,500. This range is based on how much a recall petition would cost to administer in the lowest and highest cost constituencies within Great Britain. The average across all constituencies within Great Britain provides a best estimate of £64,300.
- I 31. The cost attributed to Northern Ireland has been estimated on the average cost across its 18 constituencies as £61,200. Again, these costs are based on the real data provided from the 2010 General Election but reflect the differences in the process in Northern Ireland. For example, the recall process will be conducted by postal signature only and there will be no new postal voting identifiers required due to the existence of Individual Electoral Registration in Northern Ireland.

Consideration of equality issues

- I 32. Under the Equality Act 2010, when exercising its functions, the Cabinet Office has an ongoing legal duty to have due regard to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and,
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- I 33. Consistent with its statutory duties, while formulating the proposals for the creation of a power to recall MPs, the Cabinet Office has considered the likely impact of the proposals with reference to the protected characteristics and with the statutory objectives in mind, and has consulted with a range of stakeholders prior to publication. Potential issues, particularly around access to a single designated location in Great Britain, were taken into account during policy development. This consideration was approved by the Minister on 28 October 2011.
- I 34. We will continue to review the draft legislation against Equality Act duties and following pre-legislative scrutiny, we will make any necessary adjustments to our proposals that come to light as a result of that scrutiny and any further consultation.

Part C: Campaign spending – expenses and donations

Summary

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

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

- provide detail 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.

An overview of the spending and donation proposals can be found at Annex C.

135. This section outlines proposals for a regime to regulate campaign spending and donations during the recall petition process. While not set out in the draft Bill, we would welcome views on these proposals. The Government believes that spending and donations during the recall petition process should be regulated, in the same way that spending and donations are regulated during other democratic processes, such as elections and referendums. This system of regulation should meet three objectives. First, it should not hinder individuals and groups who have an interest in participating in the petition process. Second, the system should prevent disproportionate levels of spending or donations being made in an attempt to influence unduly the outcome of the process. Third, the regulation should ensure those who spend significant amounts on campaigning are transparent about what they are spending and who is supporting them. The intention is to give participants the freedom to raise money and to spend it, within certain limits, but on the basis that where significant resources are deployed there is a corresponding level of openness and regulation.

136. The Government recognises that it would not be proportionate to require those wishing to spend relatively modest sums on campaigning during the recall process to have to register to do so or to provide formal returns on their spending and donations. For this reason, the Government believes that there should be a threshold level of spending below which there shall be no regulation. The level of this threshold is considered in more detail below.

Accredited campaigners

137. The Government proposes that those who wish to incur expenses in relation to petition campaigning over £500 must register with the relevant returning officer. These campaigners, referred to here as accredited campaigners, would be able to spend up to £10,000, but must report details on their spending and donations. The £10,000 upper threshold is similar to the

amount that a candidate at a general election would be able to spend in the 'short campaign' – the period of time that runs from the dissolution of Parliament through to polling day. This figure also reflects the nature of the petition process – as the campaign will be focused on the constituency and will be concerned with the relatively simple question of whether or not to recall an MP, rather than a debate about a wide range of policy issues. There will be a restricted list of those who may become accredited campaigners for the purposes of the recall petition, based on those who are entitled to be permitted participants in a referendum.

138. Those who do not spend more than the £500 threshold would not be subject to any regulation for the recall petition (although some campaigners, for example MPs, are regulated on an ongoing basis under the provisions of the Political Parties Elections and Referendums Act 2000 and will remain subject to this general regulation). This broadly corresponds to the approach for third parties in a parliamentary election. The £500 threshold was chosen on the basis that it would permit local groups to carry out a certain amount of campaigning, for example the printing and distribution of leaflets, without becoming subject to the burden of reporting requirements.

Accreditation and the responsible person

139. The Government proposes that when a campaigner registers with the relevant returning officer there should be an obligation on the campaigner to identify a responsible person. The responsible person must ensure that the spending limits are observed and that a petition return is submitted to the returning officer at the end of the petition period. This person would serve a similar function to that of an election agent at parliamentary elections and a responsible person in referendums.
140. It is proposed that individuals (including the MP) may either act as their own responsible person or may nominate someone else to perform this function for them, in the same way as a candidate at a parliamentary election can nominate someone else to act as election agent.

The Regulated Period

141. The restrictions on spending and on accepting donations would only apply during the regulated period. The Government proposes that this period should begin when the Speaker gives notice that a recall petition is to be opened, because it is from this point that a recall petition is inevitable. The regulated period should end when the recall petition closes. In total the regulated period will therefore be approximately ten weeks long.

Definition of expenditure

142. Only 'petition expenses' will be regulated. The Government proposes that these would be expenses incurred for the purpose of procuring or promoting the success or failure of the petition. As in regulatory regimes governing other electoral events, where expenditure incurred before the regulated period is referable to the campaign, an appropriate proportion of it would count as petition expenses.
143. To count as a petition expense, the expenditure must also fall within one of a specified list of categories, which will be set out in the legislation, and will be modelled on the categories of election expenses contained in Schedule 4A to the Representation of the People Act 1983 for the purpose of regulating expenditure at a parliamentary election. It is proposed that the categories would include:
- Advertising of any nature;

- Unsolicited material addressed to electors;
- Transport of persons to any place;
- Public meetings;
- The services of any person whose services are engaged in connection with the petition campaign; and,
- Accommodation and administrative costs.

144. There would also be a list of general exclusions, based on those that are excluded for the purposes of election expenses and which would be relevant at a recall petition. In addition, the personal expenses of campaigners (including MPs) would not to be counted as petition expenses.

Reporting petition expenses: the petition return

145. The Government proposes that accredited campaigners would have to make a petition return to the returning officer at the end of the regulated period detailing their petition expenses. Expenditure of £20 or over must be accompanied by an invoice or receipt.

146. The returning officer will have to make the petition returns publicly available for inspection for a period of 2 years.

Donations to accredited campaigners

147. The Government proposes that accredited campaigners will be required to verify that all donations over £500 come from a permissible donor²⁴ and return them if not. This is the same level at which permitted participants in referendums regulated by the Political Parties Elections and Referendums Act 2000 (PPERA) have to verify donations. In addition, the Government proposes that accredited campaigners will be required to report donations over £500 in their petition return. This sets the threshold for reporting individual donations at a lower level than that required of permitted participants in referendums, where the only permissible donations that have to be separately declared are those over £7,500, while those between £500 and £7,500 are aggregated and only the total value recorded. The Government considers that using the referendum threshold for reporting donations would set the transparency bar too high in the context of the recall petition process, and that setting both verification and reporting requirements at £500 achieves a sensible result which will not be too onerous for accredited campaigners to meet.

148. However, some groups who are likely to want to register as accredited campaigners are already subject to ongoing regulation under PERA. This group comprises registered parties, members of registered parties, members' associations and holders of certain elected offices (including MPs). The Government is considering whether different provision in relation to the control of recall petition donations should be made for these groups to ensure that the demands made on them are compatible with their on-going regulation. One possibility, explored in more detail below, would be to require some of these groups to report some of their donations twice. This would be similar to how donations are dealt with during a referendum, where some groups are required to double report.

²⁴ The definition of 'permissible donor' would be based on that set out in section 54 of the Political Parties Elections and Referendums Act 2000.

149. Under PPERA political parties are already required to verify that all donations over £500 come from a permissible donor and return those which do not. They report donations valued over £7,500 (or over £1,500 to Individual Accounting Units – which include local parties) on a quarterly basis to the Electoral Commission. The Government is not minded to subject political parties to the controls on recall petition donations. While this will result in political parties declaring donations at a higher threshold, this is justified on the basis that the proposed recall petition regulation would interfere with their normal quarterly reporting regime.
150. Under PPERA members of registered parties, members' associations and holders of elective office are also already required to verify donations over £500. They must report donations 30 days after they are received. Most individuals must report all donations over £1,500 to the Electoral Commission, although MPs report at the same level on the Register of Members' Financial Interests from which the Electoral Commission extracts the relevant information. Members' associations report to the Electoral Commission on the same 30 day basis, but only in relation to donations greater than £7,500. One option would be to make these groups subject to the recall petition donation regulations, requiring them to report some donations twice – once on their petition return and once as part of their normal reporting regime. This would have the advantage of ensuring that any MP who is the subject of a recall petition makes the same information about donations available as any other accredited campaigner. It also seems sensible to treat individual members of political parties and members' associations, who are acting independently of their party's main campaign, in the same way as other individuals or organisations who choose to participate in a recall petition campaign. As these groups already report donations on a more regular basis than political parties the Government does not believe that this should be overly burdensome.

Oversight

151. Regulation of petition expenditure and donations under the Government's proposals would be the responsibility of the relevant returning officer. Participants would not have to register with the Electoral Commission. However, the Government proposes that the Electoral Commission should be given a power to provide advice and assistance to campaigners and returning officers as it does to permitted participants in referendums and returning officers at elections.

Breaches of key rules

152. Following the model used in relation to the regulation of expenses and donations for candidates at elections, breaches of the key regulations will be corrupt or illegal practices or other offences. These offences will be based on those contained in existing electoral legislation.

Alternative approaches

153. The Government has considered several alternative approaches that could be taken to recall petition expenditure and donations. One such approach would be not to regulate spending or donations at all during the recall petition period. This approach was rejected on the basis that it would mean that there was no transparency about who had funded campaigns and no overall control on the level of expenditure.
154. A second alternative would be to reduce the total amount of expenditure that could be incurred before a campaigner had to register as an accredited campaigner. However, it was considered that this would be too bureaucratic and may deter constituents from participating in local campaigns. A third alternative would be to have a higher accreditation limit with no regulation or reporting

requirements in relation to spending below this limit. This would allow campaigners to spend more money before having to register with the returning officer and provide information on spending and donations. Although administratively less burdensome, it was ultimately considered that this would not achieve the desired level of transparency.

155. Another alternative would have been to change the level at which individual items of expenditure would have to be detailed in petition returns and to have altered the reporting threshold for donations. However this would have created a system of regulation that did not reflect how donations and spending are regulated in other electoral events.

Overall conclusions

156. The draft Bill and the proposals set out in this paper are intended to facilitate a wider debate on what would be the best model for a recall mechanism. The Government believes that the model outlined here would produce a fair and transparent system, which would ensure that MPs are subject to increased accountability to their constituents, but at the same time would not lead to facing frequent and unnecessary distraction from carrying out the job for which they were elected.
157. In devising this approach the Government has sought to learn lessons from the recall mechanisms that already exist elsewhere, an overview of which is included at Annex E. We have created a new model that we believe best fits our system of representative democracy. The Government recognises that there are many different recall models that could be used. Accordingly the Government would very much welcome views on its proposals, either on improvements to the policy set out here, or on adopting a completely different approach.
158. The Government recognises that this is an emotive issue as well as an entirely novel mechanism for our political landscape and it is important that the time is taken to find the best possible approach. Once such a mechanism has been established for recalling MPs, the Government will give careful consideration to whether recall should be extended to other elected offices across the United Kingdom.

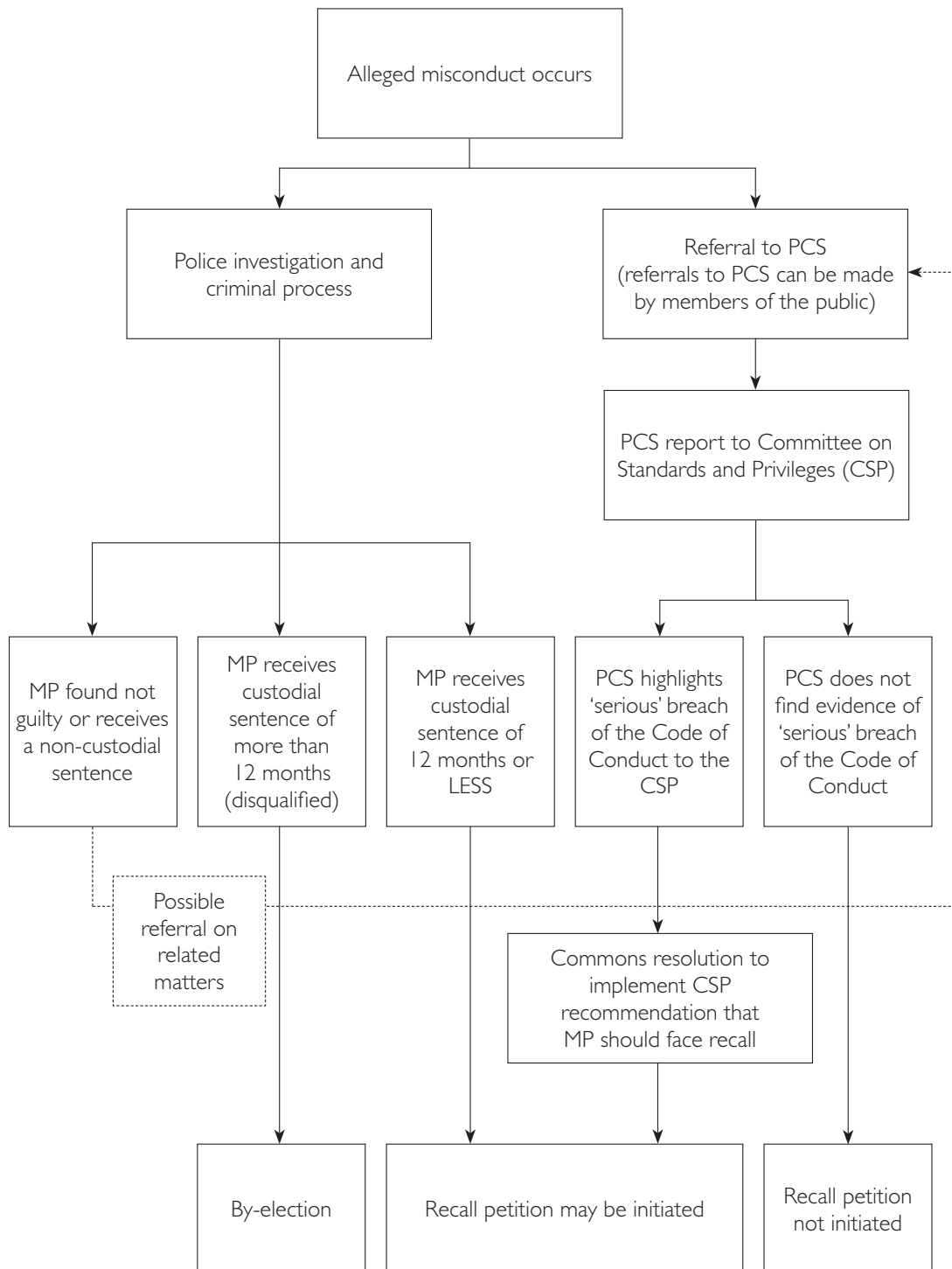
How to respond to this White Paper

159. Comments and views are sought from as wide a range of people as possible on the proposals contained in this White Paper. If you wish to comment directly to the Cabinet Office, please write to:

Parliamentary Reform Team
Area 4/S1
1 Horse Guards Road
London SW1A 2HQ

Or you can email the Cabinet Office at: recallofmps@cabinet-office.gsi.gov.uk.

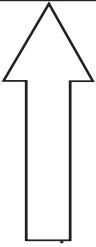

Annex A: Processes for triggering a recall petition



PCS = Parliamentary Commissioner for Standards
CSP = Committee on Standards and Privileges

Annex B: Timeline for conduct of recall petition

Some details of this timeline are indicative of the type of process the Government envisages providing for in secondary legislation, and are not currently reflected in the draft primary legislation.

Two weeks, or slightly longer if two weeks is not reasonably practicable	Eight week signing period	As soon as reasonably practicable after the end of the signing period
<p>Speaker's notice received by returning officer.</p> <p>Preparation period for opening petition.</p> <p>During this period the returning officer must:</p> <ul style="list-style-type: none"> Designate a place at which the recall petition is to be made available for signature (in Great Britain). Obtain a list of those entitled to sign the petition from the relevant registration officer(s). Appoint administrators to assist in the conduct of the petition process. Publish a public notice of petition. Provide equipment at the designated place (in Great Britain). Notify observers and administrators of the requirement of secrecy. 	<p>Petition opens for signature on the designated day.</p> <p>During the petition period the returning officer must:</p> <ul style="list-style-type: none"> Provide signature sheets and carry out signing procedures. Carry out verification procedures. Deal with spoilt signature sheets. Respond to requests for absent signatures. Assist disabled people who wish to sign the petition. Mark the register to indicate who has signed the petition. Ensure exclusion from the designated place of those who should be excluded. Keep order at the designated place. Seal the petition box. 	<p>Petition closes.</p> <p>Determination whether recall petition has been successful.</p> <p>The returning officer must:</p> <ul style="list-style-type: none"> Ascertain whether the recall petition has been successful. Notify the Speaker that the petition was successful or unsuccessful, as the case may be. <p>Disposal of documents.</p> <ul style="list-style-type: none"> Sealing of the petition signature sheets, marked registers and lists. Retention of petition documentation in accordance with regulations.
<p>Registration officer must:</p> <ul style="list-style-type: none"> Expedite alterations to the register needed to give effect to determinations made. Issue notices specifying appropriate alterations to the relevant register. 		
<p>The Electoral Commission:</p> <ul style="list-style-type: none"> May attend recall petition proceedings. May provide assistance and guidance to returning officers on the conduct of recall petitions 		

Annex C: Overview of recall spending and donation proposals

	Non-accredited campaigner	Accredited campaigner – political party	Accredited campaigner – “regulated donee” under PPERA (Includes MPs)	Accredited campaigner – Those not covered by PPERA
Required to register with the returning officer?	No	Yes	Yes	Yes
Upper-spending limit	£500	£10,000	£10,000	£10,000
Petition return?	No	Yes. Detail all expenditure; provide invoices for claims £20 and over.	Yes. Detail all expenditure; provide invoices for claims £20 and over.	Yes. Detail all expenditure; provide invoices for claims £20 and over.
Required to verify donations?	No. Donations to non-accredited campaigners will not be regulated.	Yes. All donations over £500 must be verified as coming from a permissible donor.*	Yes. All donations over £500 must be verified as coming from a permissible donor.*	Yes. All donations over £500 must be verified as coming from a permissible donor.
Required to report donations?	No. Donations to non-accredited campaigners will not be regulated.	Yes. Donations valued over £7,500 to the central party, and those over £1,500 to Individual Accounting Units (including local parties) must be declared to the Electoral Commission at the end of each quarter.* No information on donations included in the petition return.	Yes. All donations over £500 must be included in their petition return. In addition, individuals must report donations over £1,500 to the Electoral Commission within 30 days (except MPs who must report donations to the Registrar of Members' Financial Interests). Members' associations must report donations over £7,500 to the Electoral Commission.*	Yes. All donations over £500 must be included in their petition return.

* = Existing obligation under PPERA

Annex D: Division between primary and secondary legislation

Summary of provisions set out in the primary legislation

- The conditions for triggering a recall petition
- The processes for formally initiating a recall petition
- When the petition is to be opened
- The role of the returning officer (including provision for payment)
- Wording of a recall petition
- Who may sign the petition including provision for the alteration of registers of parliamentary electors
- How many signatures are needed for the petition to be successful
- Where the petition is to be held
- For how long the petition is to be open
- When the petition process may be terminated early
- The availability of an option to sign the petition by post or by proxy
- Role of the Electoral Commission
- Effect of a successful petition and a return to the Speaker
- Power to make the rules governing the conduct of the petition and the other matters mentioned below
- The offence of double signing

Provisions for inclusion in the secondary legislation

- The publication and supply by registration officers of a revised version of the register of electors
- Detailed provision in relation to absent voting (postal and proxy)
- Detailed rules in relation to the recall petition process. This would include:
 - The appointment of petition administrators
 - Equipment needed in the designated location

- The issuing of petition signature sheets (for signing in person and by post)
- The submission of petition signature sheets (in person and by post)
- Signing procedures
- Verification procedures
- Spoilt/rejected signature sheets
- The counting of the petition signature sheets and declaration of result
- Retention of petition papers
- Access to petition documents
- Offences in relation to the petition
- Questioning the petition and the consequences of any irregularities
- Modifications needed to election petition rules for the purposes of 'recall petition complaints'

In addition the Government proposes that there should be a system for regulating campaign spending and donations during the petition phase. It is intended that this will be in primary legislation, but is not included in the draft Bill.

Annex E: International examples of recall

1. There are several models for recall mechanisms used around the world and within the United States of America there are several different variants. This section summarises a number of different models.

United States of America

2. In the United States of America, 19 states permit the recall of state officials and 29 states allow for the recall of local officials.²⁵ In many states the recall process has three steps: (i) recall petition; (ii) recall ballot; (iii) new election. In some states steps (ii) and (iii) are taken at the same time. It is important to note however, that there is no uniform recall process in the United States.
3. 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 Frazier²⁶, and in California in 2003 with the recall of Gray Davis. The recall of Gray Davis was the only one of the 32 attempts to recall a Governor of California that has been successful.²⁷
4. 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.
5. In April 2011, multiple recall petitions were filed against several state senators in Wisconsin. This resulted in nine recall elections taking place in July which had the potential to tip the balance of power in the state Senate. During the course of the petition period the validity of some of the signatures on the recall petitions was fiercely contested.
6. In May 2011, a recall petition was filed against the president of the Arizona state senate, Russell Pearce. In assessing the adequacy of the petition, the County Recorder certified that only 10,365

²⁵ Data from the National Conference of State Legislatures. The list of states where elected representatives can be recalled was updated on 9 November 2011: www.ncsl.org/ (accessed 5 December 2011).

²⁶ <http://www.history.nd.gov/exhibits/governors/governors12.html/> (accessed 5 December 2011).

²⁷ National Conference of State Legislators website: <http://www.ncsl.org> (accessed 5 December 2011).

out of 18,076 signatures filed were valid voter signatures²⁸; however this number exceeded the minimum required to trigger a recall election, which was held on 8th November. Senator Pearce was recalled.

7. A number of recall petitions were also launched in respect of members of the Michigan House of Representatives earlier this year. One of these petitions was determined as having met the threshold necessary to trigger an election; however the representative in question, Paul Scott, was initially successful in a legal challenge to the clarity of the petition wording and the recall question was removed from the ballot after early voting had already begun. Eventually this decision was reversed in the courts, and State Representative Scott was recalled.

Recall Procedure

8. Only eight of the 19 states that permit recall require specific grounds for the petition²⁹, and these differ considerably from state to state. Only a portion of these provide for a system of review to ensure that these grounds are met, and different approaches are taken in such reviews. For example, in Georgia the recalled officer may submit a petition applying for a review of the sufficiency of the grounds for recall and the facts on which the grounds are based. A judge then considers the legal sufficiency of the grounds and alleged facts, and also reviews whether probable cause exists to believe that the alleged facts are true.³⁰ By contrast in Washington the superior court is obliged in all cases to conduct a hearing and determine the sufficiency of the alleged reasons for recall, but is explicitly prevented from considering the truth of the charges.³¹
9. In the remaining 11 states where no specific grounds are required, some require the petition's proponent to set out in the petition why they believe the office holder should be recalled; some permit the official to respond to the statement of reasons, and in others the petition need not set out grounds at all.

Signing the petition

10. In all states the collection of signatures is a process carried out by the petition's proponents. Typically all registered voters are eligible to sign a recall petition for state office holders in the district in which they are currently registered. The number of signatures required for a recall election to be held varies widely from state to state, and within states according to type of elected representative. It is generally based on a percentage of the votes cast in the last election for the office in question although some base the required percentage on the number of eligible voters at the last election. The most common requirement for statewide office holders and legislators is 25% of the total vote cast for the position at the last election, although this ranges from 40% in Kansas to 10% in Montana.³² To recall the Governor of Illinois, a petition must secure a number of signatures at least equal to 15% of the votes cast for governor in the preceding general election from each of the 25 counties in the state. But such a petition must also include the signatures from at least 20 members of the state's House of Representatives and 10 members of the Senate, with no more than half the signatures of members of each chamber from the same political party.³³

²⁸ <http://www.azsos.gov/releases/2011/pressrelease24.htm> (accessed 5 December 2011).

²⁹ <http://www.ncsl.org> (accessed 5 December 2011).

³⁰ Georgia Code, OCGA 21-4-6 (2010).

³¹ Revised Code of Washington, RCW 29A.56.140.

³² Kansas Statutes, 25-4311; Montana Code 2-16-614.

³³ Constitution of Illinois, Art. 3, Sec. 7.

11. The period during which the petition is open for signing also varies between states. 60 days is the shortest period, ranging up to 180 days and beyond. New Jersey, for example, permits circulation for 320 days when the Governor or US Senator is being recalled, but 160 days for all other office holders.³⁴ Alaska specifies no period, although restrictions are implied by time limits on filing applications to petition for recall.³⁵

The recall ballots and elections

12. There are three different models used for the steps following a successful recall petition. Nine states have a further two distinct electoral stages: first a recall ballot is held where the electorate is asked if the office holder should be recalled; if the ballot sees a majority vote for recall, the office is declared vacant and an election is held for a successor. By contrast, six states hold the recall ballot simultaneously with the election for a successor; while four states simply appoint a successor if the recall election is successful.³⁶

Restrictions on the use of the recall procedure

13. Several states place restrictions on the use of the recall procedure. These may limit how soon after election an office holder may be recalled, how late in the term recall can be used, or how frequently. Following an unsuccessful recall election against an elected representative, some states (e.g. Arizona) only permit further recall petitions during a given term of office if the costs of the unsuccessful recall election are paid in full by the petitioners.³⁷

Canada – British Columbia

14. British Columbia is the only Canadian province with a recall mechanism. A successful recall petition can lead directly to the removal of a Member of the Legislative Assembly and trigger a by-election.
15. There is no requirement for the petition to be based on particular grounds. The petition organiser simply provides a statement of why, in their view, the Member of the Legislative Assembly should be removed, and this statement is not officially reviewed. Four recent recall petitions in British Columbia were initiated in relation to the Member's support for the Harmonized Sales Tax. Since recall was introduced in 1995 there have been 24 recall petitions. Only six of these were submitted to the Chief Electoral Officer after the end of the petitioning period. 23 of the 24 petitions failed as they did not collect enough valid signatures and one was halted during the verification process when the Member resigned. There are restrictions on the use of the recall procedure: a Member cannot be recalled during the first 18 months after election and only one election resulting from a successful recall petition can be held in an electoral district between general elections.
16. Signatures are collected in person by the petitioner and unpaid registered volunteers ("canvassers"). The petition is open for 60 days and must be signed by more than 40% of the voters who were registered to vote in the Member's electoral district in the last election and who are currently registered to vote as electors in British Columbia. Signatories must sign their name and provide their residential address witnessed by the petitioner or a canvasser. The information is publically available although signatories may ask for their address to be obscured.

³⁴ New Jersey Statutes 19:27A-10.

³⁵ Alaska Statutes, Sec. 15.45.550.

³⁶ www.ncsl.org/default.aspx?tabid=16581 (accessed 5 December 2001).

³⁷ Constitution of Arizona, Art. 8, Part 1, Section 5.

17. The Chief Electoral Officer must verify the signatures on the petition. If there are sufficient valid signatures, the Member must resign. A by-election, in which the recalled Member may stand, is held within 90 days.
18. In 2003 the Chief Electoral Officer of British Columbia issued a report recommending reform of the recall process.³⁸ Amongst other findings, he reported that the petition process lacked the necessary formality, rigour and safeguards that were essential for an electoral process. The report highlighted concerns about intimidation and fraud and recommended several reforms to the process. The 2003 report noted that British Columbia was at that time the only jurisdiction in the world in which the recall petition led directly to the removal of the elected official. In all other cases a successful recall petition leads to a recall ballot in which a vote is taken on whether the official should be removed.

Philippines

19. In the Philippines, a recall petition may be initiated in respect of an elected official of a Local Government Unit on the basis of loss of confidence; but only once during a term in office. Recall cannot be commenced against any official in their first year in office, or in the year preceding a regular local election. The percentage of signatures of registered voters required to trigger an election under recall varies depending on the population of the Local Government Unit. The single election is effectively a by-election; all candidates' names will appear on the ballot including the Member being recalled. The incumbent Member is not permitted to tender their resignation while a recall procedure is ongoing.³⁹

Venezuela

20. 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% of registered voters from within the office holder's constituency. Should this threshold be met, this ultimately triggers a referendum on whether the office holder should serve out the remainder of their term.⁴⁰ Such a referendum was held in 2004 in relation to President Chavez.

Switzerland

21. A form of recall exists in a number of Swiss Cantons; however, since these provisions allow the public to petition for the recall of the cantonal legislature or executive as a whole rather than for the recall of individual representatives, they address a different set of issues to the model of recall for individual MPs that the Government is proposing.⁴¹

Comparison between the Government's proposed model and international examples

22. Whilst there are several different models used around the world, on the whole these allow for a politician to be recalled for 'political' reasons. This differs to the approach set out in the manifesto commitments at the last general election, which all provided for a recall petition to be triggered as a result of some form of 'serious wrongdoing'.

³⁸ <http://www.elections.bc.ca/docs/rpt/rclrpt03.pdf> (accessed 5 December 2011)

³⁹ Local Government Code of 1991, RA 7160 Chapter 5.

⁴⁰ Constitution of Venezuela, Art. 72.

⁴¹ Cf. Article 57 of the Constitution of the Canton of Bern; Article 25 of the Constitution of the Canton of Thurgau; and Articles 44 and 44A of the Constitution of the Canton of Ticino.

23. The Government's intention in establishing a recall mechanism is not that an MP's position should be called into question at every opportunity, but that they should be held to account where their conduct falls below the standards expected of those who hold public office. The experience of recall petitions in the United States tells us that under the models used there, politicians often face a constant stream of recall petitions. With the exception of the incumbent, every Governor of California since Ronald Reagan in the 1960s has been the subject of a recall petition. If a model was adopted similar to those which are used in some other countries, which allow for a person to be recalled for political reasons, this may only serve to prevent MPs from tackling controversial issues or taking on vested interests.
24. Whilst MPs are elected on the basis of the views they set out at the time of their election, they are elected to serve as a representative at Westminster for the duration of a Parliament. They will inevitably have to deal with a range of issues which were not apparent at the time of the election, or on which the surrounding circumstances have changed so radically that they believe a different stance is now appropriate.
25. A recall mechanism should not, in the Government's view, leave MPs vulnerable to attack from those who simply disagree with them, or think that they should have voted a different way on a particular measure. Recall must be more than a way of trying to rerun the election to get a different result.
26. Recall models in some other jurisdictions have a limitation on the holding of a recall petition in the very early stages of an elected representative's term of office. However, under those models a recall petition may be initiated for political reasons, unlike the Government's proposed model where a recall petition is only initiated in response to serious wrongdoing. Therefore any bar on serious wrongdoing triggering a recall petition at the start of a Member's term would be inappropriate.
27. The Government notes with interest the review of the processes in British Columbia⁴² and in particular the concerns raised about the conduct of activists during the petition, the scope for intimidation and whether there should be limited grounds for initiating a recall petition. Lessons can also be drawn from the recent series of recall petitions in the United States.
28. The framework for regulating elections and campaigning in the United Kingdom is significantly different from that used elsewhere and in particular the use of paid activists is generally prohibited in the United Kingdom.
29. Whilst the Government has taken into account other recall models, it is our view that no model can simply be imported. The draft Bill sets out a bespoke recall mechanism which we believe best fits our model of representative democracy.

⁴² Report of the Chief Electoral Officer on the Recall Process in British Columbia, November 2003.

Annex F: Glossary

Absent voting/signing: provision exists to allow voting other than in person for an election either by post or proxy. The draft Bill makes provision for signing the recall petition by post or by proxy. The regulations to be made under the power given in the Bill may impose conditions on postal or proxy signing.

Accredited campaigner: a person who campaigns during the signing period and wishes to incur expenses over £500. Such persons will have to give information about themselves to the returning officer and file a return on spending and donations connected with campaigning in relation to the petition.

Chief Electoral Officer for Northern Ireland: is both the electoral registration officer for all 18 constituencies in Northern Ireland and returning officer for all elections and referendums in that jurisdiction.

Committee on Standards and Privileges: a select committee of the House of Commons which oversees the House's arrangements for conduct and discipline and considers matters relating to privileges. The committee is established by Standing Orders of the House.

Committee on Standards in Public Life: an independent advisory body to the Government with a remit to monitor, report and make recommendations on all issues relating to standards in public life.

Code of Conduct for MPs: a document approved by resolution of the House which sets out the standards of conduct expected of MPs.

Designated location: a place where the recall petition will be available for signature in person in relation to MPs for constituencies in Great Britain.

Exclusive cognisance: each House of Parliament's right to manage its own internal affairs without interference from the executive and the courts.

Expenditure (campaign): expenditure which is incurred during the regulated period by or on behalf of any individual or body for the purpose of promoting or procuring the success or failure of the petition.

‘In time’ appeal: an appeal which is brought within the usual time period for bringing such an appeal. The time periods for appealing against a conviction, sentence or order vary depending on the type of appeal and across the United Kingdom.

Parliamentary Commissioner for Standards: an officer of the House of Commons who investigates breaches of the Code of Conduct and maintains the Register of Members’ Financial Interests.

Parliamentary Privilege: a body of law and custom which is designed to enable each House of Parliament to carry out its functions effectively. It includes Article 9 of the Bill of Rights 1689 which provides “*that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament*”. It also includes the doctrine of exclusive cognisance (see above).

Permissible donor: a person who is allowed to make a donation to a registered political party. Broadly speaking a donor must be on the electoral register or be an organisation conducting business in the United Kingdom to be a permissible donor. The full definition is set out in the Political Parties, Elections and Referendums Act 2000.

Proxy voting/signing: provision exists which enables a person to appoint someone else to vote on their behalf. The appointed person can vote in two ways; by going to the polling station in person or by voting by post (known as a “postal proxy”). The draft Bill makes provision for signing the recall petition by proxy. The regulations to be made under the power given in the Bill may impose conditions on proxy signing.

Recall: the vacating of an MP’s seat by means of a successful recall petition.

Recall petition: under the draft Bill a petition opened by a returning officer, which may be signed by eligible constituents, calling for an MP’s seat to be vacated. The petition itself will comprise individual signature sheets. The draft Bill sets out the wording which will appear on the petition.

Recall petition process: the actions taken under the draft Bill in relation to a recall petition after the giving of notice by the Speaker and before the laying of the notice of the outcome of the petition.

Regulated period (campaigning): a period during which restrictions on spending and on accepting donations will apply. That period would begin with the Speaker’s notice that a recall petition is to be opened. The regulated period would cease at the end of the signing period (see below).

Resolution of the House: the means by which the House of Commons expresses an opinion or agrees a course of action. Resolutions are put to the House as a motion, setting out a proposal for consideration, debate and decision.

Returning Officer: the person who has responsibility for the conduct of parliamentary elections. The returning officer is an officer of the local authority who is appointed under elections legislation. The draft Bill specifies who would be the returning officer for a recall petition.

Short campaign: A general election campaign that runs from the dissolution of Parliament to polling day.

Signing period: an eight week period during which the petition may be signed by eligible constituents.

Speaker's notice: a notice from the Speaker of the House of Commons to the returning officer confirming that one of the conditions for a recall petition has been met and that a recall petition is to be opened in that constituency.

Standing Orders: written rules under which Parliament conducts its internal business. In the House of Commons they regulate the way MPs behave, Bills are processed and debates are organised.

Annex G: Impact Assessment

Title: MP Recall Lead department or agency: Cabinet Office Other departments or agencies:	Impact Assessment (IA)
	IA No: CO1011
	Date: 13/09/2011
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: recalofmps@cabinet-office.gsi.gov.uk

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

In certain circumstances under the existing disciplinary arrangements an MP may be found to have committed a serious wrongdoing but can retain their seat without having to account to their constituents until the next election. The Government has given a commitment in the Coalition Programme for Government to "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 at least 10% of his or her constituents". The Government believes this mechanism will go some way to restoring public confidence in MPs and Parliament as a whole.

What are the policy objectives and the intended effects?

The legislation we are proposing is intended to give constituents the power to recall their MP under certain conditions. If one of two triggers occurs, a recall petition will be opened. These triggers are: (1) an MP is convicted in the UK of an offence and receives a custodial sentence of 12 months or less (the Representation of the People Act 1981 only disqualifies Members who receive custodial sentences of more than 12 months) (2) the House of Commons resolves that an MP should face recall (this would be an additional disciplinary power for the House). Once a recall petition has been opened, if 10% or more of the MP's constituents sign the recall petition, the MP will face a by-election and could lose their seat.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

0) Base Case - do nothing. Continue with the present arrangements; automatic disqualification if an MP is imprisoned for a period of more than 12 months or another disciplinary sanction (such as apology or suspension) decided by the House for any other wrongdoing.

1) Option 1 - Provide an automatic recall petition trigger if an MP has been given a prison sentence of 12 months or less, and give the House the power to decide a recall petition should be opened if it finds an MP to have engaged in "serious wrongdoing".

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/Year

What is the basis for this review? Please select. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

No

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: unknown	High: unknown	Best Estimate: £0.06

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.04			£0.04
High	£0.10			£0.10
Best Estimate	£0.06			£0.06

Description and scale of key monetised costs by 'main affected groups'
The cost attributed to the conduct of a recall petition is estimated between £37,700 and £100,500; best estimate of £64,300. The range is based on cost of recall in lowest and highest cost constituencies with best estimate based on average across all UK Constituencies (detail in evidence base), except Northern Ireland which is detailed below. We do not expect recall petitions to be a common occurrence. No annual estimate is provided.

Other key non-monetised costs by 'main affected groups'
N/A

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'
N/A

Other key non-monetised benefits by 'main affected groups'
Constituents will benefit from being involved in the process of holding their MP to account. This recall model would allow constituents the power to force a by-election, a power not seen before and one which will be a significant step towards restoring the public faith and trust of the electorate in Parliament.

Key assumptions/sensitivities/risks
There are no specific risks arising from the Bill, although our proposals will attract significant public attention.

Discount rate (%) N/A

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	Yes/No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			TBC		
Which organisation(s) will enforce the policy?			Cabinet Office		
What is the annual change in enforcement cost (£m)?			UNKNOWN		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:		Benefits:
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	X
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	X
Small firms Small Firms Impact Test guidance	No	X
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	X
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	X
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	X
Human rights Human Rights Impact Test guidance	No	X
Justice system Justice Impact Test guidance	No	X
Rural proofing Rural Proofing Impact Test guidance	No	X
Sustainable development Sustainable Development Impact Test guidance	No	X

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Spread sheet attached containing real data from 2010 General Election
2	
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Evidence Base

1. Problem under Consideration and rationale for intervention:

Under existing procedures, the House of Commons can discipline its MPs with various sanctions depending on the severity of the misconduct. Disciplinary sanctions imposed by the House include expulsion, suspension, withholding pay and requiring a member to make an apology to the House. In addition to this the Representation of the People Act 1981 provides that an MP is automatically disqualified if they are imprisoned in the British Isles for more than 12 months.

At present, the decision on whether an MP's misconduct should result in a by-election lies solely with the House of Commons and constituents have no role in deciding whether an MP's misconduct should trigger a by-election.

However, following the expenses scandal all three main political parties committed to introducing some form of recall mechanism in their manifestos at the 2010 General Election. The recall mechanism the Government is proposing is intended to give constituents the power to force a by-election where an MP is found to have engaged in serious wrongdoing.

The Coalition Programme for Government contained a commitment to:

“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 at least 10% of his or her constituents”.

The Government believes this recall mechanism will go some way to restoring public confidence in MPs and Parliament as a whole.

2. Policy Objective

The Government's proposals are designed to give constituents the power to force a by-election where an MP is found to have engaged in serious wrongdoing. The draft legislation will provide that a recall petition will be triggered where:

- an MP is convicted in the UK of an offence and receives a custodial sentence of 12 months or less (the Representation of the People Act 1981 only disqualifies Members 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).

Once a recall petition has been opened, if 10% or more of the constituents on the electoral register in the constituency sign the recall petition, a by-election will automatically be triggered and voters will have the final say on the MP's future.

3. Description of Options considered

Base Option: Do nothing.

Whilst the House of Commons will still have the power to discipline its members, provision does not exist to trigger a recall petition which would allow constituents to decide whether the MP should face a by-election as a result of their misconduct. Doing nothing therefore does not in any way fulfil the commitment in the Coalition Programme for Government.

Costs:

The monetary cost of doing nothing is zero. However, this would not meet the Government's policy objective.

Benefits:

The ultimate aim is to enable constituents to have a choice on whether to call a by-election. If no recall mechanism was in place, there would be no facility for constituents to have a say as to whether a by-election should be triggered.

This option would not meet the commitment to establish a recall mechanism set out in the Coalition Programme for Government.

Option 1:

This option would establish a recall mechanism with two triggers designed to capture a broad range of serious wrongdoing. The first is that a recall petition would automatically be opened where an MP is given a custodial sentence of 12 months or less. The second is that the House of Commons may trigger a recall petition where an MP has been the subject of a disciplinary investigation and found to have engaged in serious wrongdoing.

Where an MP has committed a serious wrongdoing, but this did not result in a conviction or a term of imprisonment, the House of Commons could exercise the new power which would allow it to trigger a recall petition. The House of Commons has in place a complaints procedure under which any member of the public may make a complaint about an MP's conduct to the Parliamentary Commissioner for Standards. The Commissioner will consider the complaint and, following investigation, may report the matter to the Committee for Standards and Privileges. The Committee will recommend to the House what action, if any, should be taken, and under these proposals, that may include that the MP should be liable to recall.

The recall petition will broadly follow existing electoral practices and will be administered by a local Returning Officer. Each eligible constituent who asks for one will be issued with a personal signature sheet to sign to ensure that their preference remains secret. This will also limit electoral fraud and intimidation. The process itself closely matches electoral practices.

If the recall petition is signed by at least 10% of his or her constituents the Member's seat will be vacated and a by-election will be called.

Costs:

The cost relates to the actual cost of conducting a recall petition. In practice, as the process itself has similarities to that of existing practice used in general and local elections, these forecasts use costs containing the real data from the 2010 General Election.

The cost attributed to the conduct of a recall petition in England, Scotland and Wales has been estimated at £64,300. These estimates are based on the average cost of the General Election across all English, Scottish and Welsh constituencies, worked out from the real data provided from the 2010 General Election.

The cost attributed to Northern Ireland has been estimated on the average cost across its 18 constituencies as £61,200. Again, these costs are based on the real data provided from the 2010 General Election but reflect the differences to the process in Northern Ireland. For example, the recall process will be conducted by postal signature only and there will be no new postal voting identifiers required due to the existence of Individual Electoral Registration in Northern Ireland. Postal only signing has been agreed due to sensitivities which exist in Northern Ireland which are not present in the rest of Great Britain.

The cost of any recall petition will be paid from the consolidated fund and we do not expect recall petitions to be a common occurrence. Costs have been calculated by considering all activities and their associated costs, and are rounded to the nearest hundred pounds. In particular for England, Scotland and Wales;

Returning officer cost:

£3,400 (based on a fee of £475 per 10,000 population)

Polling station cost:

A total of £27,600, which stems from the cost of poll clerks and supervisors (£7,400), required training (£100), Equipment, accommodation costs and transportation (£18,600), and printing ballot papers (£1,400).

Counting costs:

A total of £6,700 is required for the cost of counting and verifying ballot papers. This breaks down to staff costs (£1,800), travel accommodation and security (£4,000), training (£200), and equipment cost (£700).

Postal voting costs:

A total of £21,600 which breaks down into: Staff costs including training (£6,700), postage costs (£8,100), printing (£5,500), equipment and accommodation costs (£1,300).

Other costs:

General costs outside the ones mentioned include general clerical (£3,700), materials travel and subsistence (£200), and provision of training (£1,000) and Welsh translation (£100). This gives a total of £5,000.

Summation of these cost categories gives the overall estimation of £64,300.

For Northern Ireland:

The average cost for Northern Ireland is represented in the table below. This shows the £61,200 cost of conducting a petition can be split into: Printing of ballot papers (£500), counting costs (£3,200), other costs (£1,800), and postal voting costs (£55,700).

Table: Breakdown of Northern Ireland cost estimated for recall petition

	Cost of Printing Ballot Papers	Postal Voting Costs	Counting Costs	Other Costs	Total cost
Average cost across Northern Ireland's 18 Constituencies	£500	£55,700	£3,200	£1,800	£61,200

Benefits:

There are no monetary benefits, however under this option, constituents will be empowered to participate in the political process. This option also fulfils the public commitment given to voters in the Coalition Programme for Government and will go some way to restoring the public confidence in Parliament.

4. Risks and Assumptions:

Given the similarities to existing electoral processes, there are already well established procedures to minimise fraud. The threshold of proven serious wrongdoing will prevent recall petitions being triggered for nefarious and vexatious reasons.

We have assumed a 40% turnout of eligible constituents in calculating costs.

We have also assumed that a by-election is possible in the event of serious wrongdoing whether or not a recall package is put in place. The key difference is that a recall mechanism will allow constituents a say in whether a by-election should be triggered. The costs presented therefore reflect the cost of administering a recall petition itself, but not the by-election

5. Wider Impacts:

This change forms part of a package of constitutional reforms, but this proposal does not have any wider impacts on businesses or the third sector. The Justice Impact Assessment contains a detailed look at the criminal offences associated with the petition phase. Because the recall model proposed mirrors existing electoral practice, broadly the same criminal offences will

be applied to the petition phase. Because we do not anticipate that recall petitions will be a common occurrence, the impact on the justice system will be negligible.

6. Summary and Preferred Option:

Option 1 is the preferred option as it fulfils the policy objective to give constituents the power to recall their MP and potentially hold them to account for their actions. It also fully satisfies the commitment given by the Government in the Coalition Agreement. Due to the constitutional nature of this Bill, we do not expect there to be any impact on any area with the exception of Justice, for which a separate Impact Assessment has been produced, considered and approved. This was signed off on 30 June 2011 by the Secretary of State for Justice.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]

Due to the expected unpredictable nature of the recall proposals, it is difficult to plan for when a review may occur. The policy will be reviewed when there is a recall petition process to measure against, but we can not say when that may be.

Add annexes here.

Recall of MPs Bill (Draft)

CONTENTS

How an MP becomes the subject of a recall petition

- 1 How an MP becomes the subject of a recall petition
- 2 The first and second recall conditions
- 3 Expiry of the appeal period
- 4 Speaker to be notified if an MP is sentenced to imprisonment etc
- 5 Speaker's notice that first or second recall condition has been met

Conduct of the recall petition process

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Outcome of recall petition

- 14 Determination of whether recall petition successful
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Final provisions

- 17 Power to make further provision about recall petition process etc
- 18 Role of Electoral Commission
- 19 Regulations and orders: general and procedure
- 20 Interpretation
- 21 Extent, commencement and short title

-
- Schedule 1 — Returning officers
 Schedule 2 — Alteration of registers of parliamentary electors
 Schedule 3 — The role of the Electoral Commission

A
B I L L

TO

Make provision about the recall of members of the House of Commons; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

How an MP becomes the subject of a recall petition

1 How an MP becomes the subject of a recall petition

- (1) A member of the House of Commons becomes the subject of a recall petition if—
 - (a) the first or second recall condition has been met in relation to the member (see section 2), and
 - (b) the Speaker gives notice of that fact under section 5.
- (2) In this Act “recall petition” means a petition calling, in terms determined under section 8, for the seat of a member of the House of Commons to be vacated in accordance with this Act.
- (3) The provision made by or under this Act about recall petitions does not affect other ways in which a member’s seat may be vacated.
See, in particular, the Representation of the People Act 1981, under which a member may be disqualified on being detained in pursuance of certain sentences or orders.

2 The first and second recall conditions

- (1) The first recall condition is that—
 - (a) the member has, after becoming a member, been found guilty in the United Kingdom of an offence and sentenced or ordered to be imprisoned or detained, and
 - (b) the appeal period expires (see section 3) without the conviction, sentence or order having being overturned on appeal.

- (2) The second recall condition is that the House of Commons resolves that the member is to be the subject of a recall petition.
- (3) The reference in subsection (1) to an offence —
 - (a) includes an offence committed before the member became a member, but
 - (b) does not include an offence committed before the day on which this section comes into force.
- (4) The reference in subsection (1) to a member being sentenced or ordered —
 - (a) includes the member being sentenced or ordered where the sentence or order is suspended, but
 - (b) does not include the member being —
 - (i) remanded in custody, or
 - (ii) authorised to be detained under a mental health enactment.
- (5) The following are “mental health enactments” —
 - (a) the Mental Health Act 1983,
 - (b) Part 6, and section 200(2)(b), of the Criminal Procedure (Scotland) Act 1995, and
 - (c) the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).
- (6) In this Act “overturned on appeal” means —
 - (a) in relation to a conviction, quashed, and
 - (b) in relation to a sentence or order —
 - (i) varied so that it is no longer a sentence or order that the member be imprisoned or detained, or
 - (ii) replaced with another sentence or order that is not a sentence or order that the member be imprisoned or detained.

3 Expiry of the appeal period

- (1) For the purposes of section 2, the appeal period expires at the earliest time at which —
 - (a) it is no longer possible for there to be a relevant appeal, and
 - (b) all relevant appeals have been determined or otherwise disposed of.
- (2) In this section “relevant appeal” means an appeal that meets either of the following conditions.
- (3) The first condition is that the appeal —
 - (a) is in respect of the conviction, sentence or order, and
 - (b) is brought within the usual period.
- (4) The second condition is that the appeal —
 - (a) is in respect of the determination of an appeal that was itself a relevant appeal, and
 - (b) is brought within the usual period.
- (5) References in this section to an appeal being brought within the usual period are to the appeal being brought within the period allowed for bringing an appeal of the kind in question, disregarding the possibility of an appeal out of time with permission.

- (6) References in this section to an appeal –
 - (a) are to an appeal to a court in the United Kingdom;
 - (b) include an application (and accordingly references to an appeal being brought include an application being made);
 - (c) include an appeal under paragraph 13(a) of Schedule 6 to the Scotland Act 1998, paragraph 31(a) of Schedule 10 to the Northern Ireland Act 1998 or paragraph 21(a) of Schedule 9 to the Government of Wales Act 2006 (appeal against a determination, in proceedings in Scotland, of a Scottish, Northern Irish or Welsh devolution issue);
 - (d) do not include a reference under Part 2 of the Criminal Appeal Act 1995 (the Criminal Cases Review Commission) or Part 10A of the Criminal Procedure (Scotland) Act 1995 (the Scottish Criminal Cases Review Commission).
- (7) References in this section to the determination of an appeal are, where the court to which the appeal is brought remits the matter to another court, to the disposal of the proceedings by that other court.

4 Speaker to be notified if an MP is sentenced to imprisonment etc

- (1) This section applies if a member of the House of Commons is found guilty in the United Kingdom of an offence and sentenced or ordered to be imprisoned or detained.
- (2) The court that imposes the sentence or order must notify the Speaker –
 - (a) of the conviction and of the sentence or order, and
 - (b) whether an appeal may be brought in respect of the conviction, sentence or order.
- (3) Subsections (4) to (6) apply in a case in which an appeal is brought in respect of the conviction, sentence or order (whether from the court that imposed the sentence or order or from a court that determined or otherwise disposed of an earlier appeal).
- (4) The court to which the appeal is brought must notify the Speaker that an appeal has been brought in respect of the conviction, sentence or order.
- (5) Where the appeal is determined or otherwise disposed of, the relevant court must notify the Speaker –
 - (a) that the appeal has been determined or otherwise disposed of,
 - (b) if the conviction, sentence or order has been overturned on appeal, of that fact, and
 - (c) whether any further appeal may be brought in respect of the conviction, sentence or order.
- (6) In subsection (5) “the relevant court” means –
 - (a) the court to which the appeal is brought, or
 - (b) if that court remits the matter to another court, that other court.
- (7) Subsections (6) and (7) of section 3 (which are about the interpretation of references to an appeal and to the determination of an appeal) apply in relation to this section.

5 Speaker's notice that first or second recall condition has been met

- (1) The Speaker must, as soon as reasonably practicable after the first or second recall condition has been met in relation to a member of the House of Commons, give notice of that fact to the returning officer for the member's constituency.
- (2) Subsection (1) does not apply if it would otherwise require the Speaker to give notice at a time—
 - (a) within the period of six months ending with the polling day for the next parliamentary general election,
 - (b) during a recall petition process in respect of the member that has already begun, or
 - (c) when the seat of the member has already been vacated (whether by the member's death or disqualification, or otherwise).
- (3) For the purposes of paragraph (a) of subsection (2), the possibility that, after the time mentioned in that subsection, the polling day for a parliamentary general election will be altered by virtue of section 1(5) or 2(7) of the Fixed-term Parliaments Act 2011 is to be ignored.
- (4) A notice under this section—
 - (a) must specify the day on which it is given,
 - (b) must specify which of the recall conditions has been met in relation to the member, and
 - (c) in a case in which the first recall condition has been met, must specify the offence of which the member has been found guilty.
- (5) In this Act—
 - (a) "recall petition process" means the actions taken under or by virtue of this Act in relation to a recall petition during the period—
 - (i) after the giving of notice under this section, and
 - (ii) before the laying of a notice in accordance with section 15;
 - (b) "recall petition period" means the period mentioned in paragraph (a).
- (6) References in this Act to a "Speaker's notice" are to a notice under this section.

*Conduct of the recall petition process***6 Returning officers**

- (1) There is to be a returning officer in relation to a recall petition for each constituency.
- (2) For a constituency in England or Wales, the returning officer is to be the person who is the acting returning officer in relation to the constituency by virtue of section 28 of the Representation of the People Act 1983 (discharge of returning officer's functions in England and Wales).
- (3) For a constituency in Scotland, the returning officer is to be the person who is the returning officer in relation to the constituency by virtue of section 25 of that Act (returning officers: Scotland).
- (4) For a constituency in Northern Ireland, the returning officer is to be the Chief Electoral Officer for Northern Ireland.

- (5) References in this Act to a returning officer are to a returning officer under this section.
- (6) Schedule 1 (which contains further provision about returning officers) has effect.

7 Returning officer to make recall petition available for signature

- (1) Where the returning officer for a constituency receives a Speaker's notice, the officer must, as soon as reasonably practicable, designate—
 - (a) a place at which a recall petition is to be made available for signature, and
 - (b) a day from which the petition is to be made available for signature.
- (2) The returning officer must designate—
 - (a) the day two weeks after that on which the Speaker's notice is received, or
 - (b) if that day is not a relevant day, the first subsequent relevant day.
- (3) But if it is not reasonably practicable to designate the day determined under subsection (2), the returning officer must designate the first subsequent relevant day that it is reasonably practicable to designate.
- (4) The returning officer must ensure that the recall petition is made available for signature at the designated place throughout the signing period.
- (5) Subsection (4) is subject to any provision of regulations under section 17—
 - (a) permitting or requiring the returning officer not to make the recall petition available for signature for periods of a day or on particular days, or
 - (b) about signing by post.
- (6) In this section “relevant day” means a day that is not—
 - (a) a Saturday or Sunday,
 - (b) Christmas Eve, Christmas Day or Good Friday, or
 - (c) a bank holiday or a day appointed for public thanksgiving or mourning,
 and for this purpose “bank holiday” means a day that is a bank holiday in the part of the United Kingdom in which the constituency is situated.
- (7) In this Act “the signing period” means the period—
 - (a) beginning with the designated day, and
 - (b) ending with the day eight weeks later or, if the returning officer has, on an earlier day, given notice under section 9 (early termination of recall petition process), that earlier day.
- (8) In relation to a constituency in Northern Ireland, this section has effect as if—
 - (a) subsection (1)(a) were omitted, and
 - (b) in subsection (4), the words “at the designated place” were omitted.

8 Wording of recall petition

- (1) This section makes provision about the wording of a recall petition that is to be made available for signature under section 7.

- (2) Where the Speaker's notice specifies that the first recall condition has been met, the recall petition is to read as follows –

“[Name], the member of the House of Commons for [constituency], has been found guilty of the offence of [offence] and has been [sentenced/ordered] to be [imprisoned/detained].

If you think that [name] should lose [his/her] seat as a member of the House of Commons and that there should accordingly be an election for the constituency, please sign below.”

- (3) Where the Speaker's notice specifies that the second recall condition has been met, the recall petition is to read as follows –

“The House of Commons has resolved that [name], the member of the House of Commons for [constituency], is to be the subject of a recall petition.

If you think that [name] should lose [his/her] seat as a member of the House of Commons and that there should accordingly be an election for the constituency, please sign below.”

9 Early termination of recall petition process by returning officer

- (1) This section applies where, at any time after a Speaker's notice has been given, but before the returning officer has given notice of the outcome of the recall petition under section 14(4), any of the following three conditions is met.
- (2) The first condition is that –
- (a) the polling day for the next parliamentary general election is brought forward by virtue of section 2(7) of the Fixed-term Parliaments Act 2011, and
 - (b) the new day is within the period of six months beginning with the day on which the Speaker's notice was given.
- (3) The second condition is that the seat of the member is vacated (whether by the member's death or disqualification, or otherwise).
- (4) The third condition is that, in a case in which the first recall condition was met in relation to the member, the conviction, sentence or order in question is overturned on appeal.
- (5) Where this section applies no further action, except that specified in subsection (6), is to be taken under or by virtue of this Act in relation to the recall petition.
- (6) As soon as reasonably practicable after becoming aware that this section applies, the returning officer must –
- (a) take such steps as the officer considers necessary to terminate the recall petition process, and
 - (b) notify the Speaker that the recall petition process has been terminated, specifying which of the three conditions above has been met.
- (7) Subsection (5) is subject to any provision of regulations under section 17 permitting or requiring an action to be taken –
- (a) in consequence of this section applying, or
 - (b) after the laying of a notice in accordance with section 15 (conclusion of the recall petition process).

10 Persons entitled to sign recall petition

- (1) A person (“P”) is entitled to sign a recall petition in respect of a member for a constituency on any day (“the relevant day”) if any of the following three conditions is met.
- (2) The first condition is that—
 - (a) P would be entitled to vote on the relevant day as an elector at a parliamentary election in the constituency, and
 - (b) the fact that P is registered in the register of parliamentary electors for the constituency on that day is a result of a qualifying application.
- (3) “Qualifying application” means an application for registration that—
 - (a) was made on or before the day on which the Speaker’s notice was given, or
 - (b) is treated as made by virtue of section 10A(2) of the Representation of the People Act 1983 (return of canvass form treated as application for registration) in respect of a form returned on or before that day.
- (4) The second condition is that—
 - (a) the first condition is not met, but only because P is under the age of 18 on the relevant day, and
 - (b) P will (assuming he or she lives) attain the age of 18 before the end of the signing period.
- (5) The third condition is that—
 - (a) P is entitled to sign the petition on the first day of the signing period by virtue of the first or second condition being met, and
 - (b) P is not entitled to sign the petition on the relevant day by virtue of the first or second condition being met, but only because P is no longer registered in the register of parliamentary electors for the constituency.

11 How entitlement to sign recall petition is to be exercised

- (1) A person who is entitled to sign a recall petition in respect of a member for a constituency in Great Britain may sign it in person, by post or by proxy.
- (2) A person who is entitled to sign a recall petition in respect of a member for a constituency in Northern Ireland may sign it by post or by proxy.
- (3) A person who is entitled to sign a recall petition may sign it only once.
- (4) References in subsections (1) to (3) to a person who is entitled to sign a recall petition do not include a person acting as proxy for another person.

12 Alteration of registers of parliamentary electors

Schedule 2 (which contains amendments of Part 1 of the Representation of the People Act 1983 relating to the alteration of registers of parliamentary electors before and during a recall petition) has effect.

13 Double signing

- (1) A person who signs the same recall petition more than once commits an offence.

- (2) The reference in subsection (1) to signing a recall petition –
 - (a) includes signing by post or by proxy, but
 - (b) does not include signing as proxy for another person.
- (3) A person who signs the same recall petition as proxy for the same person more than once commits an offence.
- (4) An offence under this section is to be treated –
 - (a) for the purposes of section 169 of the Representation of the People Act 1983 (mode of prosecution and penalty for illegal practices) as an illegal practice,
 - (b) for the purposes of section 173 of that Act (incapacities on conviction of corrupt or illegal practice) as an illegal practice under section 61 of that Act (other voting offences),
 - (c) for the purposes of section 178 of that Act (prosecution of offences committed outside the United Kingdom), as an offence under that Act, and
 - (d) for the purposes of section 112 of the Electoral Law Act (Northern Ireland) 1962 (c. 14 (N.I.)) (incapacities on conviction of corrupt or illegal practice) as an illegal practice under paragraph 12A of Schedule 9 to that Act (other voting offences).
- (5) The court before which a person is convicted of an offence under this section may, if it thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 of the Representation of the People Act 1983 or section 112 of the Electoral Law Act (Northern Ireland) 1962.

Outcome of recall petition

14 Determination of whether recall petition successful

- (1) A recall petition is successful if the number of persons who validly sign the petition is at least 10% of the number of persons to whom subsection (2) applies.
- (2) This subsection applies to a person (“P”) if –
 - (a) P is, on any day in the signing period, registered in the register of parliamentary electors for the constituency,
 - (b) the fact that P is so registered is a result of a qualifying application (within the meaning given by section 10(3)), and
 - (c) P has attained the age of 18 before the end of the signing period (or would have done so had he or she not died).
- (3) For the purposes of this section a person (“P”) validly signs a recall petition if –
 - (a) P signs the petition during the signing period,
 - (b) P signs the petition on a day on which P is entitled to do so under section 10, and
 - (c) any condition imposed by regulations of the kind mentioned in section 17(4)(b) (conditions for the exercise of entitlement to sign) is met.
- (4) As soon as reasonably practicable after the end of the signing period, the returning officer –
 - (a) must determine whether the recall petition has been successful, and

- (b) must notify the Speaker that the recall petition was successful or unsuccessful, as the case may be.

15 Conclusion of recall petition process

The Speaker must lay before the House of Commons any notice received under —

- (a) section 9 (early termination of recall petition process), or
- (b) section 14 (outcome of recall petition).

16 Effect of successful petition

- (1) On the laying of a notice under section 15(b) that a recall petition in respect of a member was successful, the member's seat becomes vacant.
- (2) Subsection (1) is subject to any provision made in regulations under section 17 about the questioning of the outcome of the recall petition.
- (3) Subsection (1) does not apply where, before the notice is laid, the member's seat is already vacated (whether by the member's death or disqualification, or otherwise).

Final provisions

17 Power to make further provision about recall petition process etc

- (1) The Minister may by regulations —
 - (a) make provision (in addition to that made by or under any other provision of this Act) about actions that may or must be taken in relation to a recall petition during the recall petition period;
 - (b) make provision about the questioning of the outcome of a recall petition and the consequences of irregularities.
- (2) The provision that may be made under this section includes —
 - (a) provision about signing a recall petition in person, by post or by proxy;
 - (b) provision permitting or requiring a returning officer, when performing the duty under section 14(4)(a), to treat a person who signed the petition as having been entitled to do so;
 - (c) provision about the retention and disposal of documents or other information in relation to a recall petition;
 - (d) provision creating a criminal offence or about a criminal offence under this Act;
 - (e) provision conferring a discretion on any person.
- (3) Regulations under this section may —
 - (a) apply or incorporate, with or without modifications or exceptions, any provision of or made under the Representation of the People Acts or any other enactment relating to elections;
 - (b) amend any form contained in regulations made under the Representation of the People Acts, or any other enactment relating to elections, for use in relation to recall petitions.
- (4) The provision that may be made by virtue of subsection (2)(a) includes —

- (a) provision about what a person must do in order to be regarded as having signed a recall petition for the purposes of this Act;
 - (b) provision under which an entitlement to sign a recall petition may be exercised only where conditions specified in the regulations are met;
 - (c) provision about when a person who signs a recall petition by post is to be treated as signing it for the purposes of this Act.
- (5) Provision made by virtue of subsection (2)(b) does not affect –
 - (a) the question of whether a person is entitled to sign a recall petition for the purposes of provision made under subsection (1)(b), or
 - (b) a person's liability to any penalty for signing a recall petition when not entitled to do so.
- (6) The outcome of a recall petition may be questioned only in accordance with provision made under subsection (1)(b).

18 Role of Electoral Commission

Schedule 3 (which contains amendments of Part 1 of the Political Parties, Elections and Referendums Act 2000 relating to the role of the Electoral Commission in connection with recall petitions) has effect.

19 Regulations and orders: general and procedure

- (1) Regulations or orders under this Act may –
 - (a) make consequential, supplementary, incidental, transitional or saving provision;
 - (b) make different provision for different cases, purposes or areas.
- (2) The power under subsection (1)(a) includes, in the case of regulations under section 17, power to amend any enactment (including this Act).
- (3) Regulations and orders under this Act, except for regulations under paragraph 3(10) of Schedule 1, are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under section 17 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Section 26 of the Welsh Language Act 1993 (power to prescribe Welsh version) applies in relation to regulations and orders under this Act as it applies in relation to Acts of Parliament.
- (6) This section does not apply to an order under section 21 (commencement).

20 Interpretation

- (1) In this Act –
 - “action” includes omission;
 - “enactment” includes –
 - (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
 - (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
- “the Minister” means the Lord President of the Council or the Secretary of State;
- “overturned on appeal” has the meaning given by section 2(6);
- “recall condition” means the first or second recall condition (see section 2);
- “recall petition” has the meaning given by section 1(2);
- “recall petition period” has the meaning given by section 5(5);
- “recall petition process” has the meaning given by section 5(5);
- “returning officer” has the meaning given by section 6(5);
- “the signing period” has the meaning given by section 7(7);
- “the Speaker” means the Speaker of the House of Commons;
- “Speaker’s notice” has the meaning given by section 5(6).
- (2) For the purposes of this Act the time at which a member of the House of Commons becomes a member of that House is the beginning of the day after the polling day for the parliamentary election at which the member is elected.
 - (3) A duty under this Act to notify (however expressed) is a duty to give notice in writing.

21 Extent, commencement and short title

- (1) Subject to subsection (2), this Act extends to the whole of the United Kingdom.
- (2) An amendment or repeal by this Act has the same extent as the enactment (or part of the enactment) amended or repealed.
- (3) This section comes into force on the day on which this Act is passed.
- (4) Otherwise, this Act comes into force on such day as the Minister may appoint by order made by statutory instrument.
- (5) An order under subsection (4)—
 - (a) may appoint different days for different purposes, and
 - (b) may make transitional, transitory or saving provision.
- (6) This Act may be cited as the Recall of MPs Act 2011.

SCHEDULES

SCHEDULE 1

Section 6

RETURNING OFFICERS

Returning officer's general duty

- 1 It is the returning officer's general duty to do all such acts and things as may be necessary for effectually conducting a recall petition process in accordance with this Act and regulations and orders made under it.

Performance of returning officer's functions: delegation, assistance etc

- 2 (1) Sub-paragraphs (2) and (3) apply in relation to a returning officer for a constituency in England, Wales or Scotland.
- (2) The returning officer may appoint one or more deputies to discharge any or all of the returning officer's functions conferred under or by virtue of this Act.
- (3) Each local authority whose area falls wholly or partly within the constituency must place the services of its officers at the disposal of the returning officer for the purpose of assisting the returning officer in the exercise of his or her functions.
- (4) In sub-paragraph (3) "local authority" means –
 - (a) a district council,
 - (b) a county council in England for a county in which there are no district councils,
 - (c) a London borough council,
 - (d) the Common Council of the City of London,
 - (e) the Council of the Isles of Scilly,
 - (f) a county council or county borough council in Wales, or
 - (g) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).
- (5) Sections 14(5) and 14A(2) and (3) of the Electoral Law Act (Northern Ireland) 1962 (appointment of temporary deputy, delegation to assistants and involvement of officers of local authorities) have effect in relation to the Chief Electoral Officer for Northern Ireland in his or her capacity as a returning officer in relation to a recall petition.

Expenditure

- 3 (1) A returning officer may recover charges in respect of services rendered, or expenses incurred, by the officer for or in connection with a recall petition process if –

-
- (a) the services were necessarily rendered, or the expenses were necessarily incurred, for the efficient and effective conduct of the process, and
 - (b) the total of the officer's charges does not exceed the amount ("the overall maximum recoverable amount") specified in, or determined in accordance with, an order made by the Minister, with the consent of the Treasury, for the purposes of this sub-paragraph.
 - (2) An order under sub-paragraph (1) may specify, or make provision for determining in accordance with the order, a maximum recoverable amount for services or expenses of any specified description.
 - (3) Subject to sub-paragraph (4), the returning officer may not recover more than the specified maximum recoverable amount in respect of any specified services or expenses.
 - (4) In a particular case the Minister may, if satisfied that the conditions in sub-paragraph (5) are met, and with the consent of the Treasury, authorise the payment of –
 - (a) more than the overall maximum recoverable amount, or
 - (b) more than the specified maximum recoverable amount for any specified services or expenses.
 - (5) Those conditions are –
 - (a) that it was reasonable for the returning officer to render the services or incur the expenses, and
 - (b) that the charges in question are reasonable.
 - (6) The amount of any charges recoverable in accordance with this paragraph is to be paid by the Minister on an account being submitted to the Minister.
 - (7) But the Minister may, before payment, apply for the account to be taxed under paragraph 4.
 - (8) Where the superannuation contributions required to be paid by a local authority in respect of any person are increased by any fee paid under this paragraph as part of a returning officer's charges, then on an account being submitted to the Minister a sum equal to the increase must be paid to the authority by the Minister.
 - (9) On the request of a returning officer for an advance on account of the officer's charges, the Minister may make such advance on such terms as the Minister thinks fit.
 - (10) The Minister may by regulations make provision as to –
 - (a) the time when, and
 - (b) the manner and form in which,
 accounts are to be rendered to the Minister for the purposes of the payment of a returning officer's charges.
 - (11) Any sums required by the Minister for making payments under this paragraph are to be charged on, and paid out of, the Consolidated Fund.
 - (12) In this paragraph –
 - "local authority" has the same meaning as in paragraph 2(3);
 - "specified" means specified in, or determined in accordance with, an order under sub-paragraph (1).

Taxation of returning officer's account

- 4 (1) An application under paragraph 3(7) for a returning officer's account to be taxed is to be made –
- (a) in the case of a returning officer for a constituency in Scotland, to the Auditor of the Court of Session, and
 - (b) otherwise, to a county court.
- (2) On such an application the court has jurisdiction –
- (a) to tax the account in such manner, and at such time and place, as it thinks fit, and
 - (b) finally to determine the amount payable to the returning officer.
- (3) On any such application the returning officer may apply to the court to examine any claim made by any person ("the claimant") against the officer in respect of matters charged in the account.
- (4) Where an application is made in respect of a claim under sub-paragraph (3) –
- (a) notice of the application must be given to the claimant;
 - (b) the court must give the claimant an opportunity to be heard and to tender any evidence;
 - (c) the court may allow, disallow or reduce the claim, with or without costs;
 - (d) the determination of the court is final for all purposes and as against all persons.
- (5) A reference in this paragraph to "the court" includes a reference to the Auditor of the Court of Session.
- (6) An application under sub-paragraph (1) for taxation of the account of the Chief Electoral Officer for Northern Ireland must be made to the county court that has jurisdiction at the place where the officer's headquarters are situated.

SCHEDULE 2

Section 12

ALTERATION OF REGISTERS OF PARLIAMENTARY ELECTORS

- 1 Part 1 of the Representation of the People Act 1983 (parliamentary franchise etc) is amended as follows.
- 2 In section 10A (maintenance of registers: registration of electors), in subsection (2A), for "section 13BB(2)" substitute "sections 13BB(2) and 13BD(2)".
- 3 In section 13 (publication of registers), in subsection (5)(b), for "13BB" substitute "13BD".
- 4 (1) Section 13A (alteration of registers) is amended as follows.
- (2) In subsection (4), after "13BA(3), (6) or (9)" insert "or 13BC(5)".
 - (3) In subsection (5), after "section 13BB below" insert "or section 13BC or 13BD below."

- 5 (1) Section 13B (alteration of registers: pending elections), as it has effect in England and Wales and Scotland, is amended as follows.
 - (2) In subsection (1), after “section 13A(2) above” insert “or section 13BB(6B), 13BC(5) or 13BE(3) below”.
 - (3) In subsection (2)(c), after “subsection (2) of that section” insert “, or section 13BC(5),”.
 - (4) After subsection (3) insert—

“(3ZA) Subsection (3) does not require a registration officer to issue a notice under that subsection in a case where section 13BC(5) requires the officer to issue a notice under that provision.”
- 6 (1) Section 13BA (alteration of registers in Northern Ireland: pending elections) is amended as follows.
 - (2) In subsection (1), after “section 13A(2)” insert “above or section 13BB(6B), 13BC(5) or 13BE(3) below”.
 - (3) In subsection (2)(b), after “section 13A(2)” insert “, or section 13BC(5),”.
 - (4) After subsection (3) insert—

“(3A) Subsection (3) does not require the Chief Electoral Officer to issue a notice under that subsection in a case where section 13BC(5) requires the officer to issue a notice under that provision.”
 - (5) In subsection (5)(b), after “section 13A(2)” insert “, or section 13BC(5),”.
 - (6) After subsection (6) insert—

“(6A) Subsection (6) does not require the Chief Electoral Officer to issue a notice under that subsection in a case where section 13BC(5) requires the officer to issue a notice under that provision.”
- 7 (1) Section 13BB (election falling within canvass period) is amended as follows.
 - (2) After subsection (6) insert—

“(6A) Where—

 - (a) in consequence of the determination of the application, a person’s entry in respect of an address other than the relevant address falls to be removed from a register maintained by a registration officer other than the one referred to in subsection (4),
 - (b) at the time of the determination, a Speaker’s notice has been given in relation to a recall petition for a constituency that includes that other address, and
 - (c) the determination is made before the first day of the signing period in relation to the petition,

the other registration officer shall, on being informed of the determination, issue in the prescribed manner a notice specifying the appropriate alteration.
 - (6B) A notice under subsection (6A) shall be issued as soon as is reasonably practicable, and the alteration shall take effect as from the beginning of the day on which the notice is issued.

- (6C) But no notice under subsection (6A) shall be issued after the beginning of the signing period in relation to the petition.”
- (3) In subsection (7) for “or (5)” substitute “, (5) or (6A)”.
- (4) After subsection (8) insert—
- “(8A) In this section the following expressions have the same meaning as in the Recall of MPs Act 2011—
- “recall petition”;
- “signing period”;
- “Speaker’s notice”.”
- (5) After subsection (9) insert—
- “(10) This section does not apply in relation to an application that is treated under section 13BD(2) as made at an earlier time than the time at which it would be treated as made (apart from this subsection) under subsection (2) of this section.”

8 After section 13BB insert—

“13BC Alteration of registers during recall petition process

- (1) This section applies if any of the following three conditions is met.
- (2) The first condition is that—
- (a) at any time before the Speaker’s notice in relation to a recall petition is given, section 13A applies to a registration officer, by virtue of subsection (1) of that section, in connection with a determination, requirement or decision falling within any of paragraphs (a) to (d) of that subsection,
 - (b) in consequence of the determination, requirement or decision, an entry relating to a person falls to be made or altered in (or removed from) a relevant register in relation to the recall petition, and
 - (c) the alteration in the register mentioned in paragraph (b) has, on the day on which the Speaker’s notice is given, not already taken effect under section 13A, 13B or 13BA.
- (3) The second condition is that—
- (a) at any time during the pre-signing period in relation to a recall petition, section 13A applies to a registration officer, by virtue of subsection (1) of that section, in connection with—
 - (i) a determination falling within paragraph (a) of that subsection in respect of an application that is made on or before the day on which the Speaker’s notice is given, or
 - (ii) a requirement, decision or determination falling within paragraph (b), (c) or (d) of that subsection, and
 - (b) in consequence of the determination, requirement or decision, an entry relating to a person falls to be made or altered in (or removed from) a relevant register in relation to the recall petition.
- (4) The third condition is that —

- (a) at any time during the signing period in relation to a recall petition, section 13A applies to a registration officer, by virtue of subsection (1) of that section, in connection with—
 - (i) a determination falling within paragraph (a) of that subsection in respect of an application that is made on or before the day on which the Speaker’s notice is given, or
 - (ii) a decision or determination falling within paragraph (c) or (d) of that subsection, and
 - (b) in consequence of the determination or decision, an entry relating to a person falls to be made or altered in a relevant register in relation to the recall petition.
- (5) Where this section applies, the registration officer shall issue, in the prescribed manner, a notice specifying the appropriate alteration in the register; and—
 - (a) the notice shall be so issued as soon as is reasonably practicable, and
 - (b) the alteration shall take effect as from the beginning of the day on which the notice is issued.
- (6) But no notice under subsection (5) shall be issued—
 - (a) in relation to a requirement under section 13A(1)(b) (removal of person’s entry from register), after the beginning of the signing period, or
 - (b) after the end of the signing period.
- (7) In this section—
 - “pre-signing period”, in relation to a recall petition, means the period—
 - (a) beginning with the day on which the Speaker’s notice in relation to the petition is given, and
 - (b) ending with the day before the first day of the signing period in relation to the petition;
 - “relevant register”, in relation to a recall petition, means a register of parliamentary electors for the constituency, or any part of the constituency, of the member of the House of Commons who is the subject of the petition.
- (8) In this section the following expressions have the same meaning as in the Recall of MPs Act 2011—
 - “recall petition”;
 - “signing period”;
 - “Speaker’s notice”.

13BD Recall petition process beginning within canvass period

- (1) This section applies where—
 - (a) a Speaker’s notice is given under section 5 of the Recall of MPs Act 2011 in respect a member of the House of Commons for a constituency in Great Britain,
 - (b) on the same day, or an earlier day in the same year, a form is returned in connection with a canvass under section 10 in

- respect of an address within the constituency (“the relevant address”), and
- (c) the form is completed in such a way that, by virtue of section 10A(2), an application for registration is treated as having been made in respect of the relevant address.
- (2) The application mentioned in subsection (1)(c) shall be treated as made on the day on which the Speaker’s notice is given.
- (3) Where, in consequence of the determination of the application, an entry relating to a person falls to be made in (or removed from) a register covering the relevant address, the registration officer by whom that register is maintained shall issue, in the prescribed manner, a notice specifying the appropriate alteration in the register.
- (4) Where –
- (a) in consequence of the determination of the application, a person’s entry in respect of an address other than the relevant address falls to be removed from a register maintained by a registration officer other than the one referred to in subsection (3),
- (b) at the time of the determination, notice has been published of an election to which section 13B or 13BA applies that is to be held –
- (i) in an area which includes that other address, and
- (ii) during the period starting with 1 July in the year of the canvass and ending with 1 December in that year, and
- (c) the determination is made before the appropriate publication date for that election,
- the other registration officer shall, on being informed of the determination, issue in the prescribed manner a notice specifying the appropriate alteration in the register.

13BE Section 13BD: supplementary

- (1) A notice under section 13BD(3) shall be issued as soon as is reasonably practicable.
- (2) A notice under section 13BD(4), shall be issued on the appropriate publication date for the election in question.
- (3) The alteration specified in a notice under section 13BD(3) or (4) shall take effect as from the beginning of the day on which the notice is issued.
- (4) A requirement imposed by section 13BD(3) or (4) does not apply if, before the date on which it would otherwise require a notice to be issued, the registration officer publishes a revised version of the register incorporating the appropriate alteration.
- (5) In section 13BD and this section “the appropriate publication date” has the same meaning as in section 13B.
- (6) For the purposes of section 13BD the form mentioned in subsection (1)(b) of that section is “returned” when it is received by the registration officer.

- (7) Section 13BD does not apply in relation to an application that is treated under section 13BB(2) as made at an earlier time than the time at which it would be treated as made (apart from this subsection) under section 13BD(2).”
- 9 (1) Section 56 (registration appeals: England and Wales) is amended as follows.
- (2) In subsection (4), for “and 13B” substitute “, 13B and 13BC”.
- (3) In subsection (4A), after “13B(3) or (3B)” insert “or 13BC(5)”.
- 10 (1) Section 58 (registration appeals: Northern Ireland) is amended as follows.
- (2) In subsection (4), for “and 13BA” substitute “, 13BA and 13BC”.
- (3) In subsection (5), after “13BA(6) or (9)” insert “or 13BC(5)”.

SCHEDULE 3

Section 18

THE ROLE OF THE ELECTORAL COMMISSION

- 1 Part 1 of the Political Parties, Elections and Referendums Act 2000 (the Electoral Commission) is amended as follows.
- 2 (1) Section 5 (reports on elections and referendums) is amended as follows.
- (2) In the heading, for “**and referendums**” substitute “, **referendums etc**”.
- (3) After subsection (3), insert –
- “(4) After the conclusion of a recall petition process, the Commission may prepare and publish (in such manner as the Commission may determine) a report on the administration of the process.”
- 3 (1) Section 6 (reviews of electoral and political matters) is amended as follows.
- (2) In subsection (1), after paragraph (b) insert –
- “(ba) such matters relating to recall petition processes as the Commission may so determine;”.
- (3) In subsection (3) –
- (a) after paragraph (b) insert –
- “(ba) how a member of the House of Commons becomes the subject of a recall petition under sections 1 to 5 of the Recall of MPs Act 2011;”, and
- (b) in paragraph (c), for “and (b)” substitute “to (ba)”.
- (4) In subsection (4), for “or referendums” (in both places) substitute “, referendums or recall petition processes”.
- 4 In section 6A(1) (attendance of representatives of Commission at elections etc), after paragraph (b) insert –
- “(c) any part of a recall petition process which is the responsibility of the returning officer in relation to the petition.”
- 5 In section 6F (code of practice on attendance of observers at elections etc),

after subsection (1) insert –

“(1A) The code must also cover the attendance of representatives of the Commission at any part of a recall petition process.”

- 6 In section 7(2) (Commission to be consulted on changes to electoral law), after paragraph (j) insert –

“(k) regulations under section 17 of the Recall of MPs Act 2011 (power to make further provision about recall petition process).”

- 7 In section 10(3)(a) (giving of advice and assistance), after sub-paragraph (ii) insert –

“(iia) returning officers in relation to recall petitions,”.

- 8 In section 21 (interpretation of Part 1), make the existing provision subsection (1) and after that subsection insert –

“(2) In this Part “recall petition” and “recall petition process” have the same meaning as in the Recall of MPs Act 2011.”

RECALL OF MPS BILL (DRAFT)

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the draft Recall of MPs Bill published in December 2011. They have been prepared by the Cabinet Office in order to assist the reader of the draft Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The draft Bill sets out a process by which an MP is to lose his or her seat in the House of Commons as a result of a successful recall petition.

4. There are to be two alternative conditions for the opening of a recall petition. The first recall condition is that an MP is found guilty in the United Kingdom of an offence and receives a custodial sentence which is not overturned on an appeal brought before the usual time limit for appeals. The second recall condition is that the House of Commons resolves that the MP is to be the subject of a recall petition.

5. Where one of the recall conditions has been met, the Speaker of the House of Commons will notify the returning officer for the MP's constituency of this fact, and the returning officer will then open a recall petition. Eligible parliamentary electors in that constituency will have an opportunity to sign the petition over an eight week period. A recall petition will not be opened where a parliamentary general election is to be held within the next six months, where a recall petition is already underway in respect of the MP or where the MP's seat has already been vacated.

6. A recall petition will be successful where it is signed by at least 10% of the parliamentary electors in that constituency (excluding any elector whose application for registration was made after the Speaker's notice). A successful petition will result in the MP's seat becoming vacant and an election being held. The returning officer must terminate the petition early if an early parliamentary general election is called, if the MP's seat becomes vacant during the signing period, or, where the first recall condition was met, the custodial sentence is overturned in an appeal brought outside the usual time limit for appeals.

7. The draft Bill gives the Minister the power to make regulations to make further provision about the recall petition process and about the questioning of the outcome of the petition and the consequences of any irregularities. These regulations would provide detailed rules concerning the conduct of the recall petition, the signing procedures, the retention and disposal of petition documents and may include the creation of criminal offences.

8. The Electoral Commission is given a role in relation to the recall petition process similar to that it already exercises in respect of parliamentary elections.

BACKGROUND

9. 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 serious wrongdoing.

10. The provisions contained within the draft Recall of MPs Bill stem from the Programme for Government, (available at <http://www.cabinetoffice.gov.uk/news/coalition-documents>) which included the following commitment:

“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”.

TERRITORIAL EXTENT

11. The draft Bill extends to the United Kingdom. It addresses matters relating to the Parliament of the United Kingdom, which is an “excepted matter” under Schedule 2 to the Northern Ireland Act 1998, and a “reserved matter” under Schedule 5 to the Scotland Act 1998.

12. No relevant powers have been transferred to the National Assembly for Wales or the Welsh Ministers, nor does it affect the functions of any of the devolved administrations.

COMMENTARY ON CLAUSES

Clause 1: How an MP becomes the subject of a recall petition

13. Clause 1 introduces the test for how an MP becomes the subject of a recall petition.

14. *Subsection (3)* provides that the provisions under this Bill will not affect other ways in which a Member’s seat may be vacated. These include:

- Section 1 of the Representation of the People Act 1981 which provides that an MP is disqualified for membership of the House if he or she is convicted of an offence (whether in the UK or elsewhere), sentenced or ordered to be imprisoned or detained indefinitely or for more than one

year and detained (or unlawfully at large) in the British Islands or the Republic of Ireland.

- The power of the House of Commons to expel an MP by resolution. The circumstances in which the House of Commons may exercise this power are not formally limited.
- Section 173 of the Representation of the People Act 1983 which provides that an MP must vacate his or her seat on being found guilty of certain electoral offences.
- Section 426A of the Insolvency Act 1986 which provides that, in England and Wales, an MP's seat is vacated if a bankruptcy restrictions order or debt relief restrictions order has effect in respect of him or her. Section 427 of the Insolvency Act 1986 provides that, in Scotland and Northern Ireland, an MP's seat is vacated if, respectively, a court awards sequestration of the MP's estate or adjudges the MP bankrupt and the award or adjudication remains in force for six months.
- The House of Commons Disqualification Act 1975 under which certain office-holders are disqualified from membership of the House of Commons and may be required to vacate their seat.

Clause 2: The first and second recall conditions

15. Clause 2 provides the two recall conditions. If either condition is met a recall petition will be triggered.

16. *Subsection (1)* sets out the first recall condition. The first condition is that (a) the MP has, after becoming an MP, been found guilty of an offence in the United Kingdom and has been sentenced or ordered to a period of imprisonment or detention, and (b) the appeal period has expired without the conviction, sentence or order having been overturned on appeal. The time at which a person becomes an MP for the purposes of this Bill is the beginning of the day after the polling day for the current Parliament (Clause 20(2)). Custodial sentences imposed by courts overseas would not automatically trigger a recall petition.

17. *Subsection (2)* sets out the second condition for a recall petition. The second condition is that the House of Commons resolves that a recall petition is to be opened in respect of an MP. The House of Commons regulates its own disciplinary arrangements, and already has a range of disciplinary powers which it exercises on the recommendation of the Committee on Standards and Privileges. Although the power to resolve that a recall petition is to be opened in respect of an MP is not formally limited, the Government expects that it will be reserved for serious disciplinary matters.

18. Clause 2 contains further provision about the offences and sentences or orders which are to satisfy the first recall condition. Offences for the purpose of the first recall condition would include offences committed by the Member before they became a Member. However, *subsection (3)(b)* provides that the reference to an offence does not include any offence committed before the clause comes into force.

This means that a Member could not be the subject of a recall petition under the first recall condition in respect of an offence committed before the provisions on recall come into force.

19. *Subsection (4)(a)* states that references to a sentence or order for the purposes of the first recall condition include suspended sentences or orders. However, being remanded in custody or authorised to be detained under a mental health enactment are not sentences or orders for the purpose of the first recall condition. A list of “mental health enactments” for the purpose of this clause is in *subsection (5)*.

20. *Subsection (6)* provides that “overturned on appeal” means that a conviction has been quashed or that the sentence or order imposed by the court has been lifted or varied to a non-custodial sanction.

Clause 3: Expiry of the appeal period

21. Clause 3 sets out when the appeal period in respect of a conviction or sentence expires for the purposes of the first recall condition. The first recall condition is not met unless the appeal period has expired without the custodial sentence being removed.

22. *Subsection (1)* provides that the appeal period ends when (a) it is no longer possible for there to be a relevant appeal and (b) all relevant appeals have been determined or otherwise disposed of. A “relevant appeal” means an appeal in respect of the conviction, sentence or order and any further appeal from that appeal. To count as a “relevant appeal”, the appeal must have been brought within the usual period, *subsections (2) to (4)*.

23. *Subsection (5)* defines when an appeal is brought within the usual period. The appeal must be brought before the time limit allowed for that type of appeal. An appeal is not brought within the usual period (and therefore would not prevent the first recall condition from being met) if it is lodged, with the court’s permission, after the usual time limit has expired.

24. *Subsection (6)(b)* provides that references in this clause to an appeal include an application. The purpose of this subsection is that in some circumstances an alternative to appealing against a conviction, sentence or order, is to apply for judicial review. For example, in England and Wales, judicial review is available as a remedy against decisions of a magistrates’ court and, other than in its jurisdiction in matters relating to trial on indictment, the Crown Court (section 29 of the Senior Courts Act 1981).

25. The effect of *subsection (6)(c)* is that references to an appeal include an appeal to the Supreme Court against the determination of a devolution issue by the High Court of Justiciary in criminal proceedings in Scotland. For the purposes of Scottish criminal legislation, such an appeal is not ordinarily understood as being included within a general reference to an appeal, unless express provision is made (for example section 121(5) of the Criminal Procedure (Scotland) Act 1995). This provision makes clear that if the Member brings such an appeal within the usual time period, the first recall condition is not met unless the appeal is determined without the custodial sentence being removed.

26. Following an investigation the Criminal Cases Review Commission and Scottish Criminal Cases Review Commission have the power to refer convictions or sentences to the appropriate appellate court for reconsideration (Part 2 of the Criminal Appeal Act 1995 and Part 10A of the Criminal Procedure (Scotland) Act 1995). *Subsection (6)(d)* provides that such a reference is not an appeal for the purposes of the first recall condition.

27. In some cases the court to which an appeal is made will remit the matter to another court for final determination. For example, a court may decide on judicial review that a process was flawed and therefore the conviction or sentence was unsafe, but will return the case to the original court to reconsider rather than substituting its own decision. *Subsection (7)* provides that references in this clause to the determination of an appeal are, if the appellate court remits the matter to another court, to the disposal of proceedings by that court.

Clause 4: Speaker to be notified if an MP is sentenced to imprisonment etc

28. Clause 4 imposes notification obligations on those courts imposing a custodial sentence or hearing an appeal against a custodial sentence by a Member convicted in the United Kingdom. Under *subsection (2)*, the court which sentences the Member must notify the Speaker of the House of Commons of the conviction and sentence or order and whether an appeal may be brought.

29. *Subsections (4) to (6)* deal with cases where an appeal is brought. *Subsection (4)* provides that the court to which the appeal is made must notify the Speaker of the appeal. *Subsection (5)* requires the relevant court at which the appeal was determined or otherwise disposed of, to notify the Speaker that such a determination or disposal has taken place, if the conviction, sentence or order is overturned on appeal and whether any further appeal may be brought. *Subsection (6)* defines the “relevant court” as either the court to which the appeal was originally brought, or another court to which the matter was remitted.

Clause 5: Speaker’s notice that first or second recall condition has been met

30. *Subsection (1)* requires the Speaker of the House of Commons to give notice to the relevant returning officer that one of the conditions has been met for a recall petition to be opened. This requirement does not apply if the polling day for the next parliamentary general election is within 6 months, a recall petition is already open for that Member or if the Member’s seat has already become vacant, whether by death, disqualification or otherwise, *subsection (2)*.

31. *Subsection (3)* states that in determining whether the polling day for the next parliamentary general election is within 6 months, the fact that it may subsequently change as a result of the power to vary the polling day under the Fixed-term Parliaments Act 2011 is to be ignored, and the six month prohibition still applies even if the polling day has been delayed. The Act schedules polling days for parliamentary general elections on 7 May 2015 and then on the first Thursday in May every five years. There is a power to delay a scheduled polling day by up to 2 months and procedures for holding early parliamentary general elections. The Speaker would not give notice to the returning officer if either a scheduled parliamentary general election or an early parliamentary general election is to be held within 6 months.

32. *Subsection (4)* provides that the notice from the Speaker must specify the day

on which it was given and which of the recall conditions has been met. If the first condition has been met, the notice must also specify the offence of which the Member was convicted.

33. *Subsection (5)(a)* sets out the meaning of a “recall petition process”. This is defined as any action taken under the Bill or regulations made under it between the Speaker of the House of Commons notifying the relevant returning officer that a recall condition has been met and the Speaker laying a notice before the House of the outcome of the petition. *Subsection (5)(b)* defines the “recall petition period” as the period between the Speaker giving these two notices. *Subsection (6)* provides that any reference to a “Speaker’s notice” in this draft Bill is a reference to a notice under this clause.

Clause 6: Returning officers

34. *Subsection (1)* provides that every constituency will have a returning officer in relation to a recall petition and *subsections (2), (3) and (4)* identify who the relevant returning officers will be in each part of the United Kingdom. In England and Wales it will be the person who is the acting returning officer for parliamentary elections in the relevant constituency. In Scotland it will be the person who is the returning officer for parliamentary elections in the relevant constituency. In Northern Ireland it will be the Chief Electoral Officer.

35. *Subsection (6)* gives effect to Schedule 1 which contains further provision about returning officers.

Schedule 1: Returning officers

36. *Paragraph 1* sets out the returning officer’s general duty in relation to the conduct of a recall petition process.

37. *Paragraph 2* provides that returning officers in England, Wales or Scotland may appoint deputies to discharge their functions in relation to the recall petition. *Paragraph 2(3)* requires that a local authority whose area falls within the relevant constituency provides assistance to the returning officer by placing the services of its officers at the returning officer’s disposal. *Paragraph 2(4)* sets out the definition of “local authority”.

38. *Paragraph 2(5)* provides that certain provisions of the Electoral Law Act (Northern Ireland) 1962 have effect in relation to the Chief Electoral Officer when acting as the returning officer in relation to a recall petition. The effect is that in the event that the Chief Electoral Officer is absent from Northern Ireland, is incapacitated or there is a vacancy, a person may be temporarily appointed to carry out his or her functions; the Chief Electoral Officer may delegate functions to persons appointed to provide assistance and to deputy returning officers for district council elections; and district council officers must perform those functions appointed to them by the Chief Electoral Officer.

39. *Paragraph 3* makes provision for payments to returning officers in relation to the recall petition. Under *paragraph 3(1)* returning officers may recover charges which were necessarily incurred for the efficient and effective conduct of the petition

process, provided that these charges do not exceed the overall maximum recoverable amount specified in an order made by the Minister (the Lord President of the Council or the Secretary of State). The order, which must be made with the consent of the Treasury, may also specify, or make provision for determining, a maximum recoverable amount for services or expenses of a specified description (*sub-paragraph (2)*). However, the Minister may, with Treasury consent, authorise payments which exceed the amounts specified in the order if satisfied that it was reasonable for the returning officer to render the services or incur the expenses and the charges in question are reasonable (*sub-paragraphs (4) and (5)*).

40. The Minister, on an account being submitted, must pay to the returning officer the charges which the returning officer is entitled to recover (*sub-paragraph (6)*). However, the Minister can apply for the account to be taxed (*sub-paragraph (7)*). *Sub-paragraph (8)* provides that the Minister must pay to the local authority any amount required to reflect an increase in superannuation contributions payable by the authority as a result of any fee paid to a returning officer as part of the officer's charges.

41. *Paragraph 3(9)* empowers the Minister to make advance payments to the returning officer on request.

42. *Paragraph 3(10)* provides that the Minister may by regulations make provision as to the time when accounts are to be provided by the returning officer, and in what manner and form.

43. *Paragraph 3(11)* provides that any sums paid by the Minister under *paragraph 3* are to be charged on and paid out of the Consolidated Fund.

44. *Paragraph 4* makes provision in respect of applications for a returning officer's account to be taxed. *Sub-paragraphs (1) and (6)* specify which court the application must be made to, depending on whether the returning officer acts for a constituency in England and Wales, Scotland or Northern Ireland. *Sub-paragraph (2)* provides that the court may tax the account as it thinks fit and finally determine the amount payable to the returning officer. *Sub-paragraph (3)* allows the returning officer to apply to the court to examine any claim made by a person ("the claimant") against the officer in respect of any charges included in the account. The court may allow, disallow or reduce the claim but must first give the claimant the opportunity to be heard and to tender evidence (*sub-paragraph (4)*).

Clause 7: Returning officer to make recall petition available for signature

45. Clause 7 sets out the returning officer's duties on receiving the Speaker's notice.

46. *Subsection (1)* provides that when the returning officer receives the Speaker's notice the returning officer must, as soon as reasonably practicable, designate the place at which, and the day from which, the recall petition can be signed. The Chief Electoral Officer is not required to designate a place for signing, because in Northern Ireland the recall petition will only be available for signing by post (*subsection (8)*).

47. The returning officer must make the recall petition available for signature two weeks after he or she receives the Speaker's notice, unless that day is a day which is

not generally regarded as a business day in electoral legislation (*subsections (2) and (6)*). However, if it is not reasonably practicable to open the petition on that day, the returning officer may delay making the petition available for signature until it is reasonably practicable to do so (*subsection (3)*). The petition must be available for signing throughout a signing period of eight weeks (*subsection (4)*), unless the process is terminated early under one of the three conditions set out in clause 9 (*subsection (7)*). However, it need not be available for signing on every day in the signing period. Regulations made under the power given by clause 17 of the draft Bill may prescribe certain set hours for the petition to be available (*subsection (5)*).

Clause 8: Wording of recall petition

48. Clause 8 prescribes the wording for the recall petition; *subsection (2)* where the first recall condition was met and *subsection (3)* where the second recall condition was met.

Clause 9: Early termination of recall petition process by returning officer

49. Clause 9 sets out three circumstances in which the recall petition process will be terminated before the end of the usual eight week signing period. The three circumstances are:

- the date of the next parliamentary general election is brought forward under section 2(7) of the Fixed-term Parliaments Act 2011 to a date which falls within six months after the date of the Speaker's notice (*subsection (2)*)
- the Member's seat is vacated (*subsection (3)*)
- where the first recall condition was met, the Member's conviction is quashed or custodial sentence removed (*subsection (4)*). This would only occur as a result of an appeal brought after the usual time limit for appeals has expired, because the first recall condition is not met until appeal rights within the usual time periods are exhausted.

50. *Subsections (5), (6) and (7)* provide that, as soon as reasonably practicable after becoming aware that one of these circumstances has occurred, the returning officer must take any steps which he or she considers necessary to terminate the recall petition process. The returning officer must notify the Speaker that the recall petition process has been terminated early and under which circumstance. No other action is to be taken under the Bill except that which is provided in regulations to deal with the consequences of an early termination and the end of the petition process.

Clause 10: Persons entitled to sign recall petition

51. Clause 10 provides who is entitled to sign the recall petition. The general rule is that a person is entitled to sign the recall petition on any day in the signing period on which he or she would be entitled to vote in a parliamentary election in the constituency, provided that he or she is included in the relevant register of parliamentary electors as a result of a "qualifying application" for registration. A "qualifying application" is one that was made on or before the day on which the Speaker gave notice to the returning officer that a recall condition has been met (*subsections (2) and (3)*). Where an application is deemed to have been made under the provisions of the Representation of the People Act 1983 relating to the return of canvass forms, the application is a "qualifying application" if it is deemed to have

been made in respect of a form returned on or before that day. The effect of the provision is to prevent a person from being entitled to sign the petition if he or she applied for registration after the recall petition process has commenced. This is intended to prevent fraudulent attempts after the recall petition process is underway to add names to the register, and thereby wrongly influence the outcome of the petition.

52. This general rule is extended in two ways:

- Seventeen year olds who do not fall within the general rule only because they are under voting age may also sign the recall petition on any day in the signing period provided that their eighteenth birthday falls before the end of the signing period (*subsection 4*)
- Persons who were entitled to sign the recall petition on the first day of the signing period may sign it on any day during the signing period even if they would no longer be entitled to vote in a parliamentary election in the constituency because they are no longer registered in the relevant register of parliamentary electors, provided that they would be entitled to vote if they were so registered (*subsection 5*).

Clause 11: How entitlement to sign recall petition is to be exercised

53. Clause 11 outlines how a person may sign the recall petition. Where the recall petition is in respect of a Member whose constituency is in Great Britain, the petition may be signed in person, by post or by proxy (*subsection 1*). Where the constituency is in Northern Ireland the petition may be signed by post or by proxy (*subsection 2*).

54. *Subsection (3)* provides that a person who is entitled to sign the recall petition may sign it only once.

55. *Subsection (4)* makes clear that references to a person entitled to sign a recall petition in *subsections (1), (2) and (3)* do not include a person acting as proxy for another. It ensures that this clause does not prevent a person from signing in person in addition to signing as proxy for another person, or from signing as proxy for more than one person.

Clause 12: Alteration of registers of parliamentary electors

56. Clause 12 gives effect to Schedule 2 which contains amendments to the provisions of Part 1 of the Representation of the People Act 1983 relating to the registers of parliamentary electors.

Schedule 2: Alteration of registers of parliamentary electors

57. *Paragraph 8* inserts three new sections in to the Representation of the People Act 1983 which deal with the alterations to be made to the registers of parliamentary electors during the recall petition process. *Paragraphs 1-7* make amendments of existing provisions relating to registration in order to cater for the new recall petition regime.

58. The first new section inserted by *paragraph 8*, new section 13BC of the Representation of the People Act 1983, makes provision for the alteration of the registers of parliamentary electors for a constituency during a recall petition process. It provides that if the registration officer makes a determination before the

commencement of the signing period that an alteration is needed to such a register in order to add a person (as a result of an application for registration made on or before the day of the Speaker's notice) to or remove a person from the register, or alter a person's registration, but that alteration has not yet been made, the registration officer must issue a notice specifying the appropriate alteration as soon as reasonably practicable and the notice has immediate effect (new section 13BC(2), (3) and (5)). If at any time during the signing period the registration officer makes a determination that an alteration is needed to the register to add a person as a result of an application made on or before the day of the Speaker's notice or to alter a person's registration, the registration officer must issue a notice specifying the appropriate alteration as soon as reasonably practicable and the notice has immediate effect (new section 13BC (4) and (5)).

59. The second new section inserted by *paragraph 8*, new section 13BD of the Representation of the People Act 1983, makes provision for the alteration of the registers of parliamentary electors when a recall petition process begins within the annual canvass period (new section 13BD(1)). Any canvass forms returned in respect of an address within a constituency in Great Britain in which a recall petition is being held will be treated as an application for registration made on the day on which the Speaker gives notice under clause 5 of this draft Bill, provided that they are returned on or before that day (new section 13BD(1) and (2)). Where, as a consequence of the determination of such an application, a person needs to be added to or removed from the register, the registration officer must issue a notice specifying the appropriate alteration (new section 13BD(3)). In addition, if, as a result of this determination a person's name needs to be removed from a register relating to another constituency (for example because the person has moved out of that constituency into the constituency where the petition is being held) and an election is pending in that other constituency, the registration officer for that other constituency must issue a notice specifying the relevant alteration provided that he or she is informed of the determination before the "appropriate publication date" for the election (this date being the cut-off date for alterations to the register for the purposes of the pending election and is either five or six days before the date of the poll: section 13B of the Representation of the People Act 1983).

60. The third new section inserted by *paragraph 8*, new section 13BE of the Representation of the People Act 1983 makes supplementary provision to new section 13BD.

Clause 13: Double signing

61. Clause 13 makes it an offence to sign the recall petition more than once unless signing as a proxy for another person (*subsections (1) and (2)*) or to sign as proxy more than once for the same person (*subsection (3)*).

62. *Subsection (4)* provides that this offence is to be treated as an illegal practice or offence for specified provisions of the Representation of the People Act 1983 and the Electoral Law Act (Northern Ireland) 1962 with the result that:

- A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (*subsection (4)(a)*);
- A person convicted of the offence is incapable for a period of three

years of being registered as an elector or voting in parliamentary elections and local government elections in England, Wales, Scotland and Northern Ireland, being an MP or holding a local government elective office in England, Wales or Northern Ireland (*subsection (4)(b) and (d)*);

- Proceedings may be taken in respect of offences alleged to have been committed under this clause outside the United Kingdom by a Commonwealth citizen (including British citizens) or a citizen of the Republic of Ireland (*subsection (4)(c)*).

63. *Subsection (5)* provides that the court which convicts a person of an offence under this clause need not impose any of the incapacities listed above, or may impose lesser incapacities in their place, if the court thinks it is just to do so because of the special circumstance of the case.

Clause 14: Determination of whether recall petition successful

64. Clause 14 sets out the mechanism for determining whether a recall petition has been successful.

65. The recall petition is successful if it is validly signed by at least 10 per cent of those who, on any day in the signing period, are registered in the register of parliamentary electors for the constituency provided that they made their application for registration on or before the day of the Speaker's notice and are aged 18 by the end of the signing period (*subsections 1 and 2*).

66. *Subsection (3)* provides that the petition is validly signed if it is signed during the signing period, on a day on which the person signing is entitled to do so, and if any conditions on signing imposed in regulations made under the Bill are met.

67. *Subsection (4)* provides that as soon as reasonably practicable after the signing period has ended, the returning officer must determine whether the recall petition was successful, and notify the Speaker of the House of Commons of the outcome.

Clause 15: Conclusion of recall petition process

68. Clause 15 provides that the Speaker must lay before the House of Commons any notice received under clause 9 notifying that a recall petition has been terminated early or under clause 14 declaring the outcome of a recall petition.

Clause 16: Effect of successful petition

69. Clause 16 provides that if a recall petition is successful, the Member's seat becomes vacant when the Speaker lays a notice of the petition's success before the House of Commons (*subsection 1*). However, this does not apply if, either the regulations made under the power given in the Bill to make provision about questioning the outcome of the petition provide differently (*subsection (2)*), or if, before the notice is laid, the Member's seat is already vacated as result of the Member's death, disqualification or any other reason (*subsection 3*).

Clause 17: Power to make further provision about recall petition process etc

70. Clause 17 provides that the Minister may, by regulations, make provision about actions that may or must be taken in relation to a recall petition during the recall

petition period and about the questioning of the outcome of a recall petition and the consequences of irregularities. The regulations are likely to cover the detailed conduct rules for the administration of the recall petition, including the publication of notice of the recall petition, the issue and receipt of petition signature sheets, signing procedures, the procedure to be followed in counting the signatures and the retention, disposal and inspection of petition documentation. The regulations are also likely to provide the process by which a person may question the success or failure of the petition. The outcome of a recall petition may only be questioned in accordance with such regulations (*subsection (6)*).

Clause 18: Role of Electoral Commission

71. Clause 18 gives effect to Schedule 3 which makes provision for the role of the Electoral Commission in relation to recall petitions.

Schedule 3: The role of the Electoral Commission

72. Schedule 3 amends Part 1 of the Political Parties, Elections and Referendums Act 2000 in order to give additional functions to the Electoral Commission similar, but with some modification, to those which the Commission already exercises in relation to elections generally. The Commission will have the following role:

- After the conclusion of a recall petition process, the Commission may prepare and publish a report on the administration of the process (*paragraph 2*).
- The Commission shall keep under review, and from time to time submit reports to the Secretary of State on such matters relating to recall petitions as the Commission may determine, except matters in relation to how a Member becomes the subject of a recall petition (*paragraph 3*).
- A representative of the Commission may attend any part of a recall petition process which is the responsibility of the returning officer in relation to the petition (*paragraph 4*).
- The Commission's code of practice on the attendance of observers at elections must also cover the attendance of representatives of the Commission at any part of the recall petition process (*paragraph 5*).
- The Commission is to be consulted before any regulations are made under clause 17 of this Bill (*paragraph 6*).
- The Commission may give advice and assistance to returning officers on administering recall petitions (*paragraph 7*).

Clause 19: Regulations and orders: general and procedure

73. Clause 19 makes further provision in relation to the regulations and orders which can be made under powers given by the draft Bill and sets out the procedure to be followed in making them. The regulations and orders may make consequential, supplementary, incidental, transitional or saving provision (*subsection (1)*) including, in the case of regulations made under clause 17, amending any enactment including the Bill once it becomes an Act (*subsection (2)*). Regulations and orders, apart from those regulations made under paragraph 3(10) of Schedule 1 relating to the rendering of a returning officer's accounts, are to be made by statutory instrument (*subsection (3)*). *Subsection (4)* provides that a statutory instrument containing regulations made under the power given by clause 17 must be made following the affirmative resolution procedure.

74. *Subsection (5)* applies section 26 of the Welsh Language Act 1993 to regulations and orders made under this Bill in the same way as it applies to Acts of Parliament. The effect is that where the Bill specifies a form of words to be used, as in clause 8 in relation to the wording of the recall petition, a power is given for the appropriate Minister to make an order which prescribes the form of words in Welsh.

75. *Subsection (6)* provides that general rules and procedural requirements for regulations and orders set out in this clause do not apply to an order made under clause 21 (commencement).

Clause 20: Interpretation

76. Clause 20 defines terms which are used in the draft Bill and also contains references to definitions elsewhere in the Bill.

Clause 21: Extent, commencement and short title

77. Clause 21 provides that the Bill extends to the whole of the United Kingdom (*subsection (1)*).

78. Clause 21 comes into effect when the Bill receives Royal Assent (*subsection (3)*). The other clauses of the Bill are to be brought into force by means of an order made by the Minister (*subsection (4)*).

FINANCIAL EFFECTS

79. It is considered that the provisions contained within the draft Bill will have no substantial effect on public expenditure.

80. An initial screening has been completed and the cost attributed to the conduct of a recall petition has been estimated at an average of £64,300 for Great Britain and £61,200 for Northern Ireland.

81. These estimates are based on the average cost of the General Election across all English, Scottish, Welsh and Northern Irish constituencies, and calculated from the real data provided from the 2010 General Election.

82. The costs for recall petitions in Northern Ireland are slightly less than those of Great Britain. This is because of the proposal for all postal signing in Northern Ireland, which removes the cost associated with running a designated location, coupled with the existence of Individual Electoral Registration in Northern Ireland which removes the need for using identifiers for electors.

83. Expenditure incurred by a returning officer in respect of any recall petition will be reimbursed by the Minister from the Consolidated Fund. This is parallel to the reimbursement of expenditure incurred by a returning officer in respect of an election.

PUBLIC SERVICE MANPOWER

84. The provisions contained within the draft Bill have no substantial effect on public service manpower as existing electoral administrators will carry out the duties associated with the recall process; no increase in manpower will be required for this

function.

IMPACT ASSESSMENT

85. The provisions contained within the draft Bill do not require a full Impact Assessment as they do not have an impact on business, the third sector or justice. Consistent with its statutory duties under the Equality Act 2010, while formulating the proposals for the creation of a power to recall MPs, the Cabinet Office has considered the likely impact of the proposals with reference to the protected characteristics and with the statutory objectives in mind, and has consulted with a range of stakeholders prior to publication. Potential issues, particularly around access to a single designated location in Great Britain, were taken into account during policy development. This consideration was approved by the Minister on 28 October 2011.

EUROPEAN CONVENTION ON HUMAN RIGHTS

86. Although section 19(1) of the Human Rights Act 1998 does not require a minister to sign a statement of compatibility with the European Convention on Human Rights in relation to draft legislation, the Government's view is that the draft legislation is compatible with Convention rights as defined by section 1 of the 1998 Act and it would be possible for a minister to make a statement of compatibility under section 19(1)(a) of that Act.

Article 6: Right to a fair trial

87. The main issue that arises when considering the compatibility of the draft Bill with the Convention rights is whether the recall conditions set out in clause 2, by which an MP may become subject to a recall petition, engage Article 6.

88. There are good arguments that Article 6 is not engaged. First, becoming subject to a recall petition is not, by itself, decisive in relation to the MP's position as MP. That will only be affected if the recall petition is successful. There is therefore no "determination". Secondly, case law establishes that the right to participate in the work of the House of Lords is not a "civil right" within the meaning of Article 6 (*X v United Kingdom* Application No 8208/78). By analogy the Government is of the view that an MP's right to engage in political activities is a public matter rather than a civil right and therefore outside the scope of Article 6. In addition there is authority that disciplinary functions in relation to MPs do not engage Article 6 because of the public law nature of those functions. Article 6 was not engaged when an MP was automatically disqualified after being found bankrupt (*Tapie v France* Application No 32258/96) nor when an elected candidate was removed by the Conseil Constitutionnel for exceeding the maximum level of elections expenses (*Estrosi v France* Application No 24359/94).

89. Accordingly the Government is of the view that clause 2 does not engage Article 6.

Article 1 of the First Protocol: Protection of property

90. The Government has also considered whether clause 2 engages Article 1 of the First Protocol. An MP who is successfully recalled will no longer be entitled to an MP's salary and allowances, although there is no question of claiming back money already paid. In *Pierre-Bloch v France* (Application No 24194/94) proceedings

relating to disqualification from elected office which also dealt with the repayment of money following the breach of candidate spending limits were held not to be civil proceedings within Article 6 merely because they raised an economic issue. Article 1 of the First Protocol was not raised in this case, nor in *X v United Kingdom*. However, the Government considers that the implication of these cases is that the right to future salary or allowances is very unlikely to be regarded as a “possession” within Article 1 of the First Protocol. In addition, there is a line of authority holding that a right to future income is not a possession for the purposes of Article 1 unless an enforceable claim to that future income already exists (*R(Malik) v Waltham Forest Primary Care Trust* [2007] EWCA Civ 265). Even if Article 1 were engaged, the Government considers that the public interest in maintaining and enhancing the reputation of the House of Commons by the implementation of a recall mechanism justifies any interference with possessions protected by that Article.

Article 3 of the First Protocol: Right to free elections

91. Clause 10 provides that a person is entitled to sign a recall petition only if they would be entitled to vote in a parliamentary election. Section 3 of the Representation of the People Act 1983 provides that sentenced prisoners are legally incapable of voting at any parliamentary election while they are detained. Therefore those prisoners who are currently disqualified from voting in parliamentary elections will also be ineligible to sign a recall petition. In *Hirst v UK (No 2)* (Application No 74025/01) the Grand Chamber of the European Court of Human Rights found that the blanket voting ban on all serving prisoners was incompatible with Article 3 of the First Protocol. However, case law establishes that Article 3 only applies to “elections concerning the choice of the legislature”: *X v UK* (Application No 7096/75). A recall petition is not an election, and accordingly the Government considers that no right to participate in a recall petition is derived from that Article. Accordingly Article 3 of the First Protocol is not engaged by clause 10.

92. Clause 13 provides that a person who signs the recall petition twice is guilty of an offence. A person who is convicted of this offence will be subject to the disqualifications contained in section 173 of the Representation of the People Act 1983 and section 112 of the Electoral Law Act (Northern Ireland) 1962 relating to being registered as an elector, voting in parliamentary elections and local government elections, being a Member of the House of Commons or holding elective office.

93. These provisions engage Article 3 of the First Protocol. However, case law establishes that the rights in Article 3 are not absolute but are subject to implied limitations: *Mathieu-Mohin v Belgium* (1987) 10 EHRR 1. Subsequent judgments have focused on two main criteria: whether there has been arbitrariness or lack of proportionality and whether the restriction has interfered with the free expression of the people: for example, *Zdanaka v Latvia* (2007) 45 EHRR 17. The legitimate aim of these provisions in the Bill is to uphold the integrity of the recall petition process, and so by extension the proper functioning of a free and fair democratic system which ensures that effect is given to the free expression of the people. The incapacities imposed are proportionate because they are time limited and the convicting court may, if it thinks it just in the special circumstances of the case, mitigate or entirely remit them. There are not arbitrary because they only apply to those who have committed an offence in relation to a democratic process. Accordingly the Government is of the view that the draft Bill is compatible with Article 3 of the First Protocol.

Article 8: Right to respect for private life and family life

94. Schedule 2 to the draft Bill makes detailed provision for the alteration of parliamentary registers as a result of a recall petition being called. The operation of these provisions involves the processing of individual's personal details and therefore arguably engages Article 8. To the extent that Article 8 is engaged, the provisions are necessary to ensure that those who are entitled to sign the recall petition are able to do so, and those who are not, are excluded from doing so. The provisions do not require information to be used by registration officers in a different way to that which is currently required under the well-established electoral registration provisions of the Representation of the People Act 1983. Accordingly the Government considers that these provisions are compatible with Article 8.



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