

Recall of MPs Act 2014

Draft – For Public Consultation

An Act to make provision for the recall of MPs, through a petition and subsequent by-election.

(1) An MP may become subject to a recall petition process only if:

- a. The Speaker rules that the MP has broken the Ministerial Code of Conduct;
- b. The Speaker rules that the MP has been absent from the House of Assembly for three consecutive sittings, without the written leave of the Speaker;
- c. The Speaker rules that the MP has an attendance rate in the House of Assembly of less than 60% over the preceding twelve (12) months of sittings, without the written leave of the Speaker;
- d. The Speaker rules that the MP has failed to attend, without reasonable explanation, a summons to a parliamentary committee;
- e. The Speaker rules that the MP was in breach of parliamentary electoral rules at the time of election;
- f. The Speaker rules that the MP has been convicted of any criminal offense while serving as an MP;
- g. The Speaker rules that the MP has become incapacitated and unable to attend sittings of the House;
- h. The Speaker rules that the MP has been suspended from the House as per the Official Standing Orders of the House;
- i. The Speaker rules that the MP has breached the privileges of the House as per the Official Standing Orders of the House;
- j. The Speaker rules that the MP has failed to reasonably update the Register of Members Interest as necessary;

(2) The Speaker may rule on any of these issues only after consulting a committee appointed by the Speaker that must contain:

- a. One representative from the Governing Party;
- b. One representative from the Opposition Party;
- c. The Parliamentary Registrar or representative of;
- d. The Ombudsman or representative of;

- e. Two members of the public;
- f. The Speaker, as chair of the committee;

(3) The committee so appointed may :

- a. Solicit legal and other advice as required;
- b. Summon MPs or members of the public to give evidence;

(4) The Speaker may investigate any MP:

- a. On her/his own initiative;
- b. Following a written request by any MP that the Speaker feels provides sufficient reason for an investigation;
- c. Following a written request signed by no less than 10% of registered voters resident in the constituency of the MP in question that the Speaker feels provides sufficient reason for an investigation;
- d. Following a report of breach of privilege by the Rules & Privileges Committee as per the Official Standing Orders of the House;
- e. Following a report by the Committee on Register of Member's Interests as per the Official Standing Orders of the House;

(5) Following a ruling by the Speaker as per (1), the Speaker:

- a. Must report to the House of Assembly at the next sitting of the House after having made the ruling;
- b. Inform in writing the MP in question of the ruling within two weeks (14 days) of the ruling.
- c. Inform in writing the Parliamentary Registrar of the ruling within two weeks (14 days) of the ruling;
- d. Ensure publication of the ruling in the Official Gazette within two weeks (14 days) of the ruling.

(6) Following a ruling by the Speaker as per the above steps a registered voter resident within the constituency of the MP so affected may apply for a recall petition.

(7) The application for a recall petition must be made to the Parliamentary Registrar and contain the following:

- a. The name of the MP;
- b. The constituency in question;
- c. The name and residential address of the applicant;
- d. A statement, not exceeding 200 words, setting out why, in the opinion of the applicant, the recall of the MP is warranted;
- e. The application for the issuance of a recall petition must be accompanied by a processing fee of \$250.

- f. No application for the issuance of a recall petition may be made during the 18 months following a general election;
- g. No application for the issuance of a recall petition may be made during the 18 months following a by-election in the constituency in question;
- h. Subsections (f) and (g) may be waived in the event of gross misconduct by the member as per a vote in the House of no less than 30 members voting to do so.

(8) If satisfied that the requirements of section (6) and (7) have been met, the Parliamentary Registrar must:

- a. Notify the Speaker within 48 hours that the application has been approved in principle;
- b. Notify the MP in question within 48 hours that the application has been approved in principle;
- c. Ensure publication in the Official Gazette within seven days after notice is given to the Speaker and MP in question that the application has been approved in principle;
- d. Ensure a copy of the application is available for inspection at the office of the Parliamentary Registrar during its regular office hours within seven days after notifying the Speaker and the MP in question that the application has been approved in principle.
- e. Ensure that within two weeks (14 days) of the application being approved in principle that a notice of the recall petition is mailed to every address of eligible voters within the constituency in question.

(9) Following publication in the Official Gazette that an application has been approved in principle the recall petition is valid for sixty (60) days.

(10) Following publication in the Official Gazette than an application has been approved in principle, the recall petition is to be made available by the Parliamentary Registrar for signing at:

- a. The offices of the Parliamentary Registrar;
- b. The general post office;
- c. The post office within the constituency in question or the two nearest post offices to the constituency in question;
- d. Made available to the applicant for the purpose of canvassing signatures;

(11) The wording of a recall petition signing sheet must include the following:

“By signing in the box below, you are signing a petition for [*name of MP*], the MP for [*name of constituency*], to vacate [*her/his*] seat in the House of Assembly and a by-election will be held to decide who should be the MP for that constituency. The loss of [*her/his*] seat does not prevent the MP standing in this by-election.”

“If at least 35% of eligible registered voters in the constituency sign the petition, the MP will lose [her/his] seat in the House of Assembly and a by-election will be held for the constituency. If less than 35% of eligible registered voters in the constituency sign the petition, the MP will not lose [her/his] seat, and a by-election will not be held as a result of the petition.”

“You may only sign this petition once. You must provide your address in addition to your signature for your signature to be valid.”

(12) In order to sign a recall petition, an individual:

- a. Must be a registered voter in the constituency in question;
- b. Must provide their residential address on the petition;
- c. Must only sign the petition once, with additional identical signatures to be struck off;

(13) Any registered voter, regardless of their constituency, may canvass for signatures for the petition.

(14) A person commits an offence under this act and is liable to a fine of \$10,000 and/or ten months in prison if they:

- a. Directly or indirectly accept any inducement for canvassing for signatures on a recall petition;
- b. Directly or indirectly accept any inducement for providing their signature on a recall petition;

(15) A person commits an offence under this Act and is liable to a fine of \$25,000 and/or 24 months in prison if they:

- a. Directly or indirectly pay, give, lend or procure any inducement for a person who canvasses for signatures on a recall petition;
- b. Directly or indirectly pay, give, lend or procure any inducement for a person to sign a recall petition;
- c. Uses threats of any kind to induce a person to sign a recall petition;

(16) A recall petition must comply with the following requirements in order to trigger a recall by-election:

- a. Have been approved in principle as per (8);
- b. Must be submitted to the Parliamentary Registrar within 60 days after the date the approval in principle is published in the Official Gazette;
- c. The petition must be signed by at least 35% of the total number of registered voters in the constituency in question;

(17) If all the requirements of (16) are met the Parliamentary Registrar must:

- a. Release a public statement to this effect within seven days of receiving the recall petition;
- b. Notify, within 48 hours of this public statement, both the Speaker and the MP in question that the MP's seat is now vacant and a by-election to be held;
- c. Ensure the publication in the Official Gazette that the seat is now vacant and a by-election to be held;

- (18) The Member ceases to hold office and the seat becomes vacant immediately after the Speaker has been notified of a successful recall petition.**
- (19) The resulting by-election is to be held as per an ordinary by-election occurring when a seat becomes vacant.**
- (20) The MP forced to vacate the seat by a recall petition may contest the by-election.**
- (21) This Act comes into effect immediately after being passed.**
- (22) This Act is retroactive to the last general election at the date of being passed.**

Explanatory Notes

This Act puts in place a mechanism for MPs to be subject to a recall by-election, as a result of a petition in the MP's constituency.

As a prerequisite for a recall by-election the petition must meet certain criteria, set out in the act, and a petition for a recall by-election may only be initiated under the conditions outlined in the Act.

The Act empowers the Speaker to rule on whether an MP can be liable for a petition for a recall by-election; such a ruling does not necessarily result in a petition for a recall by-election, it only provides the potential for such an initiative.

It is intended that this Act provides greater accountability for MPs by strengthening the Ministerial Code of Conduct and the Standing Orders of the House. Reference is made to these (implied or otherwise) in the Act.

The Act also empowers the Parliamentary Registrar to rule on the validity of the petition for a recall by-election as per the criteria set out in the Act.

The Act seeks to achieve a balance between accountability and the efficiency and integrity of parliament and the democratic process.