

SCHEDULES

SCHEDULE 4

LEGAL PROCEEDINGS: APPLICATION TO RECALL PETITIONS OF EXISTING PROVISIONS

PART 1

REPRESENTATION OF THE PEOPLE ACT 1983, PART 3

1.—(1) Part 3 of the 1983 Act (legal proceedings) applies for the purposes of a petition and has effect—

- (a) with the modifications made by this Part of this Schedule, and
- (b) with any other necessary modifications.

(2) Sections 204 and 205 of the 1983 Act (Scotland and Northern Ireland) have effect for the purposes of the provisions applied by this Part, with the following modifications to section 204 (general application to Scotland)—

- (a) in subsection (1), omit “, and accordingly” to the end;
 - (b) omit subsections (2), (4), (7), (9) and (10).
- (3) Except where the context requires otherwise—
- (a) a reference to a provision that is applied by this Part has effect as a reference to that provision as so applied;
 - (b) expressions are to be construed in accordance with regulation 3 (interpretation) of these Regulations.

General modifications

2. A reference, however expressed, in a provision applied by this Schedule or in the heading to such a provision—

- (a) to a parliamentary election petition, other than the reference in section 123(1)(a) (rota of judges), has effect as if it were a reference to a recall petition complaint;
- (b) to any term in the first column of the following table has effect as if it were a reference to the corresponding term in the second column.

<i>Term referred to</i>	<i>Modification</i>
Candidate at an election	The MP to whom a recall petition relates
A corrupt or illegal practice	A corrupt or illegal practice under the Recall of MPs Act 2015 or the Recall of MPs (Recall Petition) Regulations 2016
Election	
Petitioner	Petition

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<i>Term referred to</i>	<i>Modification</i>
	Complainant

Questioning of a recall petition

3. For section 120 (method of questioning recall petition), substitute—

“A recall petition may not be questioned except by a complaint that there was an undue outcome to the petition (“a recall petition complaint”) presented in accordance with this Part of this Act.”

4. In section 121 (presentation and service of a recall petition complaint)—

(a) for subsections (1), (1A) and (2) substitute—

“(1) A recall petition complaint may be presented by one or more of the following persons—

(a) a person who signed the petition or was entitled to do so; or

(b) the MP in relation to whom the petition was held.

(2) The respondent to a complaint shall be—

(a) where the complaint relates to the conduct of the petition officer, that officer;

(b) where the complaint is made by a person other than the MP in relation to whom the petition was held, that MP;

(c) otherwise, the petition officer.”;

(b) in subsection (3), for “to which it relates” substitute “of the MP to whom the recall petition related”;

(c) in subsection (4), for “returning officer of the constituency to which the petition related” substitute “petition officer”.

5. In section 122 (time for presentation or amendment of a recall petition complaint)—

(a) for subsection (1), substitute—

“(1) Subject to the provisions of this section, a recall petition complaint must be presented within 21 days after the day on which public notice of the outcome of the petition is given in accordance with section 14(2)(c) of the Recall of MPs Act 2015 (determination of whether recall petition successful).”;

(b) in subsection (2)—

(i) for “election or return” substitute “outcome of the petition”,

(ii) for “since the time of that return” substitute “after the day referred to in subsection (1)”;

(c) in subsections (3) and (5), for “election or return” substitute “outcome of the petition”;

(d) in subsection (3), in paragraph (b)—

(i) for “to whose election the petition relates or an agent of his” substitute “to whom the recall petition related”,

(ii) omit “or his election agent”;

(e) for subsection (4) substitute—

“(4) The day referred to in subsection (3) is the tenth day after the end of the time allowed for delivering to the petition officer the recall petition return required by Schedule 5 to the Recall of MPs Act 2015 (recall petition returns) or, if later—

- (a) that on which the petition officer receives the return and all documents required by that Schedule to accompany it;
 - (b) where the return and those documents are received on different days, the last of those days;”;
 - (f) in subsection (6), omit “; and” and paragraph (b);
 - (g) in subsection (7), for “an election” substitute “the outcome of a petition”.
6. In section 123 (constitution of the election court and place of trial), in subsection (3), for “for which the election was held” substitute “of the MP in relation to whom the recall petition was held”.
7. Omit sections 127 to 135A (questioning of a local election).

Procedure on recall petition complaints

8. In section 136(2) (security for costs)—
- (a) omit paragraph (b) and “and” following it;
 - (b) in paragraph (i), omit “and the amount” to “the sheriff directs”.
9. In section 138 (list of petitions)—
- (a) in subsection (1), omit the words after paragraph (b);
 - (b) for subsection (2), substitute—
“ (2) Where more than one recall petition complaint is made in relation to the same petition, those complaints shall be dealt with as one complaint.”;
 - (c) omit subsections (3) to (5).
10. In section 139 (trial of petition)—
- (a) in subsection (1), for “, in the case of” to the end substitute “14 days before the day of trial”;
 - (b) in subsection (3)—
 - (i) for “respondent” substitute “the MP to whom the petition related”;
 - (ii) omit the words after “prorogation of Parliament”;
 - (c) in subsection (4), omit the second paragraph;
 - (d) for subsection (5), substitute—
“ (5) On the trial of a complaint of an undue result in a recall petition, the respondent may give evidence to prove that the result was not undue in the same manner as if the respondent had presented a petition.”;
 - (e) omit subsection (6).
11. In section 140 (witnesses), in subsection (1), omit the words after “the High Court”.
12. In section 143 (expenses of witnesses), in subsection (2), omit the second paragraph.
13. In section 144 (conclusion of trial of recall petition complaint)—
- (a) for subsection (1), substitute—
“ (1) Subject to subsection (3A), at the conclusion of the trial of a recall petition complaint, the petition court shall determine whether the outcome of the recall petition should be upheld, and the determination so certified shall be final to all intents as to the matters at issue in the complaint.”;
 - (b) for subsection (3), substitute—
“ (3) If the judges constituting the petition court—

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- (a) differ as to whether the outcome of the recall petition should be upheld, they shall certify that difference and the outcome of the petition shall be deemed to be upheld;
- (b) determine that the outcome of the petition should not be upheld but differ as to any part of the rest of the determination, they shall certify that difference and the outcome of the petition shall be deemed to be void.

(3A) A determination under this section of a complaint in relation to a petition that was successful shall avoid the outcome of that petition only if the complaint was made within the period of 21 days after the day on which public notice of the outcome of the petition is given in accordance with section 14(2)(c) of the Recall of MPs Act 2015 (determination of whether recall petition successful).”;

- (c) in subsection (7), omit “in their Journals” to the end;
- (d) after subsection (7), insert—

“(8) If the determination of the petition court under this section is that the outcome of the recall petition is void, section 5(1) of the Recall of MPs Act 2015 (Speaker’s notice) applies in relation to the MP in respect of whom the petition was held as if—

- (a) a petition had not been held, and
- (b) receipt by the Speaker of the court’s certificate is the moment the Speaker becomes aware that the recall condition giving rise to the original petition has been met in relation to that MP,

and the remainder of the Act (including the remainder of that section), applies in relation to that MP accordingly.”.

14. Omit sections 145 (conclusion of trial of local election petition) and 145A (determination in respect of election of Mayor of London or constituency member of London Assembly).

15. In section 146 (special case for determination of High Court)—

- (a) omit subsection (3),
- (b) in subsection (5), omit the words after “shall be final” to the end.

16. In section 147 (withdrawal of complaint)—

- (a) in subsection (1), omit the second paragraph;
- (b) in subsection (2), omit “or local government area”.

17. In section 155 (neglect or refusal to pay costs), in subsection (1)(a), omit “, and” to the end of paragraph (b).

18. In section 157 (appeals and jurisdiction)—

- (a) in subsection (1), after “this Act” insert “or the Recall of MPs Act 2015”;
- (b) in subsection (2)—
 - (i) for “and of the rules made under it” substitute “, the rules made under it and the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”;
 - (ii) in paragraph (c), for “, and” to the end of the subsection, substitute “shall be observed.”;
- (c) in subsection (4)—
 - (i) omit “in relation to parliamentary elections”;
 - (ii) after “this Part” insert “as applied by the Recall of MPs Act 2015”;
- (d) omit subsection (6);

(e) in subsection (7), omit “to (6) above and, in relation to elections of councillors, subsection (3),”;

(f) in subsection (8), omit the reference to subsection (5).

Consequences of finding by petition court of corrupt or illegal practice

19. In section 158 (report as to whether MP guilty of a corrupt or illegal practice)—

(a) in subsection (1), omit “or section 145”;

(b) in subsection (3)—

(i) for the first paragraphs (a) and (b) substitute—

“(a) that no corrupt or illegal practice was committed at the recall petition by the MP to whom the petition relates or with his knowledge or consent and the offences mentioned in the report were committed without the sanction or connivance of that MP, and

(b) that all reasonable means for preventing the commission of corrupt and illegal practices at the petition were taken by and on behalf of that MP.”;

(ii) omit the second paragraph.

20. In section 159 (MP reported guilty of corrupt or illegal practice)—

(a) for subsections (1) and (3) substitute—

“(1) If the MP in relation to whom an unsuccessful recall petition is held is reported guilty of any corrupt or illegal practice that petition shall be void.”;

(b) in subsection (4), after “this Act” insert “and the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”.

21. In section 160 (persons reported personally guilty of corrupt or illegal practices)—

(a) in subsection (1), omit “or section 145”, “, or” and paragraph (b);

(b) in subsection (4A), for the words after “reported” to the end substitute—

“personally guilty of—

(a) a corrupt practice under regulation 118 (personation) or 120 (offences relating to applications for postal and proxy signing) of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016, or

(b) an illegal practice under regulation 119 of those Regulations (other signing offences).”;

(c) omit subsection (7), after “this Act” insert “and the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”.

Further provision as to avoidance of recall petitions and striking off signatures

22. In section 164 (avoidance of election for general corruption etc)—

(a) for subsection (1) substitute—

“(1) Where on a recall petition complaint it is shown that corrupt or illegal practices or illegal payments or hirings committed in reference to the petition for the purpose of promoting or procuring a particular outcome in that petition have so extensively prevailed that they may reasonably be supposed to have affected the result, that petition shall be void.”;

(b) omit subsection (3).

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23. Omit section 165 (avoidance of election for employing corrupt agent).
24. In section 166 (signatures to be struck off for corrupt or illegal practices)—
- (a) for subsection (1) substitute—

“(1) Where, on a recall petition complaint, it is shown that a person has been guilty of bribery, treating or undue influence in respect of any other person who signed the petition there shall, on scrutiny, be struck off from the petition one signature for every person who signed it and is proved to have been so bribed, treated or unduly influenced.”;
 - (b) in subsection (2), for the words after “hiring at” substitute “a recall petition signs that petition, that signature is void”;
 - (c) in subsection (3), for the words after “Parliamentary election” to the end substitute “and, by reason of that incapacity, is not entitled to sign a recall petition signs that petition, that signature is void.”.

Power to except innocent act from being illegal practice, payment, employment or hiring

25. Omit section 167 (application for relief).

Prosecutions for corrupt or illegal practices

26. In section 168 (prosecutions for corrupt practices), in subsection (1)—
- (a) in paragraph (a)(i), for “section 60 or 62A” substitute “regulation 118 (personation) or 120 (offences relating to applications for postal or proxy signing) of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”;
 - (b) in paragraph (b), omit “not exceeding the statutory maximum”.
27. In section 169 (prosecutions for illegal practices), for England and Wales omit “not exceeding level 5 on the standard scale”.
28. In section 173 (incapacities on conviction of corrupt or illegal practice)—
- (a) in subsection (1), after “subsection (2)” insert “and (2A)”;
 - (b) in subsection (2), for “section 60” to the end substitute “a corrupt practice under regulation 118 (personation) or 120 (offences relating to applications for postal and proxy signing) of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016, or an illegal practice under regulation 119 of those Regulations (other signing offences).”;
 - (c) after subsection (2), insert—

“(2A) A court before which a person is convicted of an offence referred to in subsection (2B) may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of this section.

(2B) Those offences are any offence under the following provisions of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016—

 - (a) regulation 119 (other signing offences),
 - (b) regulation 125 (broadcasting from outside the United Kingdom),
 - (c) regulation 126 (imitation official petition notice cards).”.

Illegal payments, employments or hirings

29. Omit section 175 (illegal payments, etc).

General provisions as to prosecutions

- 30.** In section 176 (time limit for prosecutions)—
- (a) in subsection (1), for “this Act” substitute “this Part of this Act or in the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”;
 - (b) in subsection (2C), for “rule 57 of the parliamentary elections rules” substitute “regulations 46 and 47 (retention of documents) of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”;
 - (c) in subsection (2D), for “rule 57” substitute “regulations 46 and 47 of those Regulations”.
- 31.** Omit section 177 (local election offences punishable summarily).
- 32.** In section 178 (prosecution of offences committed outside the United Kingdom), for “this Act” substitute “this Part of this Act or the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”.
- 33.** In section 179 (offences by associations)—
- (a) for “section 100 or 110A above” substitute “regulation 131 (details to appear on recall petition publications) of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”;
 - (b) after “this Act” insert “or those Regulations”.
- 34.** In section 180 (evidence by certificate of holding of recall petition)—
- (a) in paragraph (a), omit “, and”;
 - (b) omit paragraph (b);
 - (c) for “returning officer” to the end of paragraph (ii) substitute—
 - “petition officer—
 - (i) that the petition mentioned in the certificate was duly held, and
 - (ii) that the person named in the certificate was the MP to whom the petition related,”.
- 35.** In section 181 (Director of Public Prosecutions), in subsection (1), after “this Act” insert “or the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”.

Supplemental

- 36.** In section 182 (rules of procedure), in subsection (1) and in subsection (3), at the end insert “as it has effect for the purposes of the Recall of MPs Act 2015 and the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”.
- 37.** In section 183 (costs), for “Part 2 or this Part of this Act” substitute “this Part of this Act or the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”.
- 38.** In section 184 (service of notices)—
- (a) in subsection (1), after “this Act” insert “or the Recall of MPs Act 2015 (Recall Petition) Regulations 2016”;
 - (b) in paragraph (a), omit “or, as the case may be, the area of the authority for which the election was held”.
- 39.** In section 185 (interpretation of Part 3)—
- (a) omit the definitions of “appropriate officer”, “candidate”, “date of the allowance of an authorised excuse”, “declaration as to election expenses” and “return as to election expenses”;

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- (b) in the definition of “Licensing Acts”, for “means” to the end substitute “means the Licensing Act 2003 and the Acts amending that Act, or the corresponding enactments forming part of the law of Scotland or Northern Ireland;”.