



Unlock Democracy's Response to the White Paper and Draft Bill on the Recall of MPs

About Us

Unlock Democracy (incorporating Charter 88) is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, a stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility.

Executive Summary

- Unlock Democracy welcome the government's publication of the Draft Recall of MPs Bill and in particular the fact that it has been made available for pre-legislative scrutiny.
- However we do not agree with the government's conceptualisation of recall as a disciplinary tool. Our primary concerns centre on their second proposal regarding if an MP is found in serious breach of the Code of Conduct for MPs.
- Unlock Democracy believes that recall should empower voters, not parliamentary committees. Therefore, we propose that the public should be able to have the opportunity, once in a Parliament, to trigger the recall of a Member of Parliament. We want people to have the power to recall their MP and force a by-election if a majority have lost confidence or trust in them for any reason.
- We are less concerned about the government's proposal that a criminal conviction should trigger a recall process. We recognise that there are instances where voters may not feel that the conviction warrants a by-election but this would give voters the opportunity to trigger one if they felt strongly.
- Our response to this consultation outlines three main ways in which we believe these proposals¹ can be improved so that they empower citizens and we make three recommendations.

Recommendation 1: The public to have the right to determine when there has been serious wrongdoing and for them to initiate a recall petition at any time and on any issue they wish.

- We propose that if at least 10% of those on the electoral register for the constituency who are eligible sign a petition within 8 weeks, on any issue of their choosing, a recall referendum be held in that constituency.

¹ Annex A: Pg 38 Recall of MPs Draft Bill

- If a majority voted in favour of recalling the MP in question, the seat would be vacated and a by-election would then be called. The MP would not be permitted to stand in the subsequent election.
- Any MP that had faced a recall ballot and survived would be exempt from recall proceedings for the rest of the Parliament.

Recommendation 2: An automatic recall petition following a serious breach of the Code of Conduct

- Whilst we fully respect the right of the House to discipline its own members, it should also be a right of the public, those whom they represent, to decide whether to recall their MP. We therefore recommend that in the event of a finding of a serious breach of the Code by the Parliamentary Commissioner for Standards (PCS), a recall petition can automatically be triggered by the voters of that constituency.

Recommendation 3: Widening the remit to include all elected officials

- Unlock Democracy is disappointed that the current proposals only apply to MPs.
- We note the government’s commitment in the consultation that “once such a mechanism has been established for recalling MPs, the government will give careful consideration to whether recall should be extended to other elected offices across the United Kingdom”.²
- Recall is conventionally used for directly elected executive posts such as elected mayors and elected police commissioners. If the government is reluctant to introduce full recall for MPs then these posts offer an alternative starting point for introducing full recall that is more in keeping with international experience.

Introduction

1. Unlock Democracy welcomes the government’s publication of the Draft Recall of MPs Bill as it will trigger an important debate about parliamentary accountability and responsibility.
2. We further welcome the government’s willingness to “consider other models and, in particular, different proposals for triggering a recall petition”.³
3. We do not agree with the government’s proposals which effectively define recall as a disciplinary tool. The white paper clearly sets out the government’s thinking on recall as something that should be built onto existing measures for disciplining MPs within Parliament. Whilst we recognise Parliament’s right to discipline its own members, as set out in the Bill of Rights, we believe this characterisation of recall is confused and misguided.

² 158 pg 37 Recall of MPs Draft Bill

³ Pg 22, section 82 of Recall of MPs Draft Bill

4. Recall exists, primarily in the USA, as part of a suite of direct democracy tools for holding directly elected politicians to account. In recent years the UK has started to import these directly elected executive posts, such as elected mayors and now elected police commissioners, from the USA. Recall is the corresponding accountability mechanism to these executive posts and yet the government proposes introducing it for MPs, rather than executive posts.
5. In the US model, recall is not a quasi-judicial disciplinary process; rather it is a means of voters holding powerful elected politicians to account. In the government's attempt to marry recall with our representative system of government they have undermined the value of recall which is that it puts power in the hands of voters. The government's proposals merely ask voters to endorse a view already formed by either the parliamentary disciplinary processes or the criminal justice system.
6. Unlock Democracy believes that the public should be able to have the opportunity, once in a Parliament, to trigger the recall of a Member of Parliament. We want people to have the power to recall their MP and force a by-election if a majority have lost confidence or trust in them for any reason. This could include for example crossing the floor of the house or breaking a manifesto / election promise etc.
7. Recent demonstrations of strong public feeling on issues such as the expenses scandal, tuition fees and the vote to go to war in Iraq, have shown that the public treat a broken promise by their elected representatives just as seriously, if not more so, than a breach of the MPs' Code of Conduct.
8. We readily agree that there should be safeguards to ensure this power is used rarely and appropriately. Recalling an MP is a serious matter and should not be undertaken lightly but soberly, with just cause and following proper consultation. It should be possible to do so, but hard enough that serious thought is given before undertaking the process.
9. Safeguards can be implemented to recall processes stipulating the threshold of signatures that needs to be achieved and in what time frame. The way the signatures are collected can also act as a safeguard. It is necessary to achieve a balance between too few safeguards, making the process too easy so that it could be used for frivolous or partisan purposes, and too many, meaning that in effect recall can never be used.
10. Unlock Democracy believes that the proposed recall mechanism, restrictive in scope, with a high threshold, a short time frame for signature collection and the proposed single location for signing the petition in person, are so stringent as to make the process nearly meaningless.
11. We fear that if the draft Bill goes ahead in its current form there is a very real danger that the government's proposals will further alienate the public from their MP, when its intention is indeed quite the opposite.

Suggestions for Reform

Recommendation 1: The public to have the right to determine when there has been serious wrongdoing and for them to initiate a recall petition at any time and on any issue they wish.

12. Unlock Democracy believes it should be possible for the public to determine when there has been serious wrongdoing and for them to initiate a recall petition at any time and on any issue they wish.
13. In addition to the government's proposals regarding custodial sentences (with which we agree), and its proposals on recommendations by the Committee on Standards and Privileges (which we address later), Unlock Democracy propose an additional option for recalling MPs.
14. We propose that if at least 10% of those on the electoral register for the constituency sign a petition within 8 weeks, on any issue of their choosing, a recall referendum be held in that constituency.
15. The referendum is a necessary additional stage to ensure that the recall process is not hijacked by a particularly vocal minority, to ensure that the MP gets a fair hearing and that there is proper consultation before the cost of a by-election is incurred.
16. The referendum would be in the format of a Yes/No question asking whether the public wanted to recall their Member of Parliament. If a majority voted in favour of recalling the MP in question, the seat would be vacated and a by-election would then be called. The MP who had been recalled would not be permitted to stand in the subsequent election.
17. To ensure that voters have proper parliamentary representation and that the process does not drag on, we recommend that any by-election should be held within 12 months of the original recall petition reaching the required number of signatories.
18. We further recommend that if a majority of constituents voted against recall in any referendum, then the MP in question would not only remain in post under our model, but they would also be immune from any other recall petitions for the duration of the Parliament as well.
19. We do not envisage however there being a wave of successful election petitions against MPs should our recommendations be implemented. The example of British Columbia shows that such petitions are rare as the threshold is so high. Using the government's own threshold, 10% is a large number of signatories to achieve in one constituency within the suggested timeframe.
20. The government proposes that to sign the petition in person, voters must go to a single location such as a town hall. Unlock Democracy would not advocate going this far, as only having one place to sign a petition we believe would deter public participation. However there are numerous examples of safeguards that are commonplace in other countries and would help address any concerns about the purity of the process.

21. We note that it will be possible to sign the petition by post or absentee ballot but as this will require a number of processes to apply for the form and submit the signature, this does not adequately address our concerns about the accessibility of the petition stage.
22. If the government remains committed to the single site collection model for signatures, we believe there should be a pre-petition stage to the recall process. This would involve campaigners having to collect a certain number of signatures to show that there is demand, before the local authority has to incur the costs of running a recall process.
23. The Electoral Commission should obviously have a key role as watchdog and regulator in any recall ballot and by-election. We agree with the government's proposal that their duties and responsibilities should be similar to those which it holds in relation to elections under the Political Parties, Elections and Referendums Act 2000 (PPERA).
24. As regards to timing, Unlock Democracy is open-minded about whether any recall referendum or by-election is held at the same time as other constituency wide elections. Combining elections would reduce the overall costs but does risk making the referendum or by-election more partisan.
25. We feel very strongly, however, that it would not be at all appropriate for any referendum or by-election to be an all postal ballot or for signatories in any petition to be allowed to be collected electronically.
26. At the time of writing, Zac Goldsmith MP has a Bill before Parliament which advocates a similar approach to ours. The Recall of Elected Representatives Bill is currently awaiting its second reading.
27. The Minister of State Mark Harper MP has promised in writing to Andrew George MP that this Bill will be debated on the floor of the House.⁴ We trust that this promise will be fulfilled and look forward to the debate.

Recommendation 2: An automatic recall petition following a serious breach of the Code of Conduct

28. Under the current government proposals, for the public to be able to initiate a recall petition three stages first have to happen.
29. In stage one, the Parliamentary Commissioner for Standards (PCS) must find and highlight a 'serious' breach of the Code of Conduct to the Committee on Standards and Privileges (CSP). In stage two the CSP, which is an internal committee of MPs, then has to determine and recommend that the MP in question should face a recall petition. Finally in stage three, if the CSP does recommend that one of their colleagues faces recall, there must be a House of Commons resolution to implement the CSP's recommendation.
30. Whilst we fully respect the right of the House to discipline its own members, it should also be a right of the public, those whom they represent, to have a say on the disciplining of their respective Members of Parliament. We therefore recommend that

⁴ Letter to Andrew George MP from Mark Harper signed and dated 20/6/2011

following the finding of a serious breach of the Code by the PCS, an election petition can automatically be triggered.

31. In our proposal, the CSP could still discipline the MP as they saw fit however the public could still take action if they wished and trigger a petition if, for instance, the CSP decided the breach did not merit recall. If the petition was unsuccessful the original CSP punishment would still apply. If the petition was successful, a recall ballot would be triggered.
32. We recommend stage three, whereby there has to be a vote on a resolution in the House of Commons, is abolished completely. We argue that there is no need for a Commons resolution to implement a CSP recommendation and that it is a superfluous stage. This can be seen by the admission in the consultation document that “the government is not aware of a case where the House has failed to implement a recommendation of the Committee on Standards and Privileges in relation to discipline”.⁵
33. These recommendations we believe would remove the anomaly of having MPs being both judge and jury over their colleagues, eliminate the chances of MPs voting on party lines in any vote, empower citizens and underline the importance of the Code of Conduct.
34. We are less concerned about a criminal conviction triggering a recall process. We recognise that there are instances where voters may not feel that the conviction warrants a by-election but this would give voters the opportunity to trigger one of they felt strongly.

Recommendation 3: Widening the remit to include all elected officials

35. Unlock Democracy believes that all elected officials should be subject to recall, including MEPs, directly elected police commissioners, mayors, councillors etc. That the current proposals only apply to MPs is deeply disappointing.
36. We note the government’s commitment in the consultation that “once such a mechanism has been established for recalling MPs, the government will give careful consideration to whether recall should be extended to other elected offices across the United Kingdom”⁶.
37. There is already broad cross party support within Parliament for a recall mechanism as we envisage it. Early Day Motion 1253⁷, Recall of Elected Representatives, has at the time of writing been signed by over 50 MPs from across the House.
38. Those signatories all express their belief that voters should be able to recall their elected representatives if a majority have lost confidence in them, for whatever reason, and if enough voters sign a petition to trigger a recall vote. They also express disappointment in the current proposals to only allow it to happen if the CSP deem it appropriate, and that they do not apply to other elected officials.

⁵ Section 77 pg 21 Recall of MPs Draft Bill

⁶ 158 pg 37 Recall of MPs Draft Bill

⁷ Full text and list of signatories can be found here. <http://www.parliament.uk/edm/2010-12/1253>

39. There is a strong case for introducing recall to all elected positions. When looking at the experiences of other countries, recall has traditionally been introduced for directly elected officials who carry out executive functions such as sheriffs and mayors. It has then been extended to other elected representatives. Yet as the UK government has imported US directly elected mechanisms such as police commissioners and mayors, they have not introduced the accompanying accountability tools such as recall. If they had then perhaps we would not be seeing the citizen led campaigns calling for referendums to abolish the position in cities such as Doncaster. Instead we believe the position holder would be recalled instead.