Our Ref: PEER625992

The Rt Hon the Lord Lang of Monkton DL
Chair, Select Committee on the Constitution
House of Lords
London
SW1A 0PW

4 February 2015

Dear Lord Lang,

**Government Response to the Select Committee on the Constitution’s Seventh Report of Session 2014-15, Recall of MPs Bill**

I would like to thank the Committee for its Report on the Recall of MPs Bill, published on 15 December 2014. I am happy to enclose the Government’s response to the Committee’s report which I hope will be of interest to the Committee as the Bill is considered further in the House of Lords.

I can assure the Committee that the Government will continue to engage with debate around the measures in the Bill and will listen to concerns both within and outside Parliament throughout the Bill’s consideration. I and my ministerial colleagues will be happy to provide any further information which might be of assistance to the Committee, and I look forward to further discussions in the House about the Bill.

SAM GYIMAH
Government Response to the Select Committee on the Constitution’s Seventh Report of Session 2014-15, Recall of MPs Bill

Introduction

The Government is grateful to the Committee for its report which forms a valuable part of the House of Lords’ scrutiny of the Bill. The Government notes that the Constitution Committee’s report does not make recommendations to the Government to change the Bill, but draws key points to the attention of the House of Lords to inform debates. The Government wishes to respond to these points now before the Bill is considered at Report stage.

Responses to key points in the report

6. “Clause 18 provides that “The Minister may by regulations make further provision about the conduct of a recall provision” and that such regulations “may make provision creating a criminal offence”. Such regulations are to be made by statutory instrument, subject to the affirmative resolution procedure. The House may wish to scrutinise why the Government consider it necessary to empower Ministers to create new election law offences by statutory instrument.”

The power is in the Bill to enable Ministers to apply the existing electoral law on offences to the recall petition process with suitable modifications.

In order to ensure the integrity of the recall petition process a number of criminal offences will be required. However, the Government does not consider that these will be ‘new’ offences as they will mirror with appropriate modifications well-established offences which apply at elections and referendums. The intention is to use the power only to replicate or apply criminal offences which already exist in relation to elections, adapted as necessary for the recall petition process, which have been identified as necessary for ensuring free and fair elections and the proper protection of personal data. Examples of the kinds of offence which we anticipate will need to be applied in regulations include that it is an offence to impersonate another constituent and sign as them, known as ‘personation’ at elections (s.60 Representation of the People Act 1983); that it is illegal to tamper with signature sheets (s.65 RPA 1983); and that the details of the printer and promoter of petition campaign literature must be included on the literature itself or else an offence is committed (s.110 RPA 1983).

The Government considers that it would be inappropriate to include in the Bill full details of all the criminal offences as each criminal offence will be attached to a breach of the detailed rules that will themselves be set out in regulations.

12. “First, any sentence of imprisonment in respect of a conviction for any offence may trigger a recall petition. The constitutional issue arising in respect of this matter is what should happen if an MP commits an offence for political reasons. MPs have in the past
engaged in public protest against aspects of Government policy and, on occasion, such protest has resulted in criminal proceedings. In the 1980s Unionist MPs were imprisoned for offences committed in protest at the 1985 Anglo-Irish Agreement. Likewise, Nationalist MPs were imprisoned for offences connected with processions that were contrary to law in Northern Ireland. A Labour MP (Terry Fields) was imprisoned for refusing to pay his ‘poll tax’ (community charge). The [Political and Constitutional Reform Committee (PCRC)], in its report on the draft bill, considered whether there should be an exemption from a recall petition in a particular instance because of the political nature of an offence, although it noted “the difficulty of defining what constitutes a political crime or a crime of conscience”. The Government’s response to the PCRC was that constituents should be left with the power to decide whether to recall their MP in these circumstances.”

The Constitution Committee notes the PCRC’s comments about the possibility of MPs committing offences for political reasons, and notes their view as to "the difficulty of defining what constitutes a political crime or a crime of conscience."

There may of course be circumstances in which constituents consider that their MP broke the law only because he or she was standing up for a right or principle with which they agreed. However, it is then likely they would not sign a recall petition. Constituents who disagree with the MP’s reason for committing the criminal offence should not be denied recourse to the recall petition process. If a by-election is triggered, the MP will have the opportunity to stand as a candidate if the MP believes he or she has support within the constituency for the relevant actions.

13. “Secondly, the provision that an MP should be subject to recall where he or she is suspended from the House for ten sittings days or more means that it will be MPs themselves, rather than voters, who under this scenario determine whether the recall process can be triggered. The constitutional purpose of recall is to increase MPs’ direct accountability to their electorates: it is questionable whether that purpose is achieved when the trigger is put in the hands of MPs rather than constituents.”

The issue of the role of the public in initiating recall was debated at length in the House of Commons, and MPs concluded that recall should be based on serious wrongdoing. In that sense, it is important to have clear and objective triggers which are not a matter of interpretation. The Government believes that it is important to be careful to respect the disciplinary arrangements of the House of Commons, and this Bill seeks to give the House clarity about the length of suspension which will trigger the opening of a recall petition. Once an MP has been found to have engaged in serious wrongdoing and suspended from the House, it will be up to constituents to decide whether the MP should lose their seat. This is an important new power for constituents who, under the current system, have to rely on the MP choosing to step down.

13. “...There is also a possibility that decisions taken either by the House of Commons Committee on Standards or by the House itself may become skewed by knowledge of
the ten-day trigger. Ten of the 15 suspensions following Committee reports since 1992 would have triggered recalls and, of those, five have been for exactly ten sitting days or two weeks (the threshold for recall proceedings). It could be that decisions are taken whereby MPs are suspended for a shorter period in order to avoid the prospect of their being recalled. Conversely, it could of course be that an unpopular MP is suspended for longer in the hope that he or she is recalled.”

The Government’s view is that it will be for the Standards Committee and for the House of Commons to judge how they wish to respond to the introduction of a recall mechanism. The intention of the Government in introducing the Bill was clear – to ensure that an MP who commits serious wrongdoing is subject to a recall petition process. An MP is suspended by the House, following on from a report of the Standards Committee, only in serious cases. The period of suspension is for the House to judge.

14. “Thirdly, the PCRC recommended that an MP should be recalled only if there was “a significant level of dissatisfaction” with that MP. Accordingly, they recommended that the threshold be raised from 10% to at least 20% of eligible registered electors. The Government responded that they would give this and other views on the threshold “further consideration ... as part of the development of the recall policy”. The bill retains the 10% threshold.”

The Constitution Committee notes the PCRC’s recommendation to raise the threshold for constituents to sign the petition to trigger a by-election from 10% to 20%. The Constitution Committee quotes from the Government’s interim response to the PCRC. In the Government’s July 2013 final response to the PCRC report the Government said that it did not believe “that the threshold should be raised to 20%. We committed to allowing 10% of constituents signing a petition to trigger a by-election and we believe 10% of the eligible electorate is the right threshold in the context of a recall process which follows on from proven wrongdoing.”

15. “Fourthly, whereas voting is by secret ballot, signing a recall petition is a public act. Clause 18(3)(f) provides that the Minister may make provision by regulations about “the retention or disposal of documents or other information in relation to a recall petition”. The PCRC was concerned about the public nature of a recall petition, stating that “it may be more likely to inspire public confidence in the long run if the Government were to acknowledge that it is not possible to protect the privacy of people who sign the petition and to be open about its public nature”. The Government’s response was that “it remains the Government’s view that there are ways in which privacy can be protected”.”

The Constitution Committee notes that signing the petition is a public act, and the Government agrees with this assessment. In the Government’s July 2013 response to the PCRC report the Government said that the privacy of those signing in person cannot be guaranteed. This refers to the fact that those who wish to sign in person could be seen at the signing place, and, unlike at an election or referendum, the act of going into
the signing place is a clear indication of a person’s views, albeit there remains the possibility of spoiling the signing sheet.

One option for those concerned about the public nature of signing in person is to choose to sign by post. That facility will be available on demand to all those who wish to sign the petition.

In the regulations which will set out the conduct of the recall petition, the Government will address the process in further detail, including the rules for access to the marked register once the petition has closed. The Government believes that there needs to be a balance struck between preserving the role these documents play at elections in identifying fraud, while protecting the information of those who have signed.