



## BRIEFING PAPER

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# Recall elections

By Neil Johnston and  
Richard Kelly

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## Summary

Recall is used to describe a process where the electorate in an area can trigger a special election to remove an elected representative before the end of their term.

### Recall of MPs

A recall procedure was introduced in the UK in 2015. It only applies to Members of Parliament and was a response to the MPs' expenses scandal that occurred in the run up to the 2010 General Election. There are currently no plans to extend recall to other elected officials

MPs can be recalled only under certain circumstances:

- If they are convicted in the UK of an offence and sentenced or ordered to be imprisoned or detained and all appeals have been exhausted (and the sentence does not lead to automatic disqualification from being an MP);
- If they are suspended from the House following report and recommended sanction from the Committee on Standards for a specified period (at least 10 sitting days, or at least 14 days if sitting days are not specified).;
- If they are convicted of an offence under section 10 of the *Parliamentary Standards Act 2009* (making false or misleading Parliamentary allowances claims)

Once a petition is open it is available for signing for six weeks and is administered by the local returning officer for the constituency. They are known as a petition officer when dealing with a recall petition.

For a recall petition to be successful 10% of eligible registered voters need to sign the petition. If the required number is not reached the petition fails and the MP remains in post. If the 10% threshold is reached the petition officer informs the Speaker of the House of Commons that the recall petition has been successful. On the giving of that notice the seat becomes vacant. A by-election is then required and the recalled may stand as a candidate. The timing of a UK Parliamentary by-election is determined by custom of the House of Commons: the party that previously held the seat will usually decide when to trigger the by-election.

### North Antrim petition

The first recall petition against an MP was triggered in July 2018 after the House of Commons agreed to suspend Ian Paisley, the MP for North Antrim, for 30 Parliamentary 'sitting days' from 4 September 2018. The petition did not attract the required number of signatures to recall Mr Paisley, so he remained an MP.

### Peterborough petition

The second recall was triggered on 5 March 2019. The Speaker of the House of Commons announced that he would write to the petition officer for the Peterborough constituency to inform them that Fiona Onasanya was subject to a recall process. This followed her conviction and three-month prison sentence for perverting the course of justice. Ms Onasanya appeal against the conviction was rejected. This ended of the appeals process, therefore triggering the first recall condition. The petition will be open from Tuesday 19 March until Wednesday 1 May 2019.

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### **Recall elsewhere**

Only about 30 countries have some form of recall mechanism. The exact mechanism of recall varies between these countries. Some allow national elected officials to be recalled and others only allow regional or local representatives to be recalled.

Recall is generally a two-stage process. Usually a petition is opened asking voters if they want to recall the representative. If enough people sign, usually a set proportion of eligible voters, then the recall moves to the second stage. This is where the representative is removed from office and a new election is held. The person being recalled is usually able to seek re-election.

In some recall processes the electorate can initiate a recall petition for any reason. This system of 'full recall' was rejected by the Coalition Government, which concluded that 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.

# 1. Recall in the UK

In the UK, recall petitions can only be started against Members of the House of Commons. No other elected representatives can be recalled.

A recall petition can only be initiated under certain conditions. Constituents cannot initiate a recall petition.

The recall measures for MPs were introduced following the passing of the *Recall of MPs Act 2015*. The provisions were commenced in March 2016.<sup>1</sup> The background to the introduction of the recall of MPs provisions is outlined in Section 5. Details of the passage of the Bill are available on the Parliament website.

The first recall petition launched was in North Antrim in August 2018. This was triggered after the House of Commons agreed to suspend Ian Paisley, the MP for North Antrim, for 30 parliamentary 'sitting days' from 4 September 2018.<sup>2</sup>

## 1.1 Conditions to be met

A recall petition can be opened in a constituency if any one of three conditions is met:

- the MP has, after becoming an MP, been convicted in the United Kingdom of an offence and sentenced or ordered to be imprisoned or detained, and any appeal period has passed without the conviction being overturned.
- Following on from a report from the Committee on Standards in relation to an MP, the House of Commons orders the suspension of the MP from the service of the House for a specified period (at least 10 sitting days, or at least 14 days if sitting days are not specified).
- The MP has, after becoming an MP, been convicted of an offence under section 10 of the *Parliamentary Standards Act 2009* (if they provide information which they know to be false or misleading in a material respect in support of a claim for allowances).

If a sitting MP convicted of an offence receives a custodial sentence of more than a year and is detained, they would already automatically lose their seat and recall does not apply (see Section 4).

Detention under mental health legislation is exempt from the recall provisions. An MP being remanded in custody similarly does not trigger recall.

The courts are required to inform the Speaker of the House of Commons of the conviction and sentence or order to be detained of an MP. The courts must also inform the Speaker whether an appeal may be brought. Appeal courts must also notify the Speaker that an appeal has been heard and whether the conviction, sentence or order has or has

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<sup>1</sup> The *Recall of MPs Act 2015 (Commencement) Regulations 2016*

<sup>2</sup> HC Deb 24 July 2018, c925-8

not been overturned on appeal and whether any further appeal may be brought.

The requirement for courts to notify the Speaker lapses if the MP vacates their seat.

### 1.2 Opening a petition if the conditions are met

If one of the conditions is met the Speaker of the House of Commons must give notice to the petition officer in the MP's constituency.

The petition officer is the returning officer for the constituency.

There are three exceptions where the Speaker does not need to give notice to a petition officer:

- If the seat has already been vacated by the MP
- If the MP is already subject to another recall petition
- If polling day for a scheduled general election under the terms of the *Fixed-term Parliaments Act 2011* is within six months.

Once a notice has been received from the Speaker that a condition has been met, the petition officer must "as soon as reasonably practicable," designate up to ten places where the petition may be signed once the petition has been opened. The receipt of notice is deemed to be the day after the Speaker has given notice.

The petition officer must also designate the day on which the petition will open. This is the 10<sup>th</sup> working day after the receipt of the notice. The legislation allows for a subsequent working day if it is not reasonably practicable to designate the 10<sup>th</sup> working day.<sup>3</sup>

As soon as practicable after designation of the signing places and designated day for opening the petition, the petition officer is required to send a notice to all eligible voters telling them that a petition is to be opened in their constituency. If there is more than one signing place, eligible voters will also be told their designated signing place.<sup>4</sup>

The form of official notice to be used is prescribed in the detailed regulations<sup>5</sup>

A petition remains open for signing for six weeks. The petition must be available for signing Monday to Friday from 9am to 5pm, except bank holidays.

The petition officer must also make reasonable provision for the availability of the petition for signing at other times. For example, the recall petition opened in North Antrim was available until 9pm on two of the signing days

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<sup>3</sup> Section 7, *Recall of MPs Act 2015*

<sup>4</sup> Section 8, *Recall of MPs Act 2015*

<sup>5</sup> [Recall of MPs Act 2015 \(Recall Petition\) Regulations 2016](#)

## 1.3 Eligibility to sign the petition

A person is eligible to sign the petition if they are registered and eligible to vote in a Parliamentary election in the constituency on the day after the Speaker's notice is given.

People registering to vote while the petition is open will not be able to sign the petition.

A person is eligible to register to vote in Parliamentary elections if they are:

- resident in the constituency;
- a UK, Irish or qualifying Commonwealth citizen;
- 18 years old;
- Not subject to any legal incapacity to vote.

For special category electors, such as overseas voters, service voters and those with no fixed address, the residency requirement is different. If special category electors are on the electoral register on the cut-off date they will be able to sign the petition (by post or proxy if necessary – see below).

Those aged 17 can register to vote but are not able to vote in a Parliamentary election unless they are 18 on polling day. People on the electoral register under the age of 18 are known as 'attainers'.

For a recall petition, attainers will be able to sign the petition if they have their 18<sup>th</sup> birthday in the six-week signing period. They may only sign the petition once they have reached the age of 18.

## 1.4 Signing the petition

Like an election, eligible voters will be able to sign a petition in person at a designated signing place or if they prefer, they can sign by post or by appointing a proxy to sign on their behalf.

### **In person at assigning place**

The prescribed form of the signing sheet is shown below:

Form A Signing sheet  
Front of signing sheet

<b>Petition signing sheet</b>	
<b>Petition to Remove the MP for [insert name of constituency], [insert name of MP]</b>	
<p>You should only complete this signing sheet if you support the petition for the removal of the MP named above.</p> <p><i>[insert wording in section 9(4) of the Recall of MPs Act 2015 as amended from time to time]</i></p>	
<b>My Signature is:</b>	<div style="border: 1px solid black; width: 150px; height: 40px; margin: 0 auto;"></div>

Source: The *Recall of MPs Act 2015 (Recall Petition) Regulations 2016*, reproduced under Open Government Licence v3.0

Eligible voters wishing to sign in person will go to the designated signing place. If there is more than one signing place, the petition officer will assign voters to a signing place, in a similar way to voters being assigned a designated polling station in an election.

The signing place operates in a similar way to a polling station. Those wishing to sign the petition will have their names checked against the register before being issued with a signing sheet.

The voter signs the sheet and then places it in a ballot box, which remains sealed until the end of the signing period.

In Northern Ireland, as with elections, eligible voters will be required to show photo ID before being issued with a signing sheet. Voters in Great Britain are not currently required to show ID before being issued with a ballot paper or a petition signing sheet.

As the signing period is six weeks, signing sheets must be kept securely until the final count is conducted. At the end of each day the petition has been available for signing the ballot boxes must be verified, the "daily verification procedure". The seal on the ballot boxes is broken by the petition officer (or a petitions clerk if so delegated by the petition officer) to ensure the number of sheets in the ballot box tallies with the number of sheets issued. Signing sheets are then held securely until the count is conducted.

### **Absent signing**

As with voting in an election, eligible voters may sign the petition either by post or by appointing a proxy.<sup>6</sup>

<sup>6</sup> Section 11, *Recall of MPs Act 2015*



The detailed provisions relating to absent signing replicate the provisions relating to absent voting.<sup>7</sup> Voters in England, Scotland and Wales may obtain a postal signing sheet on demand. To appoint a proxy to sign on their behalf, voters must provide a reason. Someone can apply for a proxy vote if:

- They are unable to go to the polling place because they are away on holiday;
- They have a physical condition that means they cannot go to the polling station on election day;
- Their employment means that they cannot go to the polling station on election day;
- Their attendance on an educational course means that they cannot go to the polling station on election day;
- They are a British citizen living overseas; or
- They are a crown servant or a member of Her Majesty's Armed Forces.

Postal voting on demand is not available in Northern Ireland. Voters in Northern Ireland must provide a reason for applying for a postal vote as they do for proxy votes.

However, for a recall petition, Northern Ireland voters can request a postal signing sheet without giving a reason. During the passage of the legislation the Government acknowledged that some voters in Northern Ireland might feel at risk if they are obliged to attend a petition place in person. Unlike in an election, where you attend a polling station to cast a vote in secret, the same secrecy is not absolute in a recall petition. Attending a signing place is to sign the petition to recall the MP, and people's political views might then be publicly known.<sup>8</sup>

The Coalition Government's draft Bill originally proposed that recall petitions in Northern Ireland could only be signed by post to prevent intimidation at polling stations.<sup>9</sup> Following consultation on the provision, the Government announced that voters in Northern Ireland would be given the same choice as voters in the rest of the UK to vote in person at signing place or to sign by post or by proxy.<sup>10</sup>

It is an offence to make a statement about whether any person has signed a petition during the signing period. It is also an offence to publish any forecast of the result of a petition based on information received during the period the petition is open.<sup>11</sup> This provision caused concern during the first recall petition to be held, in North Antrim. The Electoral

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<sup>7</sup> [Recall of MPs Act 2015 \(Recall Petition\) Regulations 2016](#)

<sup>8</sup> Parliament website: Recall of MPs Act 2015, Bill documents, [Letter from Sam Gyimah MP to Sylvia Hermon MP regarding the security of postal votes in Northern Ireland](#)

<sup>9</sup> HM Government, [Recall of MPs: Draft Bill](#), Cm 8241, December 2011, p28

<sup>10</sup> [Government Response to the Report of the Political and Constitutional Reform Committee on the draft Recall of MPs Bill](#), Cm 8640, October 2012, p8-9

<sup>11</sup> Regulation 24, [Recall of MPs Act 2015 \(Recall Petition\) Regulations 2016](#)

Commission noted that more guidance would help clarify this point for future petitions (see section 3.1 below)

### 1.5 Success of a petition

For a petition to succeed, it must be signed by 10% of eligible registered electors on the Parliamentary register on the day the petition notice is received by the petition officer.<sup>12</sup>

The petition officer must take reasonable steps to begin counting the signatures given on the signing sheets as soon as practicable after the end of the signing period and, in any event, no later than one day after the end of that period.<sup>13</sup>

If the petition is successful, the petition officer notifies the Speaker of the House of Commons and the MP's seat becomes vacant. Public notice of the result can only be made after the Speaker has been notified.<sup>14</sup>

Once the seat has been vacated, the normal conventions for calling a by-election remain: the writ for a vacant seat in the House of Commons is moved by the Whips of the party that previously held the seat. There is no statutory time limit for when this should occur.

### 1.6 Termination of a petition

There are four conditions where a recall petition can be terminated before the end of the six-week petitioning period.<sup>15</sup>

- The MP subject to the petition vacates their seat;
- An early general election is called under the terms of the *Fixed-term Parliaments Act 2011*;
- A conviction that triggered the first recall condition (conviction in the UK that leads to the MP being ordered to be imprisoned or detained) is overturned on appeal;
- A conviction that triggered the third recall condition (under section 10 of the *Parliamentary Standards Act 2009*) is overturned on appeal.

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<sup>12</sup> Section 14, *Recall of MPs Act 2015*

<sup>13</sup> Regulation 39, *Recall of MPs Act 2015 (Recall Petition) Regulations 2016*

<sup>14</sup> Section 14, *Recall of MPs Act 2015*

<sup>15</sup> Section 13, *Recall of MPs Act 2015*

## 2. Recall campaigns

### **Summary**

As in an election campaign, campaigners are permitted to campaign for or against the MP being recalled. And as with election campaigns, there are spending limits on how much campaigners can spend within the regulated period.

Anyone spending over £500 must register with the Electoral Commission and the spending limit is £10,000.

Registered petition campaigners can only accept donations of money, items or services towards their petition campaign spending from permissible sources. These are certain, mainly UK-based, sources. Anything with a value of £500 or less does not count as a donation.

Registered campaigners must submit a spending and donations return to the petition officer within 30 days of the end of the regulated period.

### **Regulated period**

The regulated period for a recall petition starts the day after the Speaker of the House of Commons notifies the Petition Officer that the conditions for opening a petition have been met.

The regulated period ends on the day that the Petition Officer notifies the Speaker of the House of Commons of the result of the petition. If the recall petition is terminated early, then the regulated period ends on the day the Speaker notifies the petition officer to terminate the recall petition.

Anyone can spend £500 or below on campaigning in a recall petition campaign period without registering.

Anyone intending to spend over £500 in the regulated period must register with the petition officer before spending over £500. The maximum amount a registered campaigner can spend is £10,000.

### **Registered campaigners**

People and organisations eligible to register as campaigners are:

- An individual registered on a UK electoral register or resident in the UK;
- A UK registered political party (including 'minor' parties);
- A UK registered company which is incorporated in the EU and carries on business in the UK;
- A UK registered trade union;
- A UK registered building society;
- A UK registered limited liability partnership which carries on business in the UK;
- A UK registered friendly, industrial or provident society;

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- A UK based unincorporated association that carries on the majority of its business or other activities in the UK.

The rules on spending apply to spending on activities to promote the success or failure of a recall petition during the regulated period. These include spending on goods, services, property, facilities, staff costs, promotional material for the purposes of promoting or procuring the success or failure of a recall petition during the regulated period.

Printed material, such as leaflets and posters, must include an imprint which provides information on the printer and promoter of the material. It helps to ensure that there is transparency about who is campaigning.

### **Donations**

Donations must only come from a permitted source:

- An individual registered on a UK electoral register, including overseas electors;
- A Great Britain registered political party;
- A Northern Ireland registered political party (only if the petition is opened in a constituency in Northern Ireland);
- A UK registered company which is incorporated within the EU and carries on business in the UK;
- A UK-registered trade union;
- A UK-registered building society;
- A UK-registered limited liability partnership (LLP) that carries on business in the UK;
- A UK-registered friendly society;
- A UK-based unincorporated association that is based in and carries on business or other activities in the UK

Anything with a value of £500 or less does not count as a donation. Anything with a value over £500 must be recorded and reported in the spending and donations report that must be submitted to the petition officer after the petition has closed. There are no limits on donations, but campaigners must remain within the spending limit.

Registered political parties (excluding minor parties) must report their donations to the Electoral Commission year-round. Registered parties that are registered as a petitions campaigner therefore do not need to submit a recall donations report.

Donations reported to the Petition Officer will be available for public inspection.

### **Recall campaigners return**

Registered petition campaigners must submit a spending and donations return to the petition officer within 30 days of the end of the regulated period.<sup>16</sup>

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<sup>16</sup> Electoral Commission guidance and information, [Recall petition campaigners](#)

## 3. Recall petitions held

Only one recall petition has been opened so far. It was launched in North Antrim in August 2018. Not enough signatures were collected and the MP, Ian Paisley, retained his seat.

A second recall petition is now due to be opened in Peterborough. This followed the conviction and imprisonment of the Peterborough MP, Fiona Onasanya, for perverting the course of justice.

### 3.1 North Antrim

#### Background

The North Antrim petition was triggered after the House of Commons agreed to suspend Ian Paisley MP for 30 parliamentary 'sitting days' from 4 September 2018 for breaches of the Code of Conduct for MPs.<sup>17</sup>

An investigation was conducted by the Parliamentary Commissioner for Standards following an article published in the *Daily Telegraph* newspaper on 8 September 2017 that claimed Mr Paisley had failed to register and declare visits to Sri Lanka for himself and his family which were paid for by the Sri Lankan government, and that he may have been in breach of the rule prohibiting paid advocacy. Mr Paisley referred himself to the then Parliamentary Commissioner for Standards.

Following the investigation, the Parliamentary Commissioner concluded that Mr Paisley was in breach of the Code of Conduct by engaging in paid advocacy in his letter of 19 March 2014 to the Prime Minister, and by failing to declare in that letter the benefits he and his family had received from the Sri Lankan government. The Commissioner also concluded that he was in breach of the Code of Conduct by failing to register his March/April and July 2013 visits to Sri Lanka.

The House of Commons Committee on Standards agreed with the Commissioner's conclusions and recommended "in view of the seriousness of this matter...that Mr Paisley be suspended from the service of the House for a period of 30 sitting days starting on 4 September 2018."<sup>18</sup>

The House agreed the report of the Committee on 24 July 2018 without division. The Speaker then gave notice on the same day. The 24 July was the last sitting day of the House of Commons before the 2018 summer recess. The suspension began on 4 September 2018, the next sitting day of the House.

#### Recall details

The notice of the triggering of a recall was, under the terms of the Act, deemed to be received by the petition officer the day after it was issued. In Northern Ireland, the petition officer is the Chief Electoral Officer for Northern Ireland.

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<sup>17</sup> [HC Deb 24 July 2018, c925-8](#)

<sup>18</sup> House of Commons Committee on Standards. *Ian Paisley Third Report of Session 2017-19*, 18 July 2018

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For the North Antrim petition, the receipt of the notice was therefore 25 July 2018. This meant the cut-off date for being on the electoral register to be eligible to sign the recall petition was 25 July 2018.

The Chief Electoral Officer for Northern Ireland confirmed that the eligible electorate for the petition in North Antrim was 75,248 and that the number of voters required to sign the petition for it to be successful was 7,543.<sup>19</sup>

Notification of the recall was sent to all eligible voters on the 6 and 7 August 2018 and the petition opened on 8 August 2018. The six-week period ended on 19 September 2018.

The Petition Officer decided to use three places located in the main towns of the constituency – Joey Dunlop Leisure Centre in Ballymoney, the Seven Towers Leisure Centre in Ballymena and Sheskburn House Recreation Centre in Ballycastle.<sup>20</sup>

Signing places were open 9am to 5pm, Monday to Friday, in line with the requirements of the legislation. Petition officers must make reasonable provision for the availability of the petition for signing at other times during the signing period.<sup>21</sup> In North Antrim the petition officer made provision for extended opening times of the signing places to 9pm on 6 and 13 September.

The decision to open three signing places, when the petition officer could have opened up to ten, caused some controversy. Sinn Féin and the Ulster Unionist Party were both critical. Ulster Unionist leader Robin Swann expressed his disappointment at the decision, saying the number of centres was "totally inadequate for a constituency the size of North Antrim", and Sinn Féin North Antrim MLA Philip McGuigan said "I would urge the Electoral Commission to provide more centres and more flexible opening times to ensure that the democratic process is not subverted".<sup>22</sup>

The petition officer, Virginia McVea defended her decision, saying "This runs for a lengthy period - six weeks and during that period I determined that it would be reasonable to expect people to be able to reach these three venues".<sup>23</sup>

The Electoral Commission reported that it had seen no evidence that "an increased number of signing places would have contributed to a different result at the end of the recall petition."<sup>24</sup>

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<sup>19</sup> EONI news, *Recall petition*, 30 July 2018

<sup>20</sup> *Ballymena Daily*, [Electoral Office reveals 'petition to remove' North Antrim MP Ian Paisley can be signed at three venues from Wednesday August 8 onwards](#), 3 August 2018

<sup>21</sup> The *Recall of MPs Act 2015 (Recall Petition) Regulations 2016*

<sup>22</sup> *Belfast Telegraph*, [Sinn Féin and UUP hit out at decision to open just three centres for Paisley recall](#), 3 August 2018

<sup>23</sup> *Ibid*

<sup>24</sup> Electoral Commission, *Report on the 2018 recall petition in North Antrim*, 5 November 2018

Only two campaigners registered with the petition officer, The Alliance Party of Northern Ireland and Sinn Féin. The Alliance Party reported spending of £420 and Sinn Féin reported spending of £3,758.<sup>25</sup>

The cost to the Electoral Office of Northern Ireland for conducting the petition process was £166,000.<sup>26</sup>

### **Result**

The count for the petition was started at 00:01 20 September 2018. Signing places had closed at 5pm on 19 September.

7,099 people had signed the recall petition. This was 9.4% of the eligible electorate. It meant that the recall petition was not successful as it was 444 signatures short of the required number.

There were 14 signing sheets rejected.<sup>27</sup>

In total 3,233 postal signing papers were issued and about 1,000 of these were not returned. There were 10 proxies appointed.<sup>28</sup>

### **Electoral Commission report on the conduct of the petition**

The Electoral Commission produced its statutory report on the conduct of the recall petition on 5 November 2018.<sup>29</sup>

As mentioned above the Commission noted the controversy over the number of signing places and that opponents had compared the 53 polling places used in the constituency during the last election and that the decision to use only three signing places for the petition. The Commission noted the decision had to be balanced against the length of time voters had to sign the petition and the ability to sign by post or by proxy on demand, an option not normally open to Northern Ireland voters.<sup>30</sup>

The Commission concluded that there were no significant problems in the delivery of the recall petition which affected voters or any individuals or organisations wishing to campaign, and it found no evidence that increasing the number of signing places would have affected the outcome of the petition.

Jonathan Tongue, Professor of politics at Liverpool University, questioned that assertion:

Yet there was no clinching piece of evidence either way. Greater generosity of provision *might* have made a difference; it is simply unknown. One might reasonably assume that, at an election, spacing polling stations twenty-one miles apart, akin to the way

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<sup>25</sup> Spending returns supplied to the House of Commons Library under paragraph 9 of Schedule 5 to the *Recall of MPs Act 2015*

<sup>26</sup> Answer supplied in response to a Freedom of Information request to the Electoral Office of Northern Ireland.

<sup>27</sup> EONI, *Public Notice of Outcome of Petition*, 20 September 2018

<sup>28</sup> Electoral Commission, *Report on the 2018 recall petition in North Antrim*, 5 November 2018

<sup>29</sup> Ibid

<sup>30</sup> Ibid

petition stations were set up, would have an adverse impact upon turnout.<sup>31</sup>

Professor Tongue also highlighted the “sectarian geography” of the constituency. He noted that two signing stations were in predominantly Protestant and unionist towns and one was in a predominantly nationalist and Catholic town:

The siting of such stations was arguably important, as it could involve travel to an unfamiliar location for an obvious political purpose. Entering a polling station no one is aware of a voter's choice. Entering a petition signing station is to engage in a visible electoral action; all observers knew that the entrant had arrived to unseat the incumbent MP.<sup>32</sup>

The Commission made recommendations for improving or clarifying some aspects of the recall process based on the experience of the first recall petition. Commission staff had observed conduct of the petition at the signing places, verification and count. The Commission also gathered information from the Chief Electoral Officer for Northern Ireland, staff who worked at the signing places; and political parties and campaigners.

The key recommendations made by the Commission were:

- **Length of recall petitions**

The Government should review the length of a recall petition. The Commission received feedback from petition staff and those who campaigned at the recall petition that the six-week period was too long.

- **Daily verification**

The Government should review access to the daily verification process to enhance the transparency of the process. The Electoral Commission were satisfied with the security of the process and said the process worked well. However, the legislation makes no provision for independent observers (other than Electoral Commission observers) and/or campaigners to observe the daily verification. After an election or referendum candidates and agents can oversee the verification and counting of ballot papers.

The legislation also makes no provision for the petition officer to appoint a deputy to undertake daily verification. The Commission noted that this placed an “unnecessary burden” on the petition officer.

- **Observing recall petitions**

The Commission noted that under the current legislation, the opportunity to observe proceedings at a recall petition is limited. Individuals and organisations accredited as electoral observers are not entitled to observe any proceedings within a signing place, the issue and receipt of postal signing papers, or daily verification (see previous point). Accredited individual electoral observers can

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<sup>31</sup> Jonathan Tonge, [Petitions, Polling Stations and Paisley: the First Outworking of the Recall of MPs Act 2015](#), *Political Quarterly*, Vol 90, Issue 1, Jan-March 2019

<sup>32</sup> Ibid



attend the counting of signatures, but those nominated by an accredited organisation cannot.

Although this did not arise as a problem during the North Antrim petition process, the Commission concluded it would be helpful if the Government clarified its rationale for limiting the observation of petition processes. It noted that "It may be the case that this was a deliberate policy decision to ensure the secrecy of the recall petition and to prevent individuals or organisations from working out if the 10% threshold had been reached before the end of the petition period."

- **Clarifications relating to the close, count and notification of the result of the petition to the Speaker of the House of Commons**

The legislation states that signing places must be open at least from 9am to 5pm, but there is no clear provision for what time the recall petition should close on the final day. Currently postal signing papers can still be returned on the final day up until 11.59 as there is no deadline for the receipt of postal signing papers. The lack of certainty around timing meant that the North Antrim count did not commence until 00:01 on Thursday 20 September when the Petition Officer was satisfied the petition was closed.

There is no provision in law as to how the Speaker should be notified of the result and in what form the notification should be made. There is also no provision to notify the MP who is subject to the recall petition of the result. In North Antrim the petition officer made arrangements with the Speaker to email his office and await a reply. Once this was received the Petition Officer published the result and notified the media.

- **Access to the marked register**

After an election it is possible to request marked registers to see who has been issued with a ballot paper.

The same provision exists for petitions in Great Britain but not for petitions in Northern Ireland. The Commission noted that is not clear whether the difference between Northern Ireland and the rest of the UK was a deliberate policy difference or an accidental omission in the legislation, "but it does raise questions about the secrecy of the recall petition." Unlike elections, where a ballot is cast in secret, the only reason to sign the petition is to recall an MP.

The Commission recommended reviewing access to the marked register to ensure the appropriate balance is struck between maintaining secrecy and challenging fraud.

- **Prohibition of exit polls**

As noted in section 1.4, it is an offence to publish a statement that could indicate if an individual has signed the petition or not, and it is also an offence to publish a forecast of the petition's outcome.

The Commission noted that this "caused concern and confusion among campaigners, the media and the public". It said that "as currently drafted it appears that anyone who makes any

statement on turnout or about individuals who sign the petition would be guilty of an offence.” The Commission therefore recommended that “it would be beneficial if more clarity and guidance on this provision was put in place ahead of any future recall petitions.”<sup>33</sup>

Professor Tongue concluded that North Antrim was a “tough opening test”:

In Northern Ireland, loyalty to the MP, his party and unionism appeared strong. As such, this was a tough opening test for those hoping to see the Recall of MPs Act bite. Given the seriousness of offences required to trigger recall petitions, the number of future petitioning cases brought about under the Act is likely to be minimal and changes of MP perhaps even rarer.<sup>34</sup>

### 3.2 Peterborough

The MP for Peterborough, Fiona Onasanya, was convicted of perverting the course of justice on 19 December 2018.<sup>35</sup> Sentencing took place on 29 January 2019 and Ms Onasanya was jailed for three months.

Ms Onasanya lodge an appeal against her conviction before she was sentenced.<sup>36</sup> As noted above, the petition process is only triggered when all opportunity for appeal has been exhausted.

In line with the requirements of the *Recall of MPs Act 2015*, the courts informed the Speaker of the House of Commons formally. This was announced by the Speaker and printed in the Votes and Proceedings of the House on 11 February 2019.<sup>37</sup>

Ms Onasanya’s appeal against conviction was dismissed on 5 March 2019.<sup>38</sup> The Speaker of the House was notified by letter by the Registrar of Criminal Appeals the same day. The Speaker announced receipt of the letter in the House of Commons the same afternoon.

As the first recall trigger condition had now been met, Mr Speaker announced that he would therefore write to the petition officer for the Peterborough constituency to inform them that Fiona Onasanya was subject to a recall petitions process.<sup>39</sup>

The petition officer announced the details for signing the petition on 6 March 2019. The petition will be open for signing from Tuesday 19 March 2019 until Wednesday 1 May 2019. The petition officer has

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<sup>33</sup> Electoral Commission, *Report on the 2018 recall petition in North Antrim*, 5 November 2018

<sup>34</sup> Jonathan Tonge, *Petitions, Polling Stations and Paisley: the First Outworking of the Recall of MPs Act 2015*, *Political Quarterly*, Vol 90, Issue 1, Jan-March 2019

<sup>35</sup> BBC News, *Fiona Onasanya: Peterborough MP guilty in speeding case*, 19 December 2018

<sup>36</sup> BBC News, *Fiona Onasanya: Peterborough MP appeals against conviction*, 17 January

<sup>37</sup> [HC Deb 11 February 2019, c654](#)

<sup>38</sup> BBC News, *Fiona Onasanya: Jailed MP loses appeal against conviction*, 5 March 2019.

<sup>39</sup> [HC Deb 5 March 2019, c865](#)

made provision for ten signing stations, the maximum number permitted.<sup>40</sup>

The opening hours of the signing places will be:

- Monday, 9am to 5pm
- Tuesday, 7am to 5pm
- Wednesday, 9am to 5pm
- Thursday, 9am to 10pm
- Friday, 9am to 5pm

The petition officer announced that the number of signatures required for the petition to succeed was 6,967, which was 10% of the number of persons entitled to sign the petition, 69,673.<sup>41</sup>

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<sup>40</sup> [Public notice of petition to remove the MP for Peterborough, Fiona Onasanya](#), 6 March 2019

<sup>41</sup> Peterborough City Council, [Public notice of petition to remove the MP for Peterborough Fiona Onasanya](#), undated

## 4. Other sanctions on the behaviour of Members

### Summary

There are already both statutory sanctions and disciplinary processes within the House of Commons for Members, which could lead to expulsion from the House.

- Under the *Representation of the People Act 1981* MPs sentenced to over 12 months in prison and detained are disqualified from sitting in or seeking election to the House of Commons.
- MPs who breach the Members' Code of Conduct can be subject to sanctions that include suspension and expulsion from the service of the House.

Under Standing Orders, Members can also be suspended from the service of the House for disorderly conduct in the Chamber.

In cases in which Members of either House are arrested on criminal charges, the House must be informed of the reason for which they are detained from their service in Parliament.<sup>42</sup>

### 4.1 *Representation of the People Act 1981*

Under the *Representation of the People Act 1981* (RPA 1981), anyone who is sentenced to more than a year in prison and has been imprisoned is disqualified from membership of the House of Commons.

Existing Members' seats are vacated, and no-one serving more than a year in prison can contest any election to the House of Commons.<sup>43</sup> This includes someone who is unlawfully at large when they should be detained.

The provisions of the 1981 Act only apply on imprisonment. A suspended sentence of more than one year would not lead to disqualification. However, suspended sentences do apply to the *Recall of MPs Act 2015* and a recall petition would be initiated.

A sitting MP found guilty of one or more offences and sentenced to more than a year, but on bail pending an appeal would not be disqualified. The disqualification only applies on being detained.

The RPA 1981 was passed as a direct result of the IRA hunger striker, Bobby Sands, being elected as the MP for Fermanagh and South Tyrone at a by-election in April 1981 whilst he was serving a long prison sentence. The disqualification of MPs if they had been convicted of a

<sup>42</sup> See Erskine May, *Parliamentary Practice*, 24th edition, 2011, p243 and the Protocol on the handling of notification of arrests in the Procedure Committee report, Second Report of Session 2015-16, *Notification of the arrest of Members*, HC 649, as agreed by the House on 10 February 2016.

<sup>43</sup> *Representation of the People Act 1981* (chapter 34)

felony and sentenced to a term of imprisonment exceeding 12 months had previously been removed by the *Criminal Law Act 1967*.

## 4.2 House of Commons disciplinary processes

There are no legal restrictions on how a Member of Parliament undertakes their duties. In his evidence to the Modernisation Committee's 2007 inquiry into the role of the backbench Member, the then Clerk of the House wrote that "How backbenchers perform their role as Members of the House is largely a matter for each Member to decide".<sup>44</sup>

### Parliamentary Commissioner for Standards

The House of Commons also has its own disciplinary processes. A Code of Conduct has been agreed by the House.<sup>45</sup> The Code states that in carrying out their duties, Members are expected to observe the seven principles of public life adopted by the Committee on Standards in Public Life:

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership<sup>46</sup>

and to obey the rules and associated resolutions of the House:

- Acting in the public interest;
- Not acting as a paid advocate;
- Not accepting bribes or fees;
- Registering and declaring their financial interests; and
- Not damaging the reputation or integrity of the House.

The Code was revised in 2018 to make changes consequential upon its adoption of an Independent Complaints and Grievance Policy (ICGP) aimed at tackling bullying, harassment and sexual harassment.<sup>47</sup> The Parliamentary Commissioner for Standards considers complaints alleging that a Member of Parliament has breached the Code of Conduct and its associated rules. The Commissioner can also inquire into a self-referral, with the agreement of the Committee on Standards and can investigate specific matters brought to her attention. The Commissioner will

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<sup>44</sup> Modernisation of the House of Commons, *First Report: Revitalising the Chamber: the role of the back bencher*, HC 337, 2006-07, paragraph 9

<sup>45</sup> House of Commons, *Code of Conduct for Members of Parliament*, HC 1474, 1 August 2018

<sup>46</sup> See Committee on Standards in Public Life, *Annual Report 2017-18*, p2

<sup>47</sup> [HC Deb 19 July 2018, c627-61](#)

initiate an inquiry if it comes within her remit and she considers there is sufficient evidence to justify it.

An inquiry is most likely to be concluded in one of three ways:

- The Commissioner will not uphold the allegation;
- Resolution through the rectification procedure<sup>48</sup> for a breach of the rules at the less serious end of the spectrum;
- For more serious matters or inquiries that raise issues of wider importance, the Commissioner submits a memorandum to the Committee on Standards.

The Committee informs the Member concerned and that Member has an opportunity to comment on the Commissioner's findings of fact before the Commissioner reaches her conclusions. The Member then sees a copy of the Commissioner's final report and may make representation to the Committee on Standards before it determines whether the Member is in breach of the rules and whether to recommend any sanction.

If the Committee finds the Member is in breach of the rules, it may recommend a sanction. This could be that the Member make an apology to the House, either in writing or in person, or repay the costs of any misused facilities. In more serious cases it may recommend to the House that a penalty be imposed. In the most exceptional cases the Committee could recommend the expulsion of the Member. A recommendation that the Member should have his or her salary withheld, be suspended or expelled must be debated and approved by the House.<sup>49</sup>

The last MP to be expelled from the House of Commons was Peter Baker, in 1954. He was expelled after being sentenced to seven years imprisonment,<sup>50</sup> for uttering (passing) forged documents. The *Times* reported that:

The decision to submit a motion for Mr Baker's expulsion was announced in the Commons yesterday by Mr Crookshank, Leader of the House. It had been thought at first that under the Forfeiture Act 1870, Mr Baker's seat would have been vacated automatically on his being sentenced, and it would be necessary only to move for the issue of a new writ. Doubts arose about this, and a re-examination of the law and of precedents has led to the conclusion that a motion for Mr Baker's expulsion is necessary.<sup>51</sup>

The last MP to be expelled as a result of the House's own disciplinary powers was Garry Allighan, on 30 October 1947, "for his gross contempts of the House and for his misconduct", after the Committee for Privileges found him guilty of a libel upon the House and the acceptance of a bribe.<sup>52</sup>

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<sup>48</sup> For information, see House of Commons Library Standard Note, [Rectification procedure](#), SN/PC/5754

<sup>49</sup> Parliamentary Commissioner for Standards, [Procedure for Inquiries](#), April 2012, para 32

<sup>50</sup> [HC Deb 16 December 1954 c1986](#)

<sup>51</sup> "Motion for MP's expulsion: Question of Precedent", *Times*, 15 December 1954, see also [HC Deb 14 December 1954 c1582](#)

<sup>52</sup> [HC Deb 30 October 1947 c1197](#); c1106

The only other MP to be expelled in the 20<sup>th</sup> century was Horatio Bottomley, who was expelled in August 1922 following a conviction for fraud and sentence of seven years imprisonment.<sup>53</sup>

## Disorderly conduct in the Chamber

Under Standing Orders, Members can be suspended from the service of the House for disorderly conduct in the Chamber.

The Speaker is responsible for keeping order in the Chamber and in Committees and if Members disregard the authority of the Chair, he can ask the Member to voluntarily leave the Chamber for the remainder of the day's sitting. This request is not governed by Standing Orders (SOs) and the MP can stay on the parliamentary estate and take part in Divisions.

Should the Member refuse to comply with this request the Speaker can invoke SO No. 43 on disorderly conduct:

The Speaker, or the chair, shall order any Member or Members whose conduct is grossly disorderly to withdraw immediately from the House during the remainder of that day's sitting; and the Serjeant at Arms shall act on such orders as he may receive from the chair in pursuance of this order. But if on any occasion the Speaker, or the chair, deems that his powers under the previous provisions of this order are inadequate, he may name such Member or Members, in which event the same procedure shall be followed as is prescribed by Standing Order No. 44

SO 44 (Order in debate) makes provision for an MP who disregards a ruling on disorderly conduct to be 'named'. A motion must be agreed by the House and if agreed will lead to the suspension of the Member and require their withdrawal from the precincts of the House.

Suspension on the first occasion shall continue for five sitting days, and on the second occasion for twenty sitting days, including in either case the day on which he was suspended, but, on any subsequent occasion, the suspension will continue until the House shall resolve that the suspension is terminated. Suspensions for disorderly conduct do not trigger the provisions of the *Recall of MPs Act 2015*.

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<sup>53</sup> HC Deb 1 August 1922, c1288

## 5. Background to the introduction of recall

### 5.1 2010 General Election manifestos

In the aftermath of the 2009 parliamentary expenses scandal, the three main political parties all proposed some kind of recall mechanism in their manifestos for the 2010 general election.

#### Labour

On 29 September 2009 at the Labour Party Annual Conference the then Prime Minister, Gordon Brown, addressed the issue of recall in his speech:

And so where there is proven financial corruption by an MP and in cases where wrong-doing has been demonstrated but Parliament fails to act we will give constituents the right to recall their Member of Parliament.<sup>54</sup>

Gordon Brown reiterated this position in a speech to the Institute of Public Policy Research on the 2 February 2010 when he said:

It is a choice between the new politics of giving the people a right to recall MPs who break the rules where parliament itself fails to act, or refusing the people a say even if members place their personal greed above their public duty...<sup>55</sup>

...And that is why, in grave situations where financial impropriety has been proven, but where parliament itself has failed to act, we are proposing the ultimate power of recall by the people.<sup>56</sup>

#### Conservative

The *Guardian* quoted David Cameron at the end of May 2009 as stating that he would "start looking at recall powers".<sup>57</sup>

On 8 February 2010 David Cameron made a speech entitled "Rebuilding Trust in Politics" in which he stated that the Conservatives supported the introduction of recall:

"When it comes to the firing, we've said we'll introduce a power of recall to allow voters to kick out MPs mid-parliament if they have been proven guilty of serious wrongdoing."<sup>58</sup>

#### Liberal Democrat

The Liberal Democrats included recall in their amendment to the Queen's Speech debate in 2009. The text of the amendment is given below:

Amendment proposed: at the end of the Question to add:  
but humbly regret that the Gracious Speech fails to provide proposals for constituents to recall hon. Members for misconduct, to provide for a code of financial conduct for candidates at the

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<sup>54</sup> [Gordon Brown's Speech to Labour Conference](#) 29 September 2009

<sup>55</sup> [Towards a New Politics](#), Gordon Brown, Transcript pg.3

<sup>56</sup> [Ibid](#), pg.7

<sup>57</sup> [Guardian](#), David Cameron's expenses queried as he backs 'recall' for errant MPs, Sunday 31 May 2009

<sup>58</sup> [Rebuilding Trust in Politics](#), David Cameron – last accessed 14 May 2010



next general election so that the public can understand the financial affairs of those they are voting for, to complete the reform of the House of Lords to ensure that only people who have been democratically elected have power to make law, to reform party funding to ensure that the influence of large corporate donations is removed, to fix the length of the parliamentary term so that the date of a general election is known years in advance, to provide a Citizens' Assembly to agree a new voting system for parliamentary elections and fundamentally to review the procedures of this House to strengthen the power of backbenchers, reduce the power of the whips and ensure that the business of the House is organised transparently in a formal committee of the House." - (Mr. Burstow).<sup>59</sup>

The amendment was defeated.

The Liberal Democrats also stated on their website their intention to introduce recall powers as a matter of policy:

...We will allow constituents to recall MPs who have broken the rules...<sup>60</sup>

During the 2010 general election campaign all three party leaders reiterated their support for recall during the live televised debates.<sup>61</sup>

## 5.2 Coalition Government proposals

Following the general election, the Conservative and Liberal Democrats' Coalition Agreement included a commitment to "bring forward early legislation to introduce a power of recall, allowing voters to force a by-election where an MP was 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".<sup>62</sup>

The Government published a draft *Recall of MPs Bill* and white paper in December 2011.<sup>63</sup> It proposed recall could be triggered under two circumstances:

- 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).<sup>64</sup>

The draft Bill was the subject of pre-legislative scrutiny by the Political and Constitutional Reform Committee in the first half of 2012.

The Government rejected the 'full recall' model. Some jurisdictions where recall is permitted allow for a petition to be initiated by constituents for any reason. The Government's view was that an MP's position, particularly on controversial issues, should not be repeatedly called into

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<sup>59</sup> [HC Deb 26 November 2009 c792](#)

<sup>60</sup> Liberal Democrats, [Political Reform](#)

<sup>61</sup> [First Prime ministerial debate](#), BBC News, transcript p14, 15 April 2010

<sup>62</sup> Conservative Liberal Democrat coalition negotiations Agreements reached 11 May 2010, p3

<sup>63</sup> HM Government, [Recall of MPs: Draft Bill](#), Cm 8241, December 2011

<sup>64</sup> *Ibid*, p18

question by the use of recall, but that recall should be available to hold elected MPs to account when their behaviour “falls below the standards expected of those who hold public office”:

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.<sup>65</sup>

### 5.3 Political and Constitutional Reform Committee report and Government responses

The Committee published its first report of session 2012-13, *Recall of MPs*. The report examined the Government’s draft bill. The Committee recommended that:

...the Government abandon its plans to introduce a power of recall and use the parliamentary time this would free up to better effect<sup>66</sup>

The Committee was neither convinced that the Government’s proposals would increase public confidence in politics nor that there was a gap in the existing disciplinary powers which needed to be filled by recall. It agreed with the Government to reject ‘full recall’ but questioned the limited circumstances under which a recall petition could be called, “whether such a narrow form of recall is worth introducing at all”.<sup>67</sup>

The main factors in their reasoning were set out in the report’s summary:

We are not convinced that the proposals will increase public confidence in politics. Indeed, we fear that the restricted form of recall proposed could even reduce confidence by creating expectations that are not fulfilled. Under the Government’s proposals, constituents themselves would not be able to initiate a recall petition. The circumstances that the Government proposes would trigger a recall petition—if an MP received a custodial sentence of 12 months or less, or if the House of Commons resolved that there should be a recall petition following a case of “serious wrongdoing”—are so narrow that recall petitions would seldom, if ever, take place. Moreover, time has shown that the existing democratic and legal processes worked in removing the MPs who were shown to have been guilty of serious wrongdoing during the expenses scandal.<sup>68</sup>

Despite its main recommendation, the Committee accepted that the Government could be unwilling to discard a coalition pledge, so it also made recommendations on the operation of the recall process.<sup>69</sup>

The Government published its response to the Committee’s report on 22 October 2012.<sup>70</sup> The report gave initial responses to the

<sup>65</sup> Ibid, p48

<sup>66</sup> Political and Constitutional Reform Committee, *Recall of MPs*, HC 373 20012-13, p3

<sup>67</sup> Ibid, p8

<sup>68</sup> Ibid, p3

<sup>69</sup> Ibid

<sup>70</sup> Political and Constitutional Reform Committee, *Recall of MPs: Government Response to the Committee’s First Report of Session 2012-13*, HC646 2012-13

recommendations made by the Committee, but the Government committed to send a further response in due course setting out proposals in more detail.<sup>71</sup> In responding to the Committee the Government reiterated its commitment to introducing some form of recall:

We remain committed to introducing a mechanism for the recall of MPs and will consider further the Committee's recommendations alongside detailed and careful consultation with our stakeholder in determining our policy on recall.<sup>72</sup>

### **Exempting certain types of crime**

The Committee recommended that the motivation of a crime committed by an MP should be considered and could carry an exemption from triggering a recall election, for example for a conviction following an act of civil disobedience or of protest. The Government responded that in such a situation, constituents could agree with the political motivation by refusing to sign the recall petition. The Government said it would consider the arguments put by the Committee but did not think substantially new arguments had been advanced.<sup>73</sup>

### **Defining wrongdoing**

In the draft legislation the Government had not defined 'serious wrongdoing'. The Committee acknowledged that it was difficult to define 'serious wrongdoing'. It recommended restricting the serious wrongdoing which merited a recall petition to breaches of the code of conduct for MPs. The Government noted that there were mixed views about the issue and stated it would consider the matter further.<sup>74</sup>

### **Conduct of petitions**

The Committee recommended that more than one location should be made available in each constituency. The draft proposals allowed only a single designated location for signing a recall petition in each constituency in Great Britain, and in Northern Ireland, only postal signing would be allowed (in response to possible intimidation at polling stations). The Committee also recommended that there should be a specific duty in the legislation to ensure disabled access to the petition and constituents in Northern Ireland should be able to sign in person if they so wished.

The Government said it would consult further with the Association of Electoral Administrators, the Electoral Commission and returning officers on the feasibility of increasing the number of locations for signing a recall petition. In the Government's view equality legislation was already adequate in ensuring access to disabled constituents but would consult relevant stakeholders further. It stated it would take into

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<sup>71</sup> Ibid, p1

<sup>72</sup> Ibid, p9

<sup>73</sup> Ibid, p2

<sup>74</sup> Ibid, pp3-4

the account the view of the Committee in Northern Ireland when looking again at the detail of the proposals.<sup>75</sup>

The Committee had commented that the requirement for eligible constituents to sign the petition should not prevent disabled people unable to sign the petition from participating. The Government stated that the intention was that secondary legislation would include provision regarding signing with assistance, similar to that made for voting with assistance in Parliamentary Election Rules. The Government stated it was committed to further consultation to develop these proposals.<sup>76</sup>

### **Other recommendations**

The Committee recommended that the wording of the recall petition and the accompanying information about the process should be tested by the Electoral Commission. The Government accepted this recommendation and stated it would work closely with the Commission.<sup>77</sup>

The Government had proposed in its draft legislation that electoral registration officers should be responsible for expenditure and donations relating to recall petitions. The Committee recommended this be reconsidered and suggested that the Electoral Commission might be better placed to undertake this role. The Government committed to consulting further.<sup>78</sup>

The draft legislation contained a provision to restrict access to documentation relating to recall petitions after the conclusion of the process and to only allow observers from the Electoral Commission to observe working practices during a recall. The Committee recommended that the petition would carry more public confidence if the petition was an open and public document. The Government maintained its position that there were ways in which privacy of signatories could be protected.<sup>79</sup>

The Government also stated it would give further consideration to the Committee's recommendations that Henry VIII powers be removed from the proposed legislation and that the threshold for triggering a by-election should be raised from 10% of registered electors signing the recall petition to 20%.

### **Government's full response**

In April 2013, Nick Clegg reiterated his commitment to introducing a Bill before the next general election. Speaking on his weekly phone in radio show on LBC, he said "I can assure you I want to see recall provisions on the statute book in this parliament."<sup>80</sup> He was responding to a phone call from Zac Goldsmith MP.

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<sup>75</sup> Ibid, pp4-6

<sup>76</sup> Ibid, p6

<sup>77</sup> Ibid, p7

<sup>78</sup> Ibid, p7

<sup>79</sup> Ibid, pp5-6

<sup>80</sup> *Guardian*, [Nick Clegg wants to see MP recall law on statute book before election](#), 18 April 2013

In July 2013, Chloe Smith MP, Parliamentary Secretary, Cabinet Office, issued a written statement announcing the publication of the Government's full response to the Political and Constitutional Reform Committee report. The statement reaffirmed the Government's commitment to the introduction of recall using the two triggers contained in the draft Bill:

We welcome the Committee's thorough consideration of the proposals and have accepted many of their recommendations, particularly on the conduct of the recall petition. The process of pre-legislative scrutiny has been valuable and will result in an improved Bill being presented to Parliament in due course.<sup>81</sup>

## 5.4 *Recall of MPs Bill 2014-15*

The *Recall of MPs Bill 2014-15* was introduced in the House of Commons on 11 September 2014.<sup>82</sup> The Deputy Prime Minister issued a written statement outlining the Government's rationale for the Bill and summarised its provisions:

The Bill puts in place a recall mechanism for MPs which is transparent, robust and fair. It strikes a fair balance between holding to account those who do not maintain certain standards of conduct, while giving MPs the freedom to do their job and make difficult decisions where necessary.

The Bill takes account of a number of helpful recommendations from the Political and Constitutional Reform Committee's pre-legislative scrutiny report on the draft Bill which was published in 2011.

Under the Bill, there are two conditions for the opening of a recall petition; first, that an MP is convicted in the UK of an offence and receives a custodial sentence of 12 months or less; or secondly that the House of Commons orders the suspension of the MP for at least 21 sitting days—or at least 28 calendar days if the motion is not expressed in terms of sitting days.

Where one of these triggers is met, an MP's constituents will have an opportunity to sign a recall petition, calling for a by-election. If 10% of parliamentary electors in the constituency sign the petition, the MP's seat will become vacant and a by-election will be held. The recall petition process does not prevent the unseated MP from standing in the by-election.

The Bill also sets out the framework for the regulation of campaign expenditure and donations at recall petitions.<sup>83</sup>

The progress of the Bill was set out on the [Bill's pages](#) on the Parliament website.

A summary of the stages of the Bill is available in the Library briefing, [Progress of the Recall of MPs Bill 2014-15](#).

The only Government amendments made to the Bill during the House of Commons stages were amendments to clarify the provision relating to

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<sup>81</sup> HC Deb 17 July 2013, c103WS; Deputy Prime Minister, [Government Response to the Report of the Political and Constitutional Reform Committee on the draft Recall of MPs Bill](#), July 2013, Cm 8640

<sup>82</sup> HC Deb 11 September 2014 c1091

<sup>83</sup> HC Deb 11 September 2014 cc41WS-42WS

the role of the Speaker in the recall process. These amendments were agreed on the second day of committee.

A report stage of the Bill in the House of Commons, three Opposition amendments were agreed, these were:

- To reduce the period of suspension from the House from 21 to 10 sitting days to trigger a recall;
- To make provision for a further recall condition of a Member being convicted of an offence under section 10 of the *Parliamentary Standards Act 2009*,
- To pave the way to allow a recall petition to be triggered by an offence committed before the day Clause 1 comes into force.

During the Lords stages several Government amendments were agreed to. At Committee stage technical amendments were agreed following the amendments agreed in the Commons.

At Report stage in the Lords, Government amendment were agreed that:

- Increased the number of signing places that a petition officer could designate within the constituency from a maximum of 4 to a maximum of 10 was agreed; and
- Removed the Henry VIII power for the Act to be amended through regulations

At third reading a Government amendment which reduced the recall petition signing period from 8 to 6 weeks was agreed.

## 6. Should recall be extended?

### 6.1 Expanding recall provisions for MPs

In February 2019, Labour's shadow Cabinet Office minister, Jon Trickett, announced the party was to consult on extending the right of constituents to petition to recall a sitting MP.

The Labour proposal would allow constituents to petition to recall their MPs if they leave the political party under whose banner they were elected. In a press release, Mr Trickett said:

Communities should not have to wait for up to five years to act if they feel their MP is not properly representing their interests, especially with the restrictions of the *Fixed Term Parliament Act*.<sup>84</sup>

The announcement followed the resignation from the party of several Labour MPs to form a new Independent Group of MPs.<sup>85</sup>

### 6.2 Other elected officials

There are currently no plans to extend the scope of recall for other elected officials.

The *Recall of MPs Act 2015* only extends to Members of the House of Commons although there were calls during the committee stage debates for its scope to be extended to other elected representatives.

At Bill's committee stage amendments were tabled to provide that, "if an MP was suspended from their role in another elected capacity ... they should be able to be subject to recall from this House". In responding to these amendments, Greg Clark, then Minister of State in the Cabinet Office, said that:

There is certainly a debate to be had about recall for elected offices, as I made clear on Second Reading. This is a limited Bill, but that is not to say that there is not a good case to be made for provisions to be extended elsewhere in due course. Until that debate is concluded, however, it would seem odd that a councillor could be recalled from this place because of a suspension from the council when they could not be recalled from the council itself.<sup>86</sup>

As he wound up, at the end of the second reading debate, Tom Brake, then Deputy Leader of the House of Commons, noted that Labour's Thomas Docherty had called for other elected offices to be covered by the provisions of the legislation. Tom Brake said:

[Thomas Docherty] referred to police and crime commissioners and councillors. Clearly, the Government will want to consider them in the future, but they do not fall within the scope of the Bill.<sup>87</sup>

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<sup>84</sup> Labour press release, [Labour to expand democratic right to recall of MPs](#), 20 February 2019

<sup>85</sup> [Independent](#), [The Independent Group: Corbyn-backers launch counter-offensive against ex-Labour MPs](#), 20 February 2019

<sup>86</sup> [HC Deb 27 October 2014 cc102-103](#)

<sup>87</sup> [HC Deb 21 October 2014 c866](#)

The Home Affairs Committee recommended in 2014 that police and crime commissioners (PCCs) should be subject to recall. This was in a follow up report on child exploitation and grooming in Rotherham that examined the accountability of PCCs and senior council members. The report included a draft Bill to make provision for the recall of PCC.<sup>88</sup>

Local councillors are not subject to recall. Someone who has been sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine is disqualified from the office of a local councillor, parish councillor or elected mayor.

The Committee on Standards in Public life recently conducted a review of local government ethical standards, which also considered the sanctions that might be used in a local council standards regime. Some written evidence received by the Committee suggested that a recall system similar to that used for MPs might be effective. The President of the Society of Local Authority Chief Executives and Senior Managers (SOLACE), Jo Miller, submitted written evidence saying that:

We would also argue that that inconsistency between different levels of Government is also unhelpful. Parliament has done a great deal of work exploring the appropriate sanctions for elected politicians and it would seem appropriate that powers, including the power of recall, within local government mirror those introduced in Westminster.<sup>89</sup>

The Committee did not make any recommendations in relation to recall in its final report.<sup>90</sup>

Local government standards are devolved to Scotland, Wales and Northern Ireland. The Library briefing, *Local government standards in England*, outlines the standards of conduct, and registration of pecuniary interests, for local government councillors in England and briefly summarises the arrangements in Scotland, Wales and Northern Ireland.

One council, Kingston upon Thames, in London has introduced its own system of recall. It is based on the model used to trigger recall in the *Recall of MPs Act 2015*. The Council introduced the scheme in 2015. The council modified the requirements of the scheme in December 2017.<sup>91</sup> The scheme came about in response to allegations of council tax benefit fraud by a local councillor. The investigation took over two years and the councillor was eventually convicted.

The Council policy document detailing the 2017 amendment summarised the scheme as follows:

The Councillor Recall Scheme was adopted by the Council in July 2015 and largely reflects the provisions of the Recall of MPs Act

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<sup>88</sup> Child sexual exploitation and the response to localised grooming: follow-up, Home Affairs Select Committee Sixth report 2014-15, HC 203

<sup>89</sup> Committee on Standards in Public Life, *Local government ethical standards: written evidence 201-266*, Submission 223,

<sup>90</sup> Committee on Standards in Public Life, *Local Government Ethical Standards report*, January 2019

<sup>91</sup> Royal Borough of Kingston upon Thames, *Councillor Recall Scheme – Proposed Constitutional Amendment*



which had then recently become law. Whilst the scheme does not have the force of law, it has been adopted as a non-statutory protocol, within the Council's Code of Conduct. The intention is to provide residents with a democratic means of holding locally elected politicians to account where they are not properly representing local residents.

To date the scheme has not triggered a recall petition. The conditions under which a petition can be initiated against a councillor include missing a certain number of council meetings, conviction of a crime where a prison sentence (including a suspended sentence) is imposed, and a councillor moving their main residence outside the borough.

The scheme in Kingston does not have legal force but if a petition is successful a councillor is asked to consider resigning. If they refuse the council's Audit, Governance and Standards Committee considers what further action should be taken.<sup>92</sup>

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<sup>92</sup> Kingston upon Thames Audit, Governance and Standards Committee, *Review of Councillor Recall Scheme and Member Code of Conduct*, November 2017

## 7. Previous Bills on recall

### 7.1 The *Political Parties and Elections Bill 2008-09*

On 15 June 2009 Lord Tyler proposed an amendment to the *Political Parties and Elections Bill 2008-09* to require the Secretary of State to compel the Electoral Commission to undertake a review into introducing recall to the UK.<sup>93</sup>

Lord Tyler said that he tabled the amendment to ensure that the leaders of the three largest parties would honour previous statements about reform of the parliamentary system:

Many MPs are, in that sense, servants of their constituents, who send them to this building. If they break the rules, surely the constituents, and not their parties, party leaders, kangaroo courts or the Chief Whip, should have the right to say, "You are not our MP any more. You have broken our trust and you must go". That is a sound principle for us to agree to. Today is Parliament's earliest opportunity to make that statement. If we dodge this issue now, I fear that the public will think that we have deliberately forgotten it already, despite the promises of recent days from all three party leaders. Delay will be interpreted as a further broken promise.<sup>94</sup>

The then Parliamentary Under-Secretary of State, Lord Bach, agreed that reform was necessary and quoted a statement by then Prime Minister, Gordon Brown, in which he expressed a wish to look at recall as a potential mechanism for dealing with gross financial misconduct:

As my right honourable friend the Prime Minister made clear last week, there is no more pressing task for all of us involved in public life than to respond to the public's demand for reform. In his Statement on constitutional reform on 10 June, the Prime Minister set out the Government's intention to bring forward new legislative proposals following cross-party discussions as the first stage of this reform. These proposals include, as the noble Lord, Lord Tyler reminded us when he moved this amendment, the immediate creation of a new parliamentary standards authority and the agreement of a statutory code of conduct for all Members of Parliament. The Prime Minister said:

"There will be consultation with all sides of the House to come forward with new proposals for dealing effectively with inappropriate behaviour, including the potential options of effective exclusion and recall for gross financial misconduct, identified by the new independent regulator and by the House itself".<sup>95</sup>

Lord Bach went on to reiterate the Government's commitment to looking at recall in more detail:

I am sure that there is agreement on all sides that this suggestion merits careful consideration and, indeed, the Prime Minister has made clear his commitment to taking this debate forward. I

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<sup>93</sup> [HC Deb 15 June 2009 c867](#)

<sup>94</sup> [HC Deb 15 June 2009 c870](#)

<sup>95</sup> [HC Deb 15 June 2009 c874](#)

therefore hope that noble Lords will agree that legislating to force a debate on this issue will not be necessary and that, in any event, the Electoral Commission is not best placed to undertake this work. Again on behalf of the House, I thank the noble Lord, Lord Tyler, for raising this very current issue and I hope that he will consider withdrawing his amendment today.<sup>96</sup>

The amendment was defeated 48 to 149.<sup>97</sup>

A question in relation to Lord Tyler's amendment was asked in the Commons on 17 June 2009 during Ministry of Justice topical questions:

**Danny Alexander (Inverness, Nairn, Badenoch and Strathspey) (LD):** Apparently, as the Secretary of State will know, there is cross-party support for the introduction of a power of recall in relation to Members of the House of Commons. With that in mind, will he tell us when he will be in a position to present proposals, and can he explain why Labour peers were whipped to vote against the idea last night?

**Mr. Straw:** The issue of recall is being discussed by the cross-party group which is considering the idea of a parliamentary standards authority and related matters. I have been chairing the group, and it is holding its second meeting this week. As for the wider issue of recall, the hon. Gentleman may be aware that we included in the second Green Paper on Lords reform proposals—which had been broadly agreed with all the parties—for recall for the second and subsequent terms that it is envisaged that the new Members of the second Chamber would serve.<sup>98</sup>

The *Political Parties and Elections Bill* received Royal Assent on 21 July 2009 but did not include provision for a system of recall.<sup>99</sup>

## 7.2 The *Parliamentary Elections (Recall and Primaries) Bill 2009-10*

The *Parliamentary Elections (Recall and Primaries) Bill 2009-10* was introduced by Douglas Carswell MP as a Ten Minute Rule Bill (under Standing Order No. 23) on the 13 October 2009. In addition to introducing a system of recall the Bill also allowed for a system of primaries for the selection of party candidates.

Carswell explained the Bill's provisions concerning recall:

...my Bill would provide for a recall mechanism—that is, a way to trigger a by-election where a Member of this House was guilty of serious wrongdoing. Plainly such a measure would need safeguards. We would need to ensure that it could not be triggered frivolously or on partisan grounds. We would need to guarantee that charges could not be levelled against MPs simply because they had voted with their conscience.<sup>100</sup>

Carswell also argued that is not the efficacy of recall in actually recalling elected officials that makes it beneficial to the electorate but “it is the

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<sup>96</sup> [HC Deb 15 June 2009 c875](#)

<sup>97</sup> [HC Deb 15 June 2009 c877](#)

<sup>98</sup> [HC Deb 16 June 2009 c162](#)

<sup>99</sup> [HC Deb 21 July 2009 c1580](#)

<sup>100</sup> [HC Deb 13 October 2009 c167](#)

knowledge that they are possible that makes recall ballots so effective".<sup>101</sup>

The Bill made no further progress.

### **7.3 The Recall of Elected Representatives Bill 2010-12**

The *Recall of Elected Representatives Bill 2010-12* was introduced by Zac Goldsmith as a Presentation Bill (under Standing Order No. 57) on 26 July 2010. The Bill made provision for voters to recall their elected representatives in specified circumstances.<sup>102</sup> He subsequently introduced private Members' Bills on recall in every session of the 2010-15 Parliament.

In an article in the *Hounslow Chronicle*, Goldsmith said that recall "...is a right that should exist at every level, from councillor to MP, and it should not be subject to approval by a central authority".<sup>103</sup>

On 8 September 2010 Goldsmith secured a Westminster Hall debate on direct democracy initiatives.<sup>104</sup> During the debate he said:

True recall allows people to sack their representatives, for whatever reason, if a majority have lost confidence in them, and it certainly is not subject to approval by a central authority.<sup>105</sup>

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<sup>101</sup> HC Deb 13 October 2009 c168

<sup>102</sup> HC Deb 26 July 2010 c741

<sup>103</sup> Z Goldsmith, " 'Recall your MP' pledge falls short ", *Hounslow Chronicle*, 27 July 2010

<sup>104</sup> HC Deb 08 September 2010 c131-41WH

<sup>105</sup> HC Deb 08 September 2010 c131WH

## 8. International comparisons

The Government's draft Bill included reference to international examples of recall.<sup>106</sup> The comparison noted the wide variety of recall mechanisms used in those jurisdictions that allow for it. Some jurisdictions allow citizens to initiate a recall petition for any reason and the threshold of voters required to sign a petition varies widely. In some cases, recall cannot be initiated until a certain time after the last ordinary election.

The Government concluded that international versions of recall could not simply be 'imported' to the UK. In its view the "framework for regulating elections and campaigning in the United Kingdom is significantly different from that used elsewhere."<sup>107</sup>

The Political and Constitutional Reform Committee report on the draft Bill also considered international comparisons. It noted that "recall mechanisms are comparatively unusual throughout the world, and particularly rare at national level". The Committee also noted that Recall is particularly rare in "Westminster style" democracies. It quoted the International Institute for Democracy and Electoral Assistance (International IDEA), which suggested that "recall procedure is more coherent with a presidential style of government (with a directly elected executive official) than with a parliamentary system of government."<sup>108</sup>

Some of examples of recall are outlined below.

### USA

The USA is often cited in material referring to recall. The conditions for recall vary considerably across the states.

The US President cannot be recalled but there are provisions for state and local elected representatives to be recalled in many states. Some states also allow for the recall of state representatives serving in Congress to be recalled although the constitutional legality of such recalls is in question and has not been ruled on.

The first two states to allow recall of state officials were Michigan and Oregon in 1908.

There are 19 states that allow recall of state officials. The District of Columbia allows recall. In addition, Virginia allows a process similar to recall where petitioners can recall a state official, but the process leads to a court trial rather than an election.<sup>109</sup> There are recall processes for local officials in at least 29 states,<sup>110</sup> and the number is likely to be higher.<sup>111</sup>

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<sup>106</sup> See Appendix E of *Recall of MPs: Draft Bill*, Cm 8241, December 2011

<sup>107</sup> Ibid, page 48

<sup>108</sup> Political and Constitutional Reform Committee, *Recall of MPs*, HC 373 20012-13, p6

<sup>109</sup> National Conference of State Legislators, *Recall of state officials*, 2016, accessed 4 February 2019

<sup>110</sup> National Conference of State Legislators, *Recall of local officials*, undated, accessed 4 February 2019

<sup>111</sup> Ballotpedia, *Laws governing recall*, undated, accessed 4 February 2019

The grounds for state recall are restricted in eight states. In remaining states voters can initiate a recall for any reason. The number of signatures required for a recall to be successful varies but is generally between 15% and 40% of registered voters. The time a petition remains open varies from 60 days (for state representatives in Colorado, Idaho, Michigan and Wisconsin) up to 320 days (Governor or Congress petitions in New Jersey). The process by which a recalled representative is replaced also varies. Some states run concurrent petitions and elections for the successor if the incumbent is recalled.

In one instance of a local recall in the town of West New York, New Jersey, in 1993 five representatives, including the Mayor, were recalled and removed from office but then immediately returned to office by a poll held simultaneously alongside the recall petition.<sup>112</sup>

The majority of recalls in the USA are at local level. According to Ballotpedia,<sup>113</sup> the number of attempted recalls of state representative numbered four. Only one succeeded.<sup>114</sup> In contrast, there were over 200 recall efforts against 299 officials in 2018 in total. City council officials and school board members were most often targeted.<sup>115</sup>

## Canada

Only one province or territory in Canada allows recall, British Columbia. There is no restriction on the grounds for initiating a petition. The petition organiser simply provides a statement of why, in their view, the Member of the Legislative Assembly should be removed and submits it to Elections BC, the independent and non-partisan Office of the Legislative Assembly of British Columbia.

A petition cannot be initiated within the first 18 months after the person has been elected. If a valid petition is received by Elections BC, the voter who initiated the petition (or registered canvassers) must collect signatures from more than 40% of voters eligible to sign the petition in that electoral district. Eligible voters are those who were registered to vote in the last election. The petition is open for up to 60 days.<sup>116</sup>

Recall was introduced in 1995, in that time 26 have been approved. Most were not submitted for determination. Of those submitted, none have succeeded.<sup>117</sup> Only one petition received the required number of valid signatures, but it failed because the sitting Member, Paul Reitsma, resigned his seat before being unseated by the petition. He had admitted to writing letters to newspapers and opponents under fake names. Canvassers had collected over 25,000 votes with 17,000 required for the recall to succeed had Mr Reitsma not resigned.<sup>118</sup>

<sup>112</sup> *New York Times* archive, [Voters Oust, Then Elect, Their Mayor](#), 4 February 1993

<sup>113</sup> Ballotpedia is a non-partisan and non-profit organization with content written by professional researchers, writers, and elections analysts,

<sup>114</sup> Ballotpedia, [State legislative recalls](#), 2018

<sup>115</sup> Ballotpedia, [Ballotpedia's 2018 Recall Analysis](#), 17 December 2018

<sup>116</sup> Elections BC, [Recall](#), undated, accessed 5 February 2019

<sup>117</sup> Elections BC, [Summary of recall petitions](#), undated, accessed 5 February 2019

<sup>118</sup> CBC News, [B.C. MLA Paul Reitsma resigns](#), 14 November 1998

## Switzerland

Recall in Switzerland differs from most other recall in that the recall is not usually against an individual but against an institution, generally the canton parliament but also the executive can also be recalled in some cantons. Six of Switzerland's 26 cantons allow recall. A successful recall petition would in effect 'sack' the sitting parliament or executive of that canton and require fresh elections.

Only a dozen recalls have been initiated since 1846. Only one was successful, in a canton that abandoned the power of recall in 1980, Aargau. The successful recall sacked the Aargau parliament in 1862 and the issue leading to the recall was the emancipation of Jews in Switzerland. The Aargau parliament approved emancipation legislation in line with federal law but 63% of voters were in favour of recalling the parliament. However, the government elected following the recall was of a similar make-up and the following year the Federal Council ordered Aargau to comply with the higher federal law.<sup>119</sup>

## Venezuela

The recall mechanism was introduced into Venezuelan law in 1999 under the new Constitution drafted by the National Constituent Assembly and sanctioned by the electorate in a referendum. It allowed for recall at all levels, including the President.<sup>120</sup>

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. If the threshold is met, this triggers a referendum on whether the office holder should serve out the remainder of their term.<sup>121</sup>

This was demonstrated when President Chavez had to fight a recall election on 15 August 2004. Despite opposition allegations of fraud, President Chavez survived with close to 60% of the vote.<sup>122</sup> An attempted recall election in President Maduro was blocked by the Venezuelan Supreme Court in 2015.

## Others

According to the International Institute for Democracy and Electoral Assistance, which has various databases of comparative data, there are about another 20 countries with some form of recall system.<sup>123</sup> The majority allow recall at local or provincial level.

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<sup>119</sup> Uwe Serdült, The history of a dormant institution, legal norms and the practice of recall in Switzerland, *Representation* 51:2, pp161-72

<sup>120</sup> Venezuela Analysis website, [Venezuela's New Constitution](#),

<sup>121</sup> Appendix E of *Recall of MPs: Draft Bill*, Cm 8241, December 2011

<sup>122</sup> UK and EU Relations with Latin America, Library Standard Note, SN/IA/4986

<sup>123</sup> [International IDEA databases and data tools](#)

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