

Petitions, Polling Stations and Paisley: the First Outworking of the Recall of MPs Act 2015

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Abstract

The Recall of MPs Act 2015 allows constituents to petition for their MP to be unseated. A petition of recall is opened, for six weeks, if an MP has received a custodial sentence or been suspended from the House of Commons for ten or more sitting days. Should 10 per cent of constituents sign the petition, a by-election is required, which the deposed MP has the right to contest. The first test of the Act came in 2018, when Ian Paisley, MP for North Antrim, was suspended from the Commons for thirty days. This article examines how the Act was implemented and assesses whether procedural oddities played any part in the petition failing to attract sufficient signatures to trigger a by-election.

Keywords: recall, petition, signatures, by-election, MP, Paisley

Introduction

THE RECALL OF MPs Act 2015 is a radical piece of legislation which, for the first time, allows for the removal of an MP by the public. The Act allows for a petition of recall to be opened if the MP has received a custodial or suspended prison sentence; is convicted of providing false or misleading information for allowance claims under the Parliamentary Standards Act 2009; or is barred from the House of Commons for ten sitting days, or fourteen calendar days. If the petition to unseat the elected member attracts signatures from a minimum of 10 per cent of the MP's constituents, a by-election is called. The unseated MP is allowed to take part.

July 2018 saw the first deployment of the Act. The Democratic Unionist party (DUP) MP for North Antrim, Ian Paisley, was barred from the House of Commons for thirty days. His suspension, recommended by the House of Commons Standards Committee and approved by the Commons, followed undeclared holidays in Sri Lanka and representations on behalf of the Sri Lankan government which amounted to 'paid advocacy'.¹ The length of Paisley's ban triggered a petition under the 2015 Act. The petition had to remain open for at least six weeks, but only 9.4 per cent of the electorate signed

the petition, just short of the 10 per cent required to enforce a by-election. Paisley was able to resume his position in the Commons once his suspension expired.

This article examines this first outworking of the 2015 Act, exploring the background, implementation and potential implications of the Paisley case. The episode showed that even in a serious case of misconduct—Paisley's suspension from the Commons was the longest on record—the electorate may not be greatly exercised. However, the article does also indicate that promotion of the petition facility may in this case have been modest, with lessons to be heeded for implementing the Act within a constituency.

The Recall of MPs Act 2015

The Recall of MPs Act passed under the Conservative-Liberal Democrat coalition in 2015 came into force in March 2016. Its history lies in the parliamentary expenses scandal which emerged in 2009. Whilst some MPs resigned or were prosecuted (or both), there was no punitive sanction available to electors. The legacy of the saga was the need to empower constituents to be able to take action against MPs in breach of the law or parliamentary rules. One MP referred during the passage of the Recall Bill to the 'disgust

that many of our constituents still feel about politics and politicians'.² Survey evidence suggested that 79 per cent of the public viewed the right of recall of MPs as a 'good idea', with only 10 per cent believing it be a 'bad idea'.³ The promise of 'early legislation to introduce a power of recall, allowing voters to force a by-election where an MP is found to have engaged in serious wrongdoing and having had a petition calling for a by-election signed by 10 per cent of constituents', was written into the Conservative-Liberal Democrat 2010 coalition agreement.⁴ The government's decision to offer recall powers attracted cross-party support. Labour had offered a manifesto pledge in 2010 that 'MPs who are found responsible for financial misconduct will be subject to a right of recall'.⁵

The Recall of MPs Act offered limited powers of recall to voters in the event of serious and proven cases of misconduct, which had led to the criminal conviction of an MP or a lengthy suspension from the Commons. This confinement of powers of recall to the most serious cases of impropriety was designed to assuage those MPs fearful of abuse by politically motivated constituents. The House of Commons Political and Constitutional Reform Select Committee opposed the recall power, arguing that the House of Commons Standards Committee, which now included lay members, was capable of taking sanctions against errant MPs.⁶ Some MPs feared recall devices could be used by electors to deselect MPs, prevent them taking unpopular decisions, or inhibit them from voting against the wishes of a section of the constituency. It was feared this would reduce MPs to the status of mandated delegates, altering their role from representatives who base their Commons votes on their personal and political views rather than overt constituency pressure. Recall powers were thus confined to the 'hard' cases.

Infertile territory for the Recall Act: the Paisley 'brand' and the North Antrim constituency

The suspension of Ian Paisley fell clearly within the terms of the 2015 Recall Act.

Following an unambiguously condemnatory report from the Standards Committee, the MP was barred from the Commons for thirty sitting days, beginning on 4 September 2018, following his failure to declare two family holidays in 2013, worth more than £50,000 and paid for by the Sri Lankan government. A further solo visit later that year was registered. The *Daily Telegraph* had revealed the undeclared family holidays.⁷ Moreover, Paisley had engaged in advocacy on behalf of the provider of those holidays. In 2014, Paisley lobbied against supporting a UN resolution critical of human rights abuses by the Sri Lankan government during the conflict against the Tamil Tigers. Sir Kevin Barron, Chair of the Standards Committee, declared that Paisley was guilty of 'serious misconduct and his actions were of a nature to bring the House of Commons into disrepute'. Barron also asserted that the investigation 'could have been considerably shortened if Mr Paisley had been more cooperative initially'.⁸

The recall petition was thus triggered by the Speaker of the House, John Bercow, who formally informed the Chief Electoral Officer (CEO) for Northern Ireland, Virginia McVea, of the Commons decision. The CEO was obliged to set up a petition within ten working days and specify the six-week period within which the petition could be signed. All electors in the North Antrim constituency were notified of the petition on 6–7 August and the petition opened for signing on 8 August. With the constituency electorate numbering 75,430, the 10 per cent requirement meant 7,543 signatures were needed to trigger a by-election. However, 7,099 were received, 444 short of the required minimum. Insufficient signatures meant Paisley could return as an MP once his thirty-day Commons suspension expired, without further sanction. Paisley appeared surprised, saying the outcome was 'a miracle' and that he was 'stunned' and 'greatly humbled'. Paisley's twitter account went on to claim he had achieved the 'highest recorded vote in NI, 90.6% support from recall petition'. Opponents were less enamoured, the Alliance party Northern Ireland Assembly member, Kellie Armstrong, claiming that 'in any other part of the UK Ian Paisley would have had to resign in disgrace'.⁹

From the outset, the triggering of a by-election, let alone the eventual unseating of Ian Paisley, appeared a tough task for those investing hopes that consequences would flow from the 2015 Act. Affection towards the Paisley brand name remained considerable in North Antrim. Since Ian Paisley Senior captured the seat in 1970, the Paisley majority had never fallen below five figures. Paisley Junior's 20,643 majority in 2017, achieved with 59 per cent of the total vote, was the largest yet of the three occasions he had fought the seat.¹⁰ Whilst a figure of 90.6 per cent failing to sign the petition might be regarded as more a case of apathy than adulation, the incumbent was held in sufficient regard for North Antrim to become the by-election that never was. Paisley was regularly returned for the second most unionist constituency (in terms of unionist vote share) in Northern Ireland; 66 per cent Protestant, with a 73 per cent unionist vote in 2017. In a polity where the sectarian faultline remains very stark, the correlation between the percentage of Protestants in a constituency and the percentage unionist vote was 0.96 in 2017—in one sense, an extraordinarily high figure, but routine for Northern Ireland.¹¹

Nonetheless, there were sufficient opponents of Paisley, and/or his party, resident in North Antrim to trigger a petition had this been desired. On a 64 per cent turnout at the 2017 general election, the total of 48,460 votes cast included a 22 per cent nationalist vote, drawn overwhelmingly from the 28 per cent of constituents hailing from a Catholic community background. Six per cent of voters had also chosen candidates aligned to neither the unionist nor nationalist bloc in the 2017 election. Paisley had to hope that voters were not necessarily petitioners. The recalled MP was reliant upon a majority of the 19,939 constituents who had voted against him only sixteen months earlier not being inclined to foist another contest upon their constituency by signing the petition.

A by-election would have been interesting only had there been a three-way split in the unionist vote between Paisley standing as an independent candidate, having been suspended by his party following his exclusion from the Commons, taking on a new DUP candidate and the hard-line Traditional Unionist Voice's Jim Allister, meaning the

35,000 unionist votes could have potentially split three ways. Among non-unionists, some in the Social Democratic and Labour party favoured running a unity 'anti-Brexit' candidate to harness the 13,000 non-unionist votes cast in the 2017 general election. Paisley would have been a strong favourite to win any such contest, but not an absolute certainty.

With no need for a by-election, since the petition had flopped, the DUP lifted Paisley's suspension from the party, declining to comment on whether party inquiries had revealed anything beyond the conclusions of the Commons Committee on Standards detailed report. The DUP stated that Paisley was barred from holding party office for a year, although he was not holding office at the time in any case.

Implementing the Recall Act in the constituency

The implementation of the petition proved controversial, with concerns expressed over the limited number of petition stations, their opening hours and their locations. The petition was opened for signing from 8 August to 19 September from 09.00 to 17.00 Monday to Friday (as recommended in the legislation) with opening hours extended to 21.00 on 6 and 13 September. Petition signatures had to be verified daily by the Petitions Officer. Two leisure centres, in Ballymoney and Ballymena, and a recreation centre in Ballycastle were used as petition stations. The legislation permitted the opening of a further seven stations, but this did not transpire (fifty-three polling stations were used in the constituency in the 2017 general election). The Ulster Unionist party leader, Robin Swann, claimed that only opening three petition stations was 'totally inadequate for a constituency the size of North Antrim', adding that in limiting their opening hours, 'the Electoral Office has shown little regard to people in daytime employment'.¹²

Northern Ireland's sectarian geography remains sensitive and there appeared to be a case for maximising the number of petition-signing stations to ensure this could not be raised as an issue. Ballymena and Ballymoney are largely Protestant and unionist

towns, although each contains a significant Catholic minority (25 per cent and 17 per cent respectively). Only one petition station was located in a nationalist area. Ballycastle is predominantly Catholic (77 per cent) but is tiny (population 5,000) and remote on the northern coast. The siting of such stations was arguably important, as it could involve travel to an unfamiliar location for an obvious political purpose. Entering a polling station no one is aware of a voter's choice. Entering a petition signing station is to engage in a visible electoral action; all observers knew that the entrant had arrived to unseat the incumbent MP.

Set against these concerns, however, a postal request to sign the petition was readily available to anyone. Given a troubled history of alleged electoral fraud, postal votes on demand are not normally available in Northern Ireland elections, but rules were relaxed for the petitioning. Postal 'votes' for 3,233 people were issued for those wishing to sign the petition that way rather than in person, but 1,000 were not returned. This 31 per cent non-return rate contrasted sharply with the 2017 general election, when only 9.9 per cent of postal votes issued were not returned.¹³ That nearly three times as many postal votes were issued compared to the election might suggest that voters were reluctant to travel to petition, although easier availability of the postal method is also an explanation. Constituents had six weeks to sign the petition, whereas those voting in person have a single day at an election. Constituents could also apply for a proxy vote, allowing someone to go and sign the petition on their behalf but only ten constituents exercised this option. Applications for postal or proxy votes could be downloaded online. All constituents were notified by post of the existence of the petition and the reasons why it had been initiated.

Ironically, the public petition signing at the three designated centres was accompanied by tight legal restrictions on how the petition was proceeding. The law was interpreted as prohibiting any statements as to who had signed the petition, or how it was proceeding in terms of turnout. Forecasts of the outcome were also apparently barred. Yet, the law is unclear. The Recall of MPs Act 2015 does not say a great deal about this and the Electoral Commission acknowledged there were

problems in this respect. The apparent restrictions 'caused concern and confusion among campaigners, the media and the public ... it would be beneficial if more clarity and guidance on this provision was put in place ahead of any future recall provisions'.¹⁴

The 2015 Act allows for campaigning on the petition. Individuals, political parties or businesses can register as campaigners by notifying the Petition Officer (the Returning Officer in the constituency) in writing, provided they are UK based. They do not need to be registered in the constituency in which the petition is in place. A spending limit of £500 for non-registered campaigners and £10,000 for registered campaigners applies. Yet, the requirements for secrecy over the progress of the petition may mean that campaigning is necessarily restricted. This certainly proved the case in North Antrim. Only Sinn Féin and the Alliance party registered as official campaigners, with total spending modest, at £4,178—the vast bulk by Sinn Féin.

Turnout was clearly low overall and was reported afterwards by the Electoral Commission's observers as having been very low during the middle weeks of the campaign. The Commission concluded that 'there may have not been a strong awareness of amongst electors of the recall petition throughout the whole six-week period'. A brief flurry of activity at either end of the petitioning period was evident.

Conclusion

The Recall of MPs Act 2015 provides electors with significant powers never previously held between elections. Voters now have recourse to action in the event of serious misdemeanours by their elected representative. These powers are not granted to usurp a democratic election result, but instead give electors the chance to reflect upon the conduct of their MP in instances of serious, proven misconduct. The 2015 Act offers an appropriate balance between electors and the previously elected. Electors have the opportunity to force a new election by petitioning, but they can eschew the opportunity and even if they accept the chance, the unseated MP is afforded the opportunity to defend his or her actions and their overall record in the by-election.

The conduct of the 2018 North Antrim petitioning exercise ought to invite reflection. The Electoral Commission concluded that the petition was run appropriately. It found that there was 'no evidence that an increased number of signing places would have contributed to a different result at the end of the recall petition'.¹⁵ Yet there was no clinching piece of evidence either way. Greater generosity of provision *might* have made a difference; it is simply unknown. One might reasonably assume that, at an election, spacing polling stations twenty-one miles apart, akin to the way petition stations were set up, would have an adverse impact upon turnout. As such, using the permitted maximum of ten petition stations might have been more logical in the North Antrim Paisley case. The use of a mere three has not been adequately explained and, given Northern Ireland's sectarian geography, may have been a mistake.

Paisley's triumph of the unwilling was not, however, due merely to procedural oddities. The bigger political message to be inculcated is that MPs and political parties in Northern Ireland's divided polity may be largely impervious to the damage that might be inflicted upon them for misconduct in a more normal political system. In Northern Ireland, loyalty to the MP, his party and unionism appeared strong. As such, this was a tough opening test for those hoping to see the Recall of MPs Act bite. Given the seriousness of offences required to trigger recall petitions, the number of future petitioning cases brought about under the Act is likely to be minimal and changes of MP perhaps even rarer.

Notes

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- 14 *Ibid.*
- 15 *Ibid.*