

# RECALL OF MPS ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS (AND SCHEDULES)

#### *Section 1: How an MP becomes subject to a recall petition process*

11. *Section 1* introduces the conditions for how an MP becomes subject to a recall petition process and defines a “recall petition”.
12. *Subsection (3)* sets out the first recall condition. This is that (a) the MP has, after becoming an MP, been convicted in the United Kingdom of an offence and has been sentenced or ordered to be imprisoned or detained, and (b) the appeal period has expired without the conviction, sentence or order having been overturned on appeal. Custodial sentences imposed by courts overseas would not trigger a recall petition.
13. *Subsection (4)* sets out the second recall condition. The second condition is that, 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 period of at least 10 sitting days or, if the period is not expressed as a number of sitting days, for a period of at least 14 days (which is a broadly equivalent period of time to the shortest usual period in which 10 sitting days would fall). It does not matter when that suspension starts or what provision is made by the House regarding what does or does not count as a sitting day for the purpose of calculating that period (*subsection (6)*).
14. The effect of *subsection (7)* is to future-proof the second recall condition by ensuring that the reference to the Committee on Standards (in *subsection (4)*) captures any other House of Commons committee concerned with the standard of conduct of an MP, regardless of what it is called.
15. *Subsection (9)* sets out the third recall condition. This is that (a) the MP has, after becoming an MP, been convicted of the offence of providing false or misleading information for allowances claims in relation to MPs’ allowances under section 10 of the Parliamentary Standards Act 2009, and (b) the appeal period has expired without the conviction having been overturned on appeal.
16. *Subsection (10)* states that the Act does not affect other ways in which an MP’s seat may be vacated. These include disqualification (for example, under section 1 of the Representation of the People Act 1981, which provides that if an MP is convicted of an offence (whether in the UK or elsewhere), and sentenced or ordered to be imprisoned or detained indefinitely or for more than one year, the MP is disqualified from membership of the House while detained in the British Islands or the Republic of Ireland (or while unlawfully at large)) and the MP’s death.
17. *Subsection (11)* makes clear that, if an MP loses his or her seat as a result of a recall petition, that does not prevent him or her standing in the resulting by-election.

#### *Section 2: The first and third recall conditions: further provision*

18. *Section 2* contains further provision about the offences and sentences or orders that are to satisfy the first and third recall conditions. These would include offences committed

by the MP before he or she became an MP and before section 1 comes into force; but only where an MP is convicted on or after the day on which section 1 comes into force and after the MP becomes an MP (*subsection (1)*).

19. *Subsection (3)* provides that references to a sentence or order for the purposes of the first recall condition include suspended sentences or orders. However, remand in custody or authorisation for detention under mental health legislation, if there is no sentence or order for imprisonment or detention other than under that legislation, are not sentences or orders for the purpose of the first recall condition. A list of “mental health legislation” for the purpose of this section is in *subsection (4)*.
20. *Subsection (5)* provides that the time at which a person becomes an MP for the purposes of this Act is the beginning of the day after the polling day for the parliamentary election at which the person was (or was last) elected.

### ***Section 3: The first and third recall conditions: expiry of appeal period***

21. *Section 3* sets out when the appeal period in respect of a conviction, sentence or order expires for the purposes of the first and third recall conditions. The first and third recall conditions are not met unless the appeal period has expired without the conviction, sentence or order being “overturned on appeal” (which is defined in section 22(1)).
22. *Subsection (1)* provides that the appeal period ends when (a) it is no longer possible for there to be a relevant appeal and (b) all relevant appeals have been determined or otherwise disposed of. A “relevant appeal” means an appeal in respect of the conviction, sentence or order and any further appeal from that appeal. To count as a “relevant appeal”, the appeal must be brought within the usual period and, in the case of a further appeal, must be brought within the usual period or 28 days after the determination of the first appeal, whichever is the earlier (*subsections (2) and (3)*).
23. *Subsection (4)* defines what is meant by an appeal being brought within the usual period. The appeal must be brought within the time allowed for that type of appeal. An appeal is not brought within the usual period (and therefore would not prevent the first or third recall condition from being met) if it is lodged, with the court’s permission, after the usual time limit has expired.
24. *Subsection (5)(b)* provides that references in this section to an appeal include an application. The purpose of this provision is to catch applications for judicial review, which, in some circumstances, are an alternative to an appeal, and applications for permission to appeal. For example, in England and Wales, judicial review is available as a remedy, in certain circumstances, in respect of decisions of a magistrates’ court and, other than in its jurisdiction in matters relating to trial on indictment, in respect of decisions of the Crown Court (section 29 of the Senior Courts Act 1981).
25. The effect of *subsection (5)(c)* is to put beyond doubt that references to an appeal include an appeal to the Supreme Court against the determination of a devolution or compatibility issue by the High Court of Justiciary in criminal proceedings in Scotland, following the approach in, for example, section 121(5)(a) of the Criminal Procedure (Scotland) Act 1995. This provision makes clear that if the MP brings such an appeal within the usual time period, the first and third recall conditions are not met unless the appeal is determined without the conviction, sentence or order being overturned.
26. Following an investigation the Criminal Cases Review Commission and the Scottish Criminal Cases Review Commission have the power to refer convictions or sentences to the appropriate appellate court for reconsideration (Part 2 of the Criminal Appeal Act 1995 and Part 10A of the Criminal Procedure (Scotland) Act 1995). *Subsection (5)(d)* provides that such a reference is not an appeal for the purposes of the first and third recall conditions. The fact that a petition to the nobile officium in Scotland may be brought against the conviction or sentence will not prevent the first or third recall conditions from being met (*subsection (5)(d)*).

27. In some cases the court to which an appeal is made will remit the matter to another court for final determination. For example, the Administrative Court may decide on judicial review that a process was flawed and therefore the conviction or sentence was unsafe, but will return the case to the original court to reconsider the matter rather than substituting its own decision. *Subsection (6)* provides that references in this section to the determination of an appeal are, if the appellate court remits the matter to another court, to the disposal of proceedings by that other court.

#### ***Section 4: The first and third recall conditions: courts to notify the Speaker***

28. *Section 4* imposes notification obligations on those courts imposing a sentence or order in relation to the conviction of an MP or hearing an appeal against the conviction, sentence or order. Under *subsection (2)*, the court which sentences the MP must notify the Speaker of the House of Commons of the conviction and sentence or order and whether an appeal may be brought.
29. *Subsections (3) to (5)* deal with cases where an appeal is brought. *Subsection (4)* provides that the court to which the appeal is brought must notify the Speaker of the appeal. *Subsection (5)* requires the relevant court at which the appeal was determined or otherwise disposed of to notify the Speaker that such a determination or disposal has taken place, that the conviction, sentence or order has or has not been overturned on appeal and whether any further appeal may be brought. *Subsection (6)* defines the “relevant court” as either the court to which the appeal was originally brought, or another court to which the matter was remitted. References in this section to an appeal and the determination of an appeal have the same meaning as in section 3 (see *subsections (5) and (6)* of that section) except that references to an appeal include a petition to the nobile officium (*subsection (7)*).
30. *Subsection (8)* provides that a court is not required to notify the Speaker if, at any time since the conviction, the MP’s seat has been vacated (whether by the MP’s disqualification or death, or any other reason).

#### ***Section 5: Speaker’s notice that first, second or third recall condition has been met***

31. *Subsection (1)* requires the Speaker of the House of Commons to give notice for a recall petition to be opened to the relevant petition officer as soon as reasonably practicable after becoming aware that the first, second or third recall condition has been met. This requirement does not apply if the polling day for the next UK Parliamentary general election is within six months, if the MP is already subject to a recall petition process or if the MP’s seat has already become vacant, whether by disqualification, death or otherwise (*subsection (2)*).
32. *Subsection (3)* provides that, in determining whether the polling day for the next UK Parliamentary general election is within six months, the fact that it may subsequently change as a result of the power to vary the polling day under the Fixed-term Parliaments Act 2011 is to be disregarded, and the six month prohibition still applies even if the polling day has been delayed. That Act schedules polling days for UK Parliamentary general elections on 7 May 2015 and then on the first Thursday in May every five years. There is a power to delay a scheduled polling day by up to two months and procedures for holding early UK Parliamentary general elections. The Speaker would not give notice to the petition officer to hold a petition if either a scheduled UK Parliamentary general election or an early UK Parliamentary general election is to be held within six months.
33. *Subsection (4)* provides that an MP is considered to be subject to a recall petition process during the period which begins with the giving of the Speaker’s notice to the petition officer that a recall petition is to be opened, and ends when the petition officer notifies the Speaker of the outcome of the petition, or when the petition officer receives a notice from the Speaker that one of the conditions for the early termination of the petition process has been met.

34. *Subsection (5)* provides that the notice given by the Speaker under this section must specify the day on which it was given and which of the recall conditions has been met. If the first condition has been met, the notice must also specify the offence of which the MP has been convicted. The day specified in the notice is to be treated as the day on which it is given. The notice is to be treated as received by the petition officer on the first working day after the day on which it is given (*subsection (6)*). “Working day” is defined in section 22(1). *Subsection (7)* provides that any reference to a “Speaker’s notice” in this Act is a reference to a notice under this section.

### ***Section 6: Petition officers***

35. *Subsection (1)* provides that every constituency will have a petition officer in relation to a recall petition and it identifies who the relevant petition officers will be in a constituency in each part of the United Kingdom. In England and Wales it will be the person who is the acting returning officer for UK Parliamentary elections in the relevant constituency. In Scotland it will be the person who is the returning officer for UK Parliamentary elections in the relevant constituency. In Northern Ireland it will be the Chief Electoral Officer.
36. *Subsection (3)* gives effect to Schedule 1 which contains more detail about petition officers. These provisions are in line with similar requirements about the role of returning officers at UK Parliamentary elections.

### ***Schedule 1: Petition officers***

37. *Paragraph 1* sets out the petition officer’s general duty in relation to the conduct of a recall petition.
38. *Paragraph 2* provides that petition officers in England, Wales and Scotland may appoint deputies to perform their functions in relation to the recall petition. *Paragraph 2(3)* requires that a local authority whose area falls within the relevant constituency provides assistance to the petition officer by placing the services of its officers at the petition officer’s disposal. *Paragraph 2(4)* defines “local authority”.
39. *Paragraph 2(5)* provides that certain provisions of the Electoral Law Act (Northern Ireland) 1962 have effect in relation to the Chief Electoral Officer when acting as the petition officer in relation to a recall petition. The effect is that in the event that the Chief Electoral Officer is absent from Northern Ireland, is incapacitated or there is a vacancy, a person may be temporarily appointed to carry out his or her functions; the Chief Electoral Officer may delegate functions to persons appointed to provide assistance and to deputy returning officers for district council elections; and district council officers must perform those functions appointed to them by the Chief Electoral Officer.
40. *Paragraph 3* makes provision for payments to petition officers in relation to the recall petition. Under *paragraph 3(1)* petition officers may recover charges which were necessarily incurred for the efficient and effective performance of the petition officer’s functions, provided that these charges do not exceed the overall maximum recoverable amount specified in regulations made by the Minister. The regulations, which must be made with the consent of the Treasury, may also specify, or make provision for determining, a maximum recoverable amount for services or expenses of a specified description (*sub-paragraph (2)*). However, the Minister may, with Treasury consent, authorise payments which exceed the amounts specified in the regulations if satisfied that it was reasonable for the petition officer to render the services or incur the expenses and the charges in question are reasonable (*sub-paragraphs (4) and (5)*).
41. The Minister, on an account being submitted, must pay to the petition officer the charges which the petition officer is entitled to recover (*sub-paragraph (6)*). However, the Minister can apply for the account to be taxed (*sub-paragraph (7)*).

- 42. *Paragraph 3(8)* empowers the Minister to make advance payments to the petition officer on request.
- 43. *Paragraph 3(9)* provides that the Minister may by regulations make provision as to the time when accounts are to be provided by the petition officer, and in what manner and form. The power to make such account regulations mirrors the wider practice of producing such guidance for returning officers at UK Parliamentary general elections.
- 44. *Paragraph 3(10)* provides that any sums paid by the Minister under paragraph 3 are to be charged on and paid out of the Consolidated Fund.
- 45. *Paragraph 4* makes provision in respect of applications for a petition officer's account to be taxed. *Sub-paragraph (1)* specifies which court the application must be made to, depending on whether the petition officer acts for a constituency in England and Wales or Northern Ireland. In the case of a constituency in Scotland, the application is made to the Auditor of the Court of Session. *Sub-paragraph (2)* provides that the court or Auditor may tax the account as it thinks fit and finally determine the amount payable to the petition officer. *Sub-paragraph (3)* allows the petition officer to apply to the court or Auditor to examine any claim made by a person ("the claimant") against the officer in respect of any charges included in the account. The court or Auditor may allow, disallow or reduce the claim but must first give the claimant the opportunity to be heard and to tender evidence (*sub-paragraph (4)*).

### ***Section 7: Where and from when the recall petition may be signed***

- 46. *Section 7* sets out the petition officer's duties on receiving the Speaker's notice.
- 47. *Subsection (1)* provides that when the petition officer receives the Speaker's notice the petition officer must, as soon as reasonably practicable, designate the place(s) at which, and the day from which, the recall petition can be signed.
- 48. The petition officer may designate up to a maximum of ten places and the officer must seek to ensure that the signing places have reasonable facilities and are accessible to the disabled, as far as is reasonable and practicable (*subsections (2) and (3)*).
- 49. The petition officer must designate the first day from which the petition will be available for signing (*subsection (1)*). This must be the day which is the 10th working day after the day on which the Speaker's notice is received. However, if it is not reasonably practicable to designate that day, the petition officer may delay the opening of the petition until the first subsequent working day that it is reasonably practicable to designate (*subsection (4)*).

### ***Section 8: Notice of petition to be sent to registered electors***

- 50. *Section 8* provides that, as soon as reasonably practicable after designating the signing location(s), the petition officer must notify such of those who are registered on the parliamentary electoral register for the constituency who fall within descriptions to be specified in regulations that the Minister must make (*subsection (1)(a)*) and any other description of persons which may be specified in those regulations (*subsection (1)(b)*). The regulations must also require the notice to contain information relating to the recall condition which has been met in relation to the MP (*subsection (2)*).

### ***Section 9: Recall petition to be made available for signing***

- 51. *Section 9* states that the petition officer must make the recall petition available for signature at the designated location(s) and by post throughout a six week signing period (*subsection (1)*). The signing period is defined as the period of six weeks beginning with the designated day. A separate petition signing sheet must be available at the designated location(s) for each person who is eligible to sign it at that designated location and by post for each person who is eligible to sign it by post (*subsection (3)*). *Subsection (4)* sets out the wording of the petition that must be included on the signing sheet. This section



is subject to regulations under section 18. Those regulations may, in particular, allow or require the petition officer not to make the petition available at particular times of the day or on particular days; allocate those who are registered on the electoral register to a particular signing location; and limit the availability of the petition to those who are entitled to sign it. *Subsection (5)* confers power by regulations to amend subsection (4), subject to the affirmative resolution procedure (*subsection (6)*).

### ***Section 10: Persons entitled to sign a recall petition***

52. *Section 10* provides for who is entitled to sign the recall petition. The general rule is that a person is entitled to sign the recall petition on any day in the signing period on which he or she would be entitled to vote in a UK Parliamentary election in the constituency, provided that he or she is included in the relevant register of parliamentary electors as a result of an application made on or before the day the Speaker's notice was given and is aged 18 or over, or the date of his or her 18th birthday is before the end of the signing period (*subsections (1) and (2)*). Alterations to the register of parliamentary electors that take effect after the day on which the Speaker's notice is given and on or before the cut-off day as a result of a late application for registration do not have effect for recall petition purposes (*subsection (2)*). Alterations to that register that take effect after the cut-off day also do not have effect for those purposes unless they are made as a result of a court order or the correction of an error (*subsection (3)*). The cut-off day means the third working day before the beginning of the signing period (*subsection (4)(a)*).
53. *Schedule 2* inserts section 13BC of the Representation of the People Act 1983 ("RPA 1983") and makes other amendments relating to alterations to the electoral register (*subsection (6)*).

### ***Schedule 2: Alteration of registers of parliamentary electors***

54. *Schedule 2* sets out how electoral registers can be altered during the recall petition process. It makes amendments to a number of existing provisions in the RPA 1983 relating to registering, in order to cater for the new recall petition regime.
55. The Schedule provides that if there is a determination, requirement or decision to alter the register before the cut-off day (which is the third working day before the beginning of the six week signing period) in order to add or remove a person from the register, or alter a person's registration - but that alteration has not yet been made - the registration officer must issue a notice on the cut-off day describing the alteration to be made and the notice has immediate effect (see new section 13BC(2) and (3) of the 1983 Act which is inserted by *paragraph 7*). If the requirement or determination falls within section 13A(1)(za), (zb) or (a) of the 1983 Act, this applies only if the requirement or determination is in respect of an application for registration made on or before the day on which the Speaker's notice was given (new section 13BC(2)(a)(i) and (ii) and (10)(b)).
56. If at any time on or after the cut-off day and before the prescribed time on the last day of the six week signing period the petition officer receives notification or makes a determination that an alteration is needed to the register as a result of a court order or the discovery of incorrect information, the petition officer must issue a notice setting out the alteration that will be made. The petition officer's notice must be issued on the day that he or she receives the notification or makes the determination and the notice has immediate effect (new section 13BC(5)-(7)).

### ***Section 11: How entitlement to sign a recall petition is to be exercised***

57. *Section 11* outlines how a person may sign the recall petition.
58. *Subsections (1) and (2)* provide that a person who is entitled to sign the recall petition may sign it once either in person, by post or via his or her proxy. This is subject to

regulations under section 18, which may set out the detail of the process for signing in person or by post or proxy.

59. *Subsection (4)* makes clear that references to a person entitled to sign a recall petition do not include a person acting as proxy for another. It ensures that this section does not prevent a person from signing in person in addition to signing as proxy for another person, or from signing as proxy for more than one person where this is permitted. Once a recall petition has been signed, the signature cannot be withdrawn (*subsection (3)*).

### **Section 12: Double signing**

60. *Section 12* makes it an offence for a person (“P”) to sign the recall petition more than once otherwise than by proxy (*subsection (1)*) or to sign in person or by post knowing someone else appointed as P’s proxy has already signed the petition in person as P’s proxy or is entitled to sign the petition by post as P’s proxy (*subsection (2)*). A person who signs the petition as a proxy commits an offence if he or she signs more than once for the same person (*subsection (3)*) or if he or she signs as a proxy for another person knowing that other person has already signed the petition in person or by post (*subsection (4)*). This mirrors existing offences which apply to double-voting at elections.
61. *Subsection (5)* provides that an offence under the section is to be treated as an illegal practice or offence for specified provisions of the RPA 1983 and the Electoral Law Act (Northern Ireland) 1962 with the result that:
- (i) a person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (*subsection (5)(a)*);
  - (ii) a person convicted of the offence is incapable for a period of three years of being registered as an elector or voting in parliamentary elections and local government elections in England, Wales, Scotland and Northern Ireland, being an MP or holding a local government elective office in England, Wales or Northern Ireland (*subsection (5)(b)* and (*d*));
  - (iii) proceedings may be taken in respect of offences alleged to have been committed under this section outside the United Kingdom by a Commonwealth citizen (including British citizens) or a citizen of the Republic of Ireland (*subsection (5)(c)*).
62. *Subsection (6)* provides that the court that convicts a person of an offence under this section need not impose any of the incapacities listed above, or may impose lesser incapacities in their place, if the court thinks it is just to do so because of the special circumstances of the case.

### **Section 13: Early termination of recall petition process**

63. *Section 13* sets out four circumstances in which the recall petition process will be terminated before the end of the usual six week signing period. The four circumstances are:
- (i) the date of the next UK Parliamentary general election is brought forward under section 2(7) of the Fixed-term Parliaments Act 2011 to a date which falls within six months after the date of the Speaker’s notice (*subsection (2)*);
  - (ii) the MP’s seat is vacated (by the MP’s disqualification, death or otherwise) (*subsection (3)*);
  - (iii) where the first recall condition was met, the MP’s conviction, sentence or order in question is overturned on appeal (*subsection (4)*); and
  - (iv) where the third recall condition was met, the MP’s conviction is overturned on appeal (*subsection (5)*).

- 64. *Subsection (6)* provides that, as soon as reasonably practicable after becoming aware that one of these circumstances has occurred, the Speaker must notify the petition officer.
- 65. *Subsection (7)* provides that, once the petition officer receives the Speaker's notice that an early termination condition has been met, the duties that relate to making the petition available for signing cease to have effect and no further action is to be taken pursuant to the Act or regulations made under it on the process relating to the signing of the petition, except for the steps specified in *subsection (8)* and any other steps specified in regulations.
- 66. *Subsection (8)* provides that, as soon as reasonably practicable after receiving the notice, the petition officer must take any steps necessary to terminate the process relating to the signing of the petition and give a public notice of the termination. The Speaker must lay before the House of Commons the notice given to the petition officer under *subsection (6)* (*subsection (9)*).

#### ***Section 14: Determination of whether recall petition successful***

- 67. *Section 14* sets out the mechanism for determining whether a recall petition was successful.
- 68. *Subsection (2)* provides that as soon as reasonably practicable after the end of the signing period the petition officer must determine whether the petition was successful; notify the Speaker of the outcome; and give a public notice of the outcome in the form and manner to be set out in regulations under section 18.
- 69. The recall petition is successful if the number of persons who validly sign the petition is at least 10 per cent of the number of persons who are registered in the register of parliamentary electors for the constituency on the last day of the signing period, whose applications for registration were made on or before the day on which the Speaker's notice was given, and who, according to their entry in the register, are aged 18 or over on that day (*subsections (3) and (4)*).
- 70. For the purposes of calculating under *subsection (3)* the number of persons registered in the register of parliamentary electors on the last day of the signing period, alterations to the register of parliamentary electors that take effect after the day on which the Speaker's notice is given and on or before the cut-off day as a result of a late application for registration are ignored (*subsection (4)*). The "cut-off day" is the third working day before the beginning of the signing period (*section 10(4)(a)*). A "late application for registration" is an application made after the day on which the Speaker's notice is given (*section 10(4)(b)*).
- 71. *Subsection (5)* provides that any alterations to the register which take effect after the cut-off day are also to be ignored for the purposes of calculating under *subsection (3)* the number of persons registered in the register of parliamentary electors on the last day of the signing period unless the alterations are the result of court orders or are to correct an error.
- 72. *Subsections (6) and (7)* provide that a recall petition is validly signed if it is signed by a person during the signing period who is entitled to sign under section 10, who has not previously signed the petition, who meets any conditions set out in regulations under section 18 that are applicable to the method of signing used, whose signature is not invalid as a result of conditions set out in such regulations and whose entry in the register of parliamentary electors has not been removed, after the person signed the petition, as a result of a court order or discovery of incorrect information.
- 73. *Subsection (8)* provides that the Speaker must lay before the House of Commons any notice received under *subsection (2)*.



### ***Section 15: Effect of successful petition***

74. **Section 15** provides that if a recall petition is successful, the MP's seat becomes vacant when the petition officer notifies the Speaker that the recall petition was successful (*subsection (1)*). However, this does not apply if, before the notice is given, the MP's seat is already vacated as result of the MP's disqualification, death, or for any other reason (*subsection (2)*). Subsection (1) is subject to regulations under section 18 about questioning the outcome of the petition (*subsection (3)*).

### ***Section 16: Expenses, donations and reporting***

75. **Section 16** gives effect to Schedule 3 (regulation of expenditure), Schedule 4 (control of donations to accredited campaigners) and Schedule 5 (recall petition returns). *Subsection (4)* provides that Schedules 4 and 5 can be amended by regulations to make provision that is the same as or similar to the modifications to Schedule 15 to the Political Parties, Elections and Referendums Act 2000 ("PPERA") (control of donations to permitted participants) made by or under the Political Parties and Elections Act 2009 (other than section 20). Those modifications are not in force. Regulations made under subsection (4) are subject to affirmative resolution procedure (*subsection (5)*).

### ***Schedule 3: Regulation of expenditure***

76. This Schedule regulates expenditure in relation to recall petitions.
77. The recall petition period is defined in *paragraph 1* as the period beginning with the day after the day on which the Speaker's notice is given and ending on the day that the petition officer receives notice from the Speaker under section 13 that one of the conditions for early termination of the petition process has been met or on the day that the petition officer gives notice to the Speaker of the outcome of the petition (section 14).
78. **Part 2** limits the amount of petition expenses that may be incurred during the recall petition period by or on behalf of non-accredited and accredited campaigners (defined in Part 5 of Schedule 3).
79. For non-accredited campaigners, the total amount of campaign expenditure that can be incurred by them or on their behalf must not exceed £500. An offence is committed if expenses are incurred above this threshold and the campaigner does not register for accreditation (provided the expenses are incurred knowingly or if the person/party/body should have reasonably known that they were incurring expenses above the threshold) (*paragraph 2*).
80. For accredited campaigners, the total amount that can be incurred must not exceed £10,000. An offence is committed if expenses are incurred above this threshold (provided they are incurred knowingly or if the person/party/body should have reasonably known that they were incurring expenses above the threshold). It is a defence to show that an Electoral Commission code of practice (*paragraph 16*), that was in force at the time that the relevant expenses were incurred, was complied with in determining the items and amounts of expenses and on the basis of those determinations the limit was not exceeded (*paragraph 3*).
81. *Paragraph 4* makes provision about the aggregation of expenses incurred by persons who are acting in concert. It would cover, for example, two groups both campaigning for the same outcome to the petition who agree to share the costs of distributing campaign leaflets by covering half the constituency each. *Sub-paragraph (3)* provides that where expenses are incurred by persons acting in concert, the total value of those expenses is to be regarded as having been incurred by each of the persons in question (and will therefore count towards each person's spending limits).
82. *Paragraph 5* makes provision about petition expenses that are incurred before the start of the recall petition period on property, services or facilities subsequently used

for campaign purposes during the recall petition period. An “appropriate proportion” of those expenses are treated as having been incurred during the recall petition period and therefore will count towards the spending limits in paragraphs 2 and 3 (*sub-paragraph (2)*). *Sub-paragraph (3)* defines the “appropriate proportion” as that proportion of the expense that is reasonably attributable to the campaigning which takes place during the recall petition period. The purpose of this paragraph is to prevent campaigners from circumventing the limits on expenditure by incurring expenses before the start of the regulated period (i.e. the recall petition period) on matters that are to be used during that period.

83. *Paragraph 6* concerns benefits in kind which are given to a campaigner either free of charge or at a discount of more than 10 per cent of their market value (*sub-paragraph (2)*). If the campaigner makes use of those benefits during the recall petition period in such a way that any expense incurred on them would have been treated as a petition expense, then the campaigner is deemed to have incurred expenditure on them of an amount equal to the difference between what the campaigner paid (if anything) and the market value of the benefit. An “appropriate proportion” of this expenditure (being the amount reasonably attributable to the use made of the benefit in kind during the recall petition period) will count towards the thresholds set out in paragraphs 2 and 3. However, where the appropriate proportion would be £50 or less, the deeming provision does not apply (*sub-paragraph (9)*).
84. *Paragraph 7* makes supplementary provision about what is to be counted as a petition expense incurred by the accredited campaigner. *Paragraph (a)* relates to petition expenses that the accredited campaigner incurs during the recall petition period but at a time before the campaigner becomes accredited. *Paragraph (b)* relates to petition expenses that the campaigner is treated as having incurred during the recall petition period under paragraphs 5 and 6. For the purposes of the limit on petition expenditure in paragraph 3, all these expenses are treated as having been incurred by an accredited campaigner and will therefore count towards the £10,000 limit.
85. *Part 3* imposes controls on the petition expenses of accredited campaigners. It is an offence to incur an expense, without reasonable excuse, without the authority of the responsible person or a person that the responsible person has authorised in writing to incur expenses. The same rules apply to payments. Invoices or receipts must be kept for payments of £20 or more, which must be delivered to the responsible person otherwise, in the absence of a reasonable excuse, an offence is committed. Part 3 also sets out restrictions on the payment of claims and makes it an offence, in the absence of a reasonable excuse, not to comply with those restrictions. It also sets out the processes for applying to a court for leave to pay a late claim and in respect of disputed claims.
86. *Part 4* defines a petition expense and sets out a list of matters that count as petition expenses. It also sets out the process for the Electoral Commission to seek approval for new or amended codes of practice on petition expenses.
87. *Part 5* defines an accredited campaigner and sets out eligibility to be an accredited campaigner. It also sets out the process for submitting an accreditation notice to the petition officer as well as subsequently altering information in the accreditation notice. It makes it an offence to fail to comply with the provisions relating to the alteration of the notice. Part 5 identifies the responsible person for the accredited campaigner (who is the treasurer if the campaigner is a registered party other than a minor party (as defined in PPERA)). In all other circumstances, the responsible person is the individual who is named in the accreditation notice. Part 5 also imposes a duty on the petition officer to publish information about accredited campaigners.
88. *Part 6* sets out supplementary provisions, including the power to alter the meaning of petition expense and certain financial limits, as well as providing how offences in Schedule 3 which are corrupt or illegal practices should be treated for the purposes of other electoral legislation. Various provisions of that legislation, which provide for the penalties for such offences and related matters, are applied.

***Schedule 4: Control of donations to accredited campaigners***

89. **Schedule 4** sets out the controls that apply to relevant donations to accredited campaigners who are not registered parties or who are registered parties but are minor parties (“registered party” and “minor party” have the same meaning as in PPERA). Donations to registered parties that are not minor parties will be reported as part of, and in line with, their reporting obligations under Part 4 of PPERA.
90. **Part 1** sets out the general rules relating to donations and defines a donation as: a gift of money or other property; sponsorship; money spent on the accredited campaigner’s petition expenses with no right to reimbursement from them; money lent, property services or facilities provided other than on commercial terms; or, where the accredited campaigner is not an individual, a subscription or fee paid for affiliation or membership. The Schedule sets out the definitions of, and the rules that apply to, each of these forms of donation, as well as how their value is to be calculated. It is immaterial whether a donation is made or received in the United Kingdom or elsewhere.
91. **Paragraph 4** sets out that donations do not include: a donation the amount or value of which is £500 or less; a grant from public funds; an individual providing services voluntarily in his or her own time and free of charge or interest that accrues to an accredited campaigner as a result of impermissible donations or donations from unidentifiable donors that are returned within 30 days.
92. **Paragraph 6** defines a “permissible donor” as: a registered party; an individual who is on the electoral register; a registered company incorporated in the United Kingdom or another member state but which conducts its business in the United Kingdom; a trade union entered in lists contained under relevant legislation set out in the Schedule; a building society; a limited liability partnership that is registered and conducts its business in the United Kingdom; a friendly society or a society that is registered under relevant legislation set out in the Schedule; or an unincorporated association of two or more people that carries on its business or activities wholly or mainly in the United Kingdom and the main office of which is in the United Kingdom.
93. A permissible donor does not include, in relation to a recall petition in respect of an MP for a constituency in Great Britain, a party registered in the Northern Ireland register maintained by the Electoral Commission under Part 2 of PPERA (which relates to the registration of political parties). This is necessary because Northern Ireland political parties can accept donations from citizens of the Republic of Ireland and other sources in the Republic of Ireland. **Paragraph 8** provides a power to the Minister by regulations – following consultation with the Electoral Commission - to alter the amount below which a donation is to be disregarded and the amount above which donations made on behalf of other persons are treated as separate donations.
94. **Part 2** of Schedule 4 sets out controls on donations. It prohibits the acceptance of donations from impermissible or unidentifiable donors. It also describes when donations will be treated as having been received or not received from permissible donors. An exempt trust donation (defined in **paragraph 11**) is treated as having been received from a permissible donor whereas a donation from a trustee of any property is not (unless the donation is sent on behalf of beneficiaries who are permissible donors).
95. **Part 2** also sets out the rules that apply to donations that are made on behalf of others (**paragraph 12**). Each individual contribution that is over £500 is treated as a separate donation. Offences are committed if the person making the donation on behalf of another fails (without reasonable excuse) to comply with the rules relating to making information available to the responsible person in compliance with the provisions in Schedule 5 that relate to recall petition returns.
96. **Paragraph 13** places a duty upon an accredited campaigner to take immediate reasonable steps to verify the identity of a donor if he or she receives a donation that is not immediately refused.

97. A duty is also placed upon an accredited campaigner to return donations from impermissible donors within 30 days of receipt of the donation. If this is not complied with, an offence is committed by both the accredited campaigner and the responsible person, although it is a defence to show that reasonable steps were taken to verify the donor's identity and that the person who is charged believed that the donor was permissible ([paragraph 14](#)).
98. In addition, a duty is placed on accredited campaigners to return donations from unidentifiable donors. The donation must be returned within 30 days of receipt of it and an offence is committed by the accredited campaigner and the responsible person if this is not done. If the identity of the individual or the facility that transmitted the donation cannot be established, then the donation must be returned to the Electoral Commission, which is obliged to pay it into the Consolidated Fund ([paragraph 15](#)).
99. [Paragraph 16](#) sets out the circumstances in which donations are treated as having been accepted or received. A donation that is received by an accredited campaigner that is not returned within 30 days of receipt is treated as having been accepted.
100. The courts can, following an application from the Electoral Commission, order the forfeiture of a donation from an impermissible or unidentifiable donor (with the amount paid into the Consolidated Fund). The Schedule sets out the appeal process against such an order and gives the power to make supplementary court rules relating to forfeiture.
101. The Schedule sets out the circumstances in which a person commits an offence if that person evades the restrictions on donations and it applies certain provisions of PPERA to offences under Schedule 4 more generally.

#### ***Schedule 5: Recall petition returns***

102. [Schedule 5](#) sets out the rules regarding recall petition returns for accredited campaigners which detail their expenditure and donations.
103. The return must contain a statement in relation to payments made in respect of petition expenses incurred by the accredited campaigner during the recall petition period (and any outstanding or disputed claims) – and if there were no such payments (or claims), a statement is required to that effect ([paragraph 2\(1\)](#)). Evidence of payments of £20 or over must be provided with the return ([paragraph 2\(3\)\(a\)](#)). The responsible person must also make declarations about petition expenses that the accredited campaigner is deemed to have incurred during the recall petition period under the acting in concert and notional expenses provisions in paragraphs 4 and 6 of Schedule 3 ([paragraph 2\(3\)\(b\) and \(c\)](#)). Payments (or claims) in respect of petition expenses that the accredited campaigner incurs during the recall petition period, but before accreditation, are not included in the statement of payments and claims (because they may not have kept full records of these), albeit these expenses should be included in a separate declaration accompanying the return ([paragraph 2\(2\), \(3\)\(d\) and \(4\)](#)).
104. [Paragraphs 3 and 4](#) prescribe what information the recall petition return must contain about relevant donations received by an accredited campaigner. These obligations do not apply to accredited campaigners who are registered parties that are not minor parties as these are regulated by Part 4 of PPERA ([paragraph 1\(3\)](#)). Information about each donation that the accredited campaigner accepts or returns must be recorded in the return.
105. The return must also be accompanied by a declaration, signed by the responsible person, regarding compliance with the spending and donation rules. This obligation does not apply to accredited campaigners who are registered parties that are not minor parties ([paragraph 5\(3\)](#)).
106. [Paragraph 6](#) requires the return, together with the supporting documents, to be delivered to the petition officer within 30 days of the end of the recall petition period.

107. *Paragraph 7* creates offences relating to the failure to comply (without reasonable excuse) with the provisions relating to the delivery of all of the relevant statements, documentation and declarations or the provision of false information.
108. The petition officer is made responsible for providing relevant documentation relating to the return to the Electoral Commission as soon as reasonably practicable after receipt, as well as making the return and accompanying documentation available for inspection (*paragraphs 8 and 9* set out the process for this). The Minister may, by regulations, set a fee to be paid by persons other than the Electoral Commission seeking copies of the return and accompanying documentation. It is intended that this fee will be set at a level that recovers the cost of providing the copies and no more.

### ***Section 17: Loans***

109. *Section 17* amends section 62 of the Electoral Administration Act 2006 so that recall petitions are included in the provisions that regulate loans. Part 4A of PPERA makes provision for the regulation of loans and related transactions to registered parties, their members, associations of members and holders of elected office. Section 62 of the Electoral Administration Act 2006 gives the Minister an order making power to extend the loans and related transactions regime to candidates at elections, recognised third parties at national elections and permitted participants in a referendum. No orders have yet been made under this section. Section 17 amends section 62 of the 2006 Act so that the order making power is extended to cover loans and related transactions to accredited campaigners in relation to a recall petition.

### ***Section 18: Power to make further provision about conduct of a recall petition etc***

110. *Section 18* provides that the Minister may, by regulations, make further provision about the conduct of a recall petition; about the questioning of the outcome of a recall petition and the consequences of irregularities; and about the giving, sending, delivery or receipt of notices or other documents under this Act. Regulations under this section may incorporate any provision of electoral legislation, amend any form contained in a provision of electoral legislation for use in relation to recall petitions, make provision conferring a discretion on any person, create a criminal offence and make further provision about criminal offences under this Act (*subsection (2)*). A provision of electoral legislation is defined in *subsection (7)* as that made under the Representation of the People Acts, or other legislation which is a provision relating to elections.
111. The regulations are likely to cover the detailed conduct rules for the administration of the recall petition, including the publication of notice of the recall petition, the issue and receipt of petition signature sheets, signing procedures, the procedure to be followed in counting the signatures and the retention, disposal and inspection of petition documentation (*subsection (3)*). The regulations will also set out the process by which a person may question the success or failure of the petition. The outcome of a recall petition may only be questioned in accordance with such regulations (*subsection (5)*). Regulations under this section are subject to the affirmative resolution procedure (*subsection (8)*).

### ***Section 19: Performance of the Speaker's functions by others***

112. *Section 19* provides that if a relevant circumstance arises, the Speaker's functions under the Act are to be performed by the Chairman of Ways and Means or a Deputy Chairman of Ways and Means (*subsection (1)*). A relevant circumstance arises if the Speaker is unable to perform his or her functions because of absence, illness or for any other reason; the first, second or third recall condition has been met in relation to the Speaker; or there is a vacancy in the office of the Speaker (*subsection (2)*).



## **Section 20: Minor and consequential amendments**

113. **Section 20** gives effect to Schedule 6.

### **Schedule 6: Minor and consequential amendments**

114. **Paragraph 1** of Schedule 6 amends the form of writ in the Appendix of Forms in Schedule 1 to the RPA 1983 (parliamentary election rules), to provide for the option of stating on the form of writ that a by-election is to be held as a result of a successful recall petition.
115. **Paragraph 3** amends Part 1 of PPERA in relation to the role of the Electoral Commission:
- (i) The Commission must prepare and publish a report on the actions taken under the Act after the giving of the Speaker's notice under Section 5 (*sub-paragraph (2)*).
  - (ii) The Commission must keep under review, and from time to time submit reports to the Minister on such matters relating to recall petitions as the Commission may determine, except matters in relation to how an MP becomes subject to a recall petition process (*sub-paragraph (3)*).
  - (iii) A representative of the Commission may attend any part of the proceedings that is the responsibility of the petition officer in relation to the petition (*sub-paragraph (4)*).
  - (iv) The Commission's code of practice on the attendance of observers at elections must also cover the attendance of representatives of the Commission at any part of the recall petition proceedings that are the responsibility of the petition officer (*sub-paragraph (5)*).
  - (v) The Commission is to be consulted before any regulations are made under sections 9(5) or 18 (*sub-paragraph (6)*).
  - (vi) The Commission may give advice and assistance to petition officers in relation to recall petitions and to accredited campaigners (*sub-paragraph (7)*).
116. **Paragraph 4** amends Part 2 of PPERA so that the treasurer of a registered party is the person responsible for the party's compliance with the financial controls on recall petitions, unless the party has a campaigns officer. In this case the campaigns officer is responsible for ensuring the party's compliance with the controls.
117. **Paragraphs 5 and 6** amend Part 5 and Part 6 of PPERA respectively so that the definition of campaign expenditure and controlled expenditure does not include any petition expenses that fall to be reported in a recall petition return.
118. **Paragraph 7** amends Schedule 19A to PPERA which sets up a regime for the reporting of gifts received by unincorporated associations making political contributions. The definition of a "political contribution" is extended to include making a relevant donation to an accredited campaigner.

## **Section 21: Regulations**

119. **Section 21** makes further provision in relation to the regulations that can be made under powers given by the Act and sets out the procedure to be followed in making them. The regulations are to be made by statutory instrument (*subsection (1)*) save for regulations relating to the petition officer's accounts or the form of a recall petition return (*subsection (2)*) and regulations relating to commencement (which are required to be made by statutory instrument under section 24) (*subsection (9)*). The regulations may make consequential, supplementary, incidental, transitional or saving provision (*subsection (3)*), including, in the case of regulations made under section 18, amending any legislation apart from the Recall of MPs Act itself (*subsection (4)*).

120. *Subsection (5)* applies section 26 of the Welsh Language Act 1993 to regulations made under this Act in the same way as it applies to Acts of Parliament. The effect is that where regulations under the Act specify a form of words to be used, in a form, a power is given for the appropriate Minister to make an order that prescribes the form of words in Welsh.
121. *Subsection (7)* provides that provisions that may be made by regulations under the Act for which no Parliamentary procedure is required may be included in regulations that are subject to the affirmative or negative resolution procedures. Those subject to the negative resolution procedure may be included in regulations subject to affirmative resolution procedure (*subsection (8)*).

## **Section 22: Interpretation**

122. **Section 22** defines terms that are used in the Act and also contains references to definitions elsewhere in the Act.

## **Section 23: Extent**

123. **Section 23** provides that the Act extends to the whole of the United Kingdom and that the amendments made by the Act to other legislation have the same extent as that other legislation. Some of the provisions of PPERA amended by the Act extend to Gibraltar (see section 163(11) of PPERA).

## **Section 24: Commencement**

124. *Subsection (1)* provides that the following provisions come into force on the day that the Act receives Royal Assent:
- (i) The power to amend the wording of the petition-signing sheet by regulations (section 9(5)).
  - (ii) The power to amend Schedules 4 and 5 by regulations (section 16(4)).
  - (iii) The amendments to section 62 of the Electoral Administration Act 2006 which confer a power by order to make provision on loans (section 17).
  - (iv) The power to make further provision about the conduct of a recall petition etc by regulations (section 18).
  - (v) The general provision about regulation-making powers under the Act (section 21).
  - (vi) The provisions relating to interpretation, extent, commencement and short title (sections 22 to 25).
125. *Subsection (2)* sets out the other regulation-making powers and related provisions that come into force on the day that the Act is passed.
126. The other sections of the Act are to be brought into force by the Minister by means of regulations made by statutory instrument (*subsection (3)*).

## **Section 25: Short title**

127. This section sets out the short title of the Act.