

RECALL OF MPS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

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)**).

*These notes refer to the Recall of MPs Act 2015 (c.25)
which received Royal Assent on 26 March 2015*

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.