**Recall of MPs Act 2015 (Recall Petition) Regulations 2016 – Thursday 11 February 2016**

**Lords Hansard – Lord Lipsey’s contribution**

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4.45 pm

**Lord Lipsey (Lab):** My Lords, I am grateful, and I hope the House is grateful, to the noble Baroness, Lady Hayter—I should have said my noble friend because she has been my noble friend for many years now—for putting down this amendment, because it has led us to have a fuller debate this afternoon than we might otherwise have done. She has ably made her points of substance. However, I will go a little wider and consider what this tells us about secondary legislation.

This document, which I just managed to carry from the Vote Office without being forced to my knees by its weight, is an exemplar of how secondary legislation should not be. The fact is that secondary legislation in part is being considered by the committee of the noble Lord, Lord Trefgarne, on the Strathclyde report. Some of the things said this afternoon may be very useful input into the work of that committee.

This is secondary legislation and it has passed through both Houses, so I will not restart a debate on its purpose. I was in error by not participating at that stage. It was of course a delayed reaction to the MPs’ expenses scandal. The Government—and the opposition parties—wanted to show they were doing something about that. However, the Government, and the opposition parties, did not want to open the door very wide. There are countries which use the recall quite widely: in the United States a governor of California was recalled not long ago, and the speaker of one state who recently had the temerity to favour gun control legislation has also been recalled, which might be a warning sign of some of the effects which recall legislation that goes wider can have. In the Andean countries of Latin America, especially in the light of the pink tide that took place there in the 1990s, there are quite a lot of recall elections—Lima is the world capital, having held some 7,000. Incidentally, I am relying for this information on a seminar I chaired at St Antony's College Oxford, at which the noble Lord, Lord Cooper, spoke—which shows that academic seminars can sometime help us. I learned there the nearest thing to an amusing fact about recall elections that I have ever learned, which is that one of their greatest exponents

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was Vladimir Lenin. He was a huge enthusiast. In post-revolutionary Russia there were hundreds of thousands of recall elections, until of course Lenin established himself and his friends in power, when for some strange reason their enthusiasm for the recall ebbed away. Our Government, wisely, did not want to establish a recall on the American or Peruvian scale, let alone on the Leninist scale, therefore we remain a representative democracy.

This legislation could hardly be more limited—the conditions in which it applies are very limited. If an MP is sentenced to more than 12 months in the jug, they are disqualified anyway, so the measure can apply only when the sentence is shorter than that, when they are suspended for more than 10 days by a committee of fellow MPs or when they withhold information on expenses. That is not going to happen very often and in most such cases the MP would, through shame, resign anyway. They could not hang on in those circumstances. Even if those conditions are met, you then have to get 10% of the electorate to sign your petition within six weeks. That 10% of the electorate is probably around one in five of those who voted at the last election, with turnout having been around 60% or slightly less. It is going to be one helluva job to organise that. The noble Lord, Lord Cooper, explained at the seminar how uninterested in politics people generally are. Some were asked, in a focus group, to name one politician and they were able to manage David Cameron. When pressed, they also managed Ed Miliband and his brother, Ed Balls, as the noble Lord reported to the seminar, so there is not a fantastic surge of interest. It could happen but it does not seem very likely.

The House does not need me to tell it that this is going to be a rare event. As my noble friend Lady Donaghy said, the Cabinet Office says so itself in paragraph 10.2 of the Explanatory Memorandum. It says that it is anticipated that recall petitions will occur extremely rarely. If you ask me, extremely rarely probably means never. Be that as it may, this really is a mouse of a proposition—and I am pleased that it is—but, although it is a mouse of a proposition, it has given birth to a mountain of secondary legislation.

I cannot claim to have read all 174 pages of the regulations—I defer in diligence to my noble friend Lady Hayter—but I have poked about in it. As a journalist, I always read documents from the back and usually get to the bit that someone is trying to hide. Regulation 128 deals with illegal canvassing by police officers. Can one imagine? “Mr Plod is going from house to house illegally canvassing. Let’s lock him up as swiftly as we can”. I admire the imagination that puts that into the regulations.

Another regulation bans exit polls. Why it should do that, I am not quite sure, but I can tell your Lordships that nobody is ever going to commission one. No single recall petition could possibly be interesting enough for anybody to commission an exit poll.

Parts of the regulations are wholly incomprehensible. I read Regulation 132, on the prohibition of paid canvassers, about eight times. I may not be the sharpest kid on the block but I still do not have the faintest clue as to what it means. I am reluctant to ask

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the Minister to explain when he winds up because we might then be here into the early hours of the morning, but I am sure that he will take the point.

We rightly deplore the growth of Henry VIII clauses. As I reflect on the legislative situation, there is one thing that has changed hugely since Henry VIII. In his day, the secondary legislation had to be written on parchment. It was a helluva process and, if anybody wanted to change it, it was a helluva process to write it on parchment again. Alas, our legislative procedure has been bugged by the discovery of the word processor. This makes it possible to add, muck about with and expand clauses, thus expanding legislation, with extraordinary facility. It is a case of, “If in doubt, put it in”. That is why the number of pages of secondary legislation has expanded from 4,800-odd in 1970 to 12,000 in the latest year for which figures are available, according to a recent Hansard Society study which was made available to the Campaign for an Effective Second Chamber this week. There is nothing to stop it.

Secondary legislation this may be but it is the law of the land. Citizens can be sent to prison for disobeying the stuff that is before your Lordships this afternoon. Ignorance of the law, as we know, is no excuse, but not necessarily every citizen is going to read the 174 pages of this—I could not even manage it.

Although the Government have made one change in response to representations made to them, neither House has had the opportunity to amend this, and that refers to the point that my noble friends Lady Hayter and Lord Campbell-Savours made: that much of this should have been in primary legislation.

I hope that this afternoon’s narrow debate, and the slightly wider but still narrow debate about the Strathclyde report, will transmute into a much wider debate, which we urgently need, and one that uses one of many ways available to Parliament to look at the whole issue of secondary legislation and of scrutiny in the round. If that happens, this misshapen monster that we have before us this afternoon may, at last, have found a purpose to serve.