

# EUROPEAN UNION REFERENDUM BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the European Union Referendum Bill as introduced in the House of Commons on 28 May 2015 (Bill 2).

- These Explanatory Notes have been prepared by the Foreign and Commonwealth Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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## Overview of the Bill

- 1 The European Union Referendum Bill has 11 clauses and 3 Schedules. A summary of, and background to, the Bill is provided below.
- 2 The Bill provides for the question of whether or not the United Kingdom should remain as a Member of the European Union to be put to a referendum held in the United Kingdom and Gibraltar.

## Policy background

- 3 During the Queen's Speech 2015 on 27 May 2015 it was announced that the Government would introduce a Bill to hold a referendum on whether the United Kingdom should remain a member of the European Union. The referendum must take place no later than the 31 December 2017

## Legal background

- 4 Part 7 of the Political Parties, Elections and Referendums Act 2000 provides a framework which regulates national and regional referendums that take place pursuant to an Act of Parliament. However, in relation to a particular referendum, specific legislation is needed for setting the date, and for the question and entitlement to vote at the referendum. The provisions of Part 7 of the Political Parties, Elections and Referendums Act 2000 apply to this referendum, subject to the additions and modifications made in Schedules 1 to 3 to the Bill. Many of the provisions in Schedules 1 to 3 to the Bill copy or draw from provisions in the Parliamentary Voting System and Constituencies Act 2011.

## Territorial extent and application

- 5 Clause 9 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. The Bill, and Part 7 of the 2000 Act for the purposes of this referendum, apply to the whole of the United Kingdom and Gibraltar.
- 6 The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- 7 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of any of these legislatures without the consent of the legislature concerned. If there are amendments relating to such matters that fall within the convention, the consent of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly (as appropriate) will be sought for them.

# Commentary on provisions of Bill

## Clause 1: The referendum

- 8 Clause 1 provides that a referendum is to be held on whether the United Kingdom should remain a member of the European Union. The Secretary of State must set a date for the referendum, which must be no later than 31 December 2017, through regulations subject to the affirmative resolution procedure.
- 9 Subsection (4) sets out the question that is to appear on the ballot papers, which is "Should the United Kingdom remain a member of the European Union?"
- 10 Subsection (5) sets out the Welsh version of the question, which is "A ddylai'r Deyrnas Unedig ddal i fod yn aelod o'r Undeb Ewropeaidd?"

## Clause 2: Entitlement to vote in the referendum

- 11 Clause 2 provides for who is entitled to vote in the referendum. Under subsection (1)(a) a person is entitled to vote in the referendum if, on the date of the referendum, he or she would be entitled to vote in a parliamentary election. That is British, Irish and Commonwealth citizens over the age of 18 who are resident in the United Kingdom, and United Kingdom nationals resident overseas for less than 15 years, provided they appear on the register of Parliamentary electors.
- 12 Subsection (1)(b) enables a peer, who is disqualified by common law from voting in Parliamentary elections, to vote in the referendum if, on the date of the referendum, he or she would be entitled to vote in a local government election.
- 13 Subsection (1)(b) also enables a peer to vote in the referendum if he or she is entitled to vote at a European Parliamentary election by virtue of section 3 of the Representation of the People Act 1985. This latter category comprises peers who are resident outside the United Kingdom.
- 14 Subsection (1)(c) further extends the franchise to include Commonwealth citizens who, on the date of the referendum, would be entitled to vote in Gibraltar at a European Parliamentary election.

## Clause 3: Further provision about the referendum

- 15 Clause 3 establishes that Part 7 of the 2000 Act, as well as Schedule 1 (Campaigning and Financial Controls), Schedule 2 (Control of loans etc. to permitted participants) and Schedule 3 (Conduct of the referendum) of the Bill apply to the referendum.

## Clause 4: Conduct regulations, etc

- 16 Subsection (1) provides that the Minister may by regulations make further provision about voting in the referendum and the conduct of the referendum; apply any provision of the Representation of the People Act 1983 ("the 1983 Act") or other enactments (as defined in clause 8) relating to elections or referendums to the referendum; modify the 2000 Act for the purposes of this referendum; and modify or exclude any provision of any other enactment that applies to the referendum.
- 17 Subsection (2) provides that the Minister may, by regulations, make provisions in connection with the referendum being combined with the other polls.
- 18 Subsection (3) provides that the Minister may, by regulations, make modifications or amendments to this legislation or other legislation where necessary because the

referendum is to be held in Gibraltar as well as the United Kingdom.

- 19 Subsection (4) makes further provision as to the regulations which may be made under this clause.
- 20 Subsection (5) requires that that the Minister must consult with the Electoral Commission prior to making regulations under this clause. This consultation may be undertaken prior to commencement (subsection 6).

### Clause 5: Gibraltar

- 21 Clause 5 provides further detail about what provision can be made under clause 4 as regards Gibraltar. The clause also provides that the power to make legislation in relation to Gibraltar for the purposes of the referendum does not affect the capacity of Gibraltar legislature to make law for Gibraltar, neither does it affect the operation of the Colonial Laws Validity Act 1865.

### Clause 6: Regulations

- 22 Clause 6 sets out the process by which powers under this Bill to make regulations can be exercised. All powers, other than those under paragraph 12(10) of Schedule 3 are exercisable by statutory instrument. Regulations under paragraph 12(10) of Schedule 3 are made by the Electoral Commission and concern the accounts to be rendered for the purposes of the payment of the charges of a counting officer, a Regional Counting Officer or the Chief Counting Officer.
- 23 Subsections (2) and (3) set out that a statutory instrument containing regulations under the Act must be made by the affirmative resolution procedure, with the exception of statutory instruments containing only regulations under clause 10, which relate to commencement, or regulations made by the Minister under paragraph 12 of Schedule 3, which relate to the overall maximum recoverable amount which a counting officer or Regional Counting Officer is entitled to recover in respect of services rendered or expenses incurred in connection with the referendum. Subsection (4) makes further provision with regards to regulations.

### Clause 7: Financial provisions

- 24 Clause 7 deals with the financial provision necessary as a result of the Bill.

### Clause 8: Definitions

- 25 Clause 8 defines certain terms used in the Bill.

### Clause 9: Extent

- 26 Clause 9 provides that the Bill, and Part 7 of the 2000 Act for the purposes of this referendum, extend to the whole of the United Kingdom and Gibraltar.

### Clause 10: Commencement

- 27 Clause 10 sets out that the clauses 6 to 11 will commence on Royal Assent. The remaining clauses and Schedules 1 to 3 will come into force on the day appointed by regulations made by the Minister.

### Clause 11: Short title

- 28 Clause 11 establishes that the short title of the Bill is the European Union Referendum Act 2015.

## Schedule 1: Campaigning and financial controls

- 29 Schedule 1 supplements Part 7 of the 2000 Act in relation to the campaigning and financial controls for the referendum.
- 30 Paragraph 1 of Schedule 1 sets out that the referendum period, during which the campaigning and financial controls in the Bill and Part 7 of the 2000 Act have effect, is to be set by the Minister through regulations subject to the affirmative procedure.
- 31 Paragraph 2 modifies section 105(1) of the 2000 Act to extend the list of those eligible to become permitted participants to include a body incorporated by Royal Charter, a Charitable Incorporated Association, a Scottish or Northern Irish Charitable Incorporated Association, a Scottish Partnership, an individual who is resident in Gibraltar or is registered in Gibraltar for the purposes of European Parliamentary elections, and the Gibraltar-based bodies eligible to donate to political parties (as specified by section 54(2A)(b)-(g) of the 2000 Act).
- 32 Paragraph 3 deals with the details that must be provided under section 106 of the 2000 Act by any of the new bodies included in the list of those eligible to become a permitted participant as provided for by the new section 105(1)(b). It also modifies section 106 to provide that any declarations or notifications under section 106 must be accompanied by a statement signed by the person who is the responsible person (under section 105(2)) confirming that he or she is willing to exercise the functions of a responsible person set out in the 2000 Act and the Bill.
- 33 Paragraph 4 provides for additional information to be entered into the register maintained by the Electoral Commission under section 107 of the 2000 Act if a statement is given under section 106(6A)
- 34 Paragraph 5 is consequential on paragraph 3(3) of Schedule 1 and takes account of the new bodies eligible to register as a permitted participant in relation to meaning of “responsible person” under section 105(2) of the 2000 Act.
- 35 Paragraph 6 makes provision to ensure that a person cannot be the “responsible person” for more than one permitted participant at the referendum.
- 36 Paragraph 7 modifies section 110 of the 2000 Act regarding the payment of grants by the Electoral Commission to designated lead campaign organisations. The effect is that, in relation to the proposed referendum, the Electoral Commission will be entitled to pay the grant in instalments, and may withhold instalments if it is satisfied that the designated organisation has breached one of the conditions that the Commission has set when making the grant. Under the 2000 Act, the level of the grant paid to each designated organisation must be of the same amount, but this need not be the case if the Commission has withheld any instalment(s) from any of the designated organisation(s) under this paragraph.
- 37 Paragraph 8 modifies the provision in Schedule 12 to the 2000 Act in relation to assistance to designated organisations to take account of the referendum also taking place in Gibraltar.
- 38 Paragraph 9 enables a permitted participant to appoint a referendum agent for any voting area. Paragraphs 10 and 11 impose requirements in relation to the appointment of referendum agents. These include a requirement for the responsible person for the permitted participant to notify the counting officer of the appointment before noon on the 16th day ahead of the poll (paragraph 10(2)), and for the counting officer to give

public notice of the appointment (paragraph 11).

- 39 Paragraph 12 provides that, for this referendum, the following are not “referendum expenses” for the purposes of this Bill or the 2000 Act:
- a. expenses incurred in the publication of non-advertising material in a newspaper or periodical, a broadcast by the BBC, S4C, the Gibraltar Broadcasting Corporation or a programme included in a service from another licensed broadcaster.
  - b. expenses in respect of, or in consequence of, translating materials from English to Welsh or Welsh to English.
  - c. reasonable expenses incurred that are reasonably attributable to an individual's disability (disability has the same meaning as in the Equality Act 2010).
  - d. expenses incurred in providing for the protection of persons or property at rallies or other public events.
- 40 Paragraph 13 protects the rights of a creditor in a case where a contract or expense contravenes a provision of Part 7 of the 2000 Act but the creditor was unaware of this.
- 41 Paragraph 14 makes provision about the aggregation of expenses by persons acting in concert at the proposed referendum. Sub-paragraph (1) sets out the circumstances in which persons will be regarded as having acted in concert. Sub-paragraph (2) provides that where expenses are incurred by persons acting in concert, the total value of those expenses is to be regarded as having been incurred by each of the persons in question, and counted against each person's spending limit accordingly. Sub-paragraph (5) provides that expenses incurred by or on behalf of a designated organisation are not to be regarded as having been incurred by any other person. Sub-paragraph (6) applies section 117(5) and (6) of the 2000 Act. The effect of those provisions is, in certain circumstances, to treat expenses incurred before the beginning of the referendum period as incurred during the referendum period. Sub-paragraph (7) provides that this applies even if the expenses were incurred prior to commencement. Sub-paragraph (8) provides that section 112 of the 2000 Act, which relates to notional referendum expenses, applies to this paragraph.
- 42 Paragraph 15 makes consequential modifications to section 115(7) of the 2000 Act to account for bank holidays and public holidays in Gibraltar in relation to making claims in respect of referendum expenses.
- 43 Paragraph 16 provides that the limits of referendum expenses by permitted participants as set by Schedule 14 to the 2000 Act apply to this referendum and therefore apply to spending in the United Kingdom and Gibraltar.
- 44 Paragraph 17 modifies paragraph 6 of Schedule 15 to the 2000 Act to extend the list of permissible donors to include a body incorporated by Royal Charter, a Charitable Incorporated Association, a Scottish or Northern Irish Charitable Incorporated Association and a Scottish Partnership. It also includes individual registered in Gibraltar for the purposes of European Parliamentary elections, and bodies who are permissible Gibraltar based donors (as specified by section 54(2A)(b)-(g) of the 2000 Act). Schedule 15 applies to donations to permitted participants who are not registered parties or are minor parties.
- 45 Paragraph 18 is consequential to paragraph 17 and modifies paragraph 7(2) of Schedule 15 to take account of the extended list of permissible donors.

- 46 Paragraph 19 establishes the details that must be provided under paragraph 10 of Schedule 15 to the 2000 Act with regards to donations received from the individuals and bodies listed in paragraph 17(3) of Schedule 1.
- 47 Paragraph 20 modifies the 2000 Act by treating new section 120A as having been inserted for the purposes of this referendum. New section 120A provides for circumstances where a permitted participant's expenses do not exceed £10,000. In this event, the responsible person is not required to make a return under section 120 of the 2000 Act, but can, within 3 months of the end of the referendum period, make a declaration to the Electoral Commission that to the best of their knowledge and belief the total expenses incurred by or on behalf of the permitted participant during the referendum period do not exceed £10,000. Subsection (3) of new section 120A creates an offence with regards to this provision and subsection (4) sets out the associated penalties.
- 48 Paragraph 21 modifies the declarations required of a permitted participant (that is not a registered party or is a minor party) by section 123 of the 2000 Act in relation to relevant donations to include a statement that section 56(2) of the 2000 Act (which provides for the return of donations) was complied with in relation to donations from an impermissible donor. It further modifies section 123 to take account of the extended list of permissible donors provided for by paragraph 17 of Schedule 1.
- 49 Paragraph 22 sets out a system for the reporting of donations received by permitted participants in the run up to the referendum. It requires that reports are prepared by responsible persons for permitted participants which include details of donations received of more than £7,500 that are to be used for the purpose of meeting referendum expenses incurred by the permitted participant during the referendum period. Reports must be prepared and delivered to the Electoral Commission at the times and in respect of periods to be set by Minister by regulations made under the affirmative procedure. If no donations of more than £7,500 were received, this information must also be included in the report. Sub-paragraphs (9) to (11) create offences with regards to these provisions and set out the associated penalties.
- 50 Paragraph 23 requires each pre-poll report to be accompanied by a declaration, signed by the responsible person, confirming that the report is complete. Knowingly or recklessly making a false declaration, or the failure by a responsible person to make a declaration, is an offence.
- 51 Paragraph 24 requires the Electoral Commission to make pre-poll donation reports publicly available, for a period of two years beginning with the date any such report is received, as soon as reasonably practicable after receipt.
- 52 Paragraph 25 provides that section 125 of the 2000 Act does not apply for the purposes of this referendum. Sub-paragraph (2) makes a consequential amendment to Schedule 13 to the 2000 Act.
- 53 Paragraph 26 extends the controls in section 127 of the 2000 Act, in relation to referendum campaign broadcasts, to the Gibraltar Broadcasting Corporation.
- 54 Paragraph 27 establishes that certain other provisions in the 2000 Act, including civil sanctions under Schedule 19C to the 2000 Act, apply in relation to the requirements and offences in Schedule 1.

## Schedule 2: Control of loans etc to permitted participants

- 55 Schedule 2 sets out in detail the arrangements that are to apply for the regulation of loans and other regulated transactions to permitted participants who are not non-minor registered political parties.
- 56 Paragraph 1 modifies the 2000 Act to treat as inserted a new Schedule 15A to the 2000 Act. Paragraph 1 of new Schedule 15A sets out the operation of that Schedule. Paragraph 2 of new Schedule 15A defines a regulated transaction as an agreement by someone to lend money or provide credit to a permitted participant, where the permitted participant intends to use all or part of the money to meet referendum expenses. An agreement of this type may also be supplemented by a "connected transaction", where a third party provides security to the lender. In this case the connected transaction is considered to be a regulated transaction. Under paragraph 2(12) of new Schedule 15A, agreements of a value of £500 or less or that are already covered by the donations provisions do not count as regulated transactions.
- 57 Paragraph 3 of new Schedule 15A clarifies the value of regulated transactions. Where the transaction is a loan agreement, the value is the full amount of the money to be lent. Where the transaction is a credit agreement, the value is the maximum credit limit. Both of these exclude any interest provisions in the agreement. Where the transaction is arranged on the basis of a security, the value is the contingent liability under the security.
- 58 Paragraph 4 of new Schedule 15A prohibits permitted participants from entering into regulated transactions with anyone who is not a qualifying person. A qualifying person is a permissible donor falling within section 54(2) of the 2000 Act (excluding registered political parties), a body incorporated by Royal Charter, a Charitable Incorporated Association, a Scottish or Northern Irish Charitable Incorporated Association, a Scottish Partnership, a Gibraltar elector and individuals and bodies who are permissible Gibraltar based donors within section 54(2A)(b)-(g) of the 2000 Act.
- 59 Under paragraph 5 of new Schedule 15A, any regulated transaction between a permitted participant and a non-qualifying person is void. Any money received under the transaction must be repaid, along with any interest due. If the money is not repaid, the Electoral Commission may apply to the court to make an order to return the money or discharge any security, with the effect that both parties return to the position they would have been in if the transaction had never been entered into.
- 60 Paragraph 6 of new Schedule 15A provides that where a connected transaction involves a non-qualifying person providing security, both the regulated transaction and the connected transaction are void. If the lender is unable to recover the full amount owed by the permitted participant, they may recover such sums from the third party.
- 61 Paragraph 7 of new Schedule 15A sets out that any attempt by a qualifying person to transfer their interest in a regulated transaction to a non-qualifying person is not valid.
- 62 Paragraphs 8 to 12 of new Schedule 15A provide the offences related to regulated transactions. Paragraph 13 of new Schedule 15A establishes that references in this Part of the Schedule to permitted participants entering into a regulated transaction includes circumstances where the terms of the regulated transaction change to increase the amount of money received by the permitted participant. Paragraph 14 of new Schedule 15A sets out the associated penalties for the offences in paragraphs 8 to 12 of new Schedule 15A.

- 63 Paragraph 15 of new Schedule 15A sets out the requirement for permitted participants to include regulated transactions in the statements prepared for the Electoral Commission under section 120 of the 2000 Act. The transaction need only be included in the return where the value exceeds £7,500, or where the aggregate value of the transaction and any other relevant benefits exceeds £7,500.
- 64 Paragraph 16 and 17 of new Schedule 15A sets out the information that must be recorded in the statement prepared under section 120 of the 2000 Act in relation to each recordable transaction to which a qualifying person (paragraph 16) and a non-qualifying person (paragraph 17) was a party. Paragraph 18 of new Schedule 15A establishes that the statement must also include details of the transaction in line with Schedule 6A to the 2000 Act.
- 65 Under paragraph 19 of new Schedule 15A, where there is any change to the agreement, such as another qualifying person becoming party to it, the information from before and after the change must be included in the statement, as well as the date the change was made. Where the loan has been repaid in full or the debt released this information must be included.
- 66 Paragraph 20 of new Schedule 15A requires that the statement required under section 120 of the 2000 Act also includes the total value of regulated transactions that are not recordable.
- 67 Paragraph 21 of new Schedule 15A deals with a situation where the court, on application by the Commission, is satisfied that a failure to comply with any requirement under this Part of the Schedule was caused by a person attempting to conceal the existence of, or true value of, the transaction. In this case, the court may make an order which will return the parties to the same position as if the transaction had never been entered into. Paragraph 22 of new Schedule 15A makes provision in relation to court proceedings under paragraphs 5(4) or 21 of new Schedule 15A.
- 68 Paragraph 23 of new Schedule 15A establishes that the reporting requirements for permitted participants in relation to regulated transactions apply, if a permitted participant is party to a regulated transaction under paragraph 2(3)(a) of new Schedule 15A, as if it were a party to the connected transaction.
- 69 Paragraph 2(1) of Schedule 2 modifies section 120 of the 2000 Act to require that the returns under that section must include a statement of regulated transactions entered into. Paragraph 2(2) modifies section 123 of the 2000 Act to require the declaration by the responsible person to include information about regulated transactions entered into by the permitted participant. Paragraph 2(3) modifies section 124 of the 2000 Act so that a return in relation to a regulated transaction with an individual does not include the individual's address when published by the Electoral Commission. Paragraphs 2(4) and (5) make consequential modifications to Schedule 15 to the 2000 Act as a result of the inclusion of new Schedule 15A. Paragraph 2(6) establishes that civil sanctions under Schedule 19C to the 2000 Act can be applied to the offences in paragraph 8 to 11 of new Schedule 15A.
- 70 Paragraph 3 provides for the operation of paragraphs 1 and 2 of Schedule 2 (and new Schedule 15A) where regulated transactions are entered into prior to the commencement of Schedule 2.
- 71 Paragraphs 4 to 6 provide for a pre-poll reporting regime for regulated transactions in line with the regime for pre-poll reporting of donations as provided for by paragraphs

22 to 24 of Schedule 1.

- 72 Paragraph 7 establishes that certain other provisions in the 2000 Act, including civil sanctions under Schedule 19C to the 2000 Act, apply in relation to the requirements and offences in Schedule 2.
- 73 Paragraph 7 establishes that civil sanctions under Schedule 19C to the 2000 Act can be applied to the offences under paragraph 4(9) of this Schedule, which relate to the responsibility of the responsible person to provide pre-poll reports which detail regulated transactions to the Electoral Commission.

### Schedule 3: Further provision about the referendum

- 74 Paragraph 1 sets out that section 128 of the 2000 Act applies for the purpose of the referendum with certain modifications. The effect is that the Chair of the Electoral Commission is designated as the Chief Counting Officer for the referendum. The Chief Counting Officer will be responsible for certifying the total number of ballot papers counted and the total number of votes cast in favour of each answer to a question asked in the referendum for the whole referendum area. Paragraphs 3 and 5 contain additional modifications of section 128 for the purpose of the referendum.
- 75 Paragraph 2 designates returning officers as counting officers for voting areas for the purposes of the referendum. In practice this means that in England, Scotland and Wales counting officers will be the same individuals who are returning officers for the local government elections. The counting officer for the Northern Ireland voting area is the Chief Electoral Officer for Northern Ireland. The paragraph also makes special provision for the City of London and Isles of Scilly. The counting officer for the Gibraltar voting area is the person who is the Clerk to the Gibraltar Parliament who by virtue of holding this post is the European electoral registration officer and local returning officer at European Parliamentary elections for Gibraltar.
- 76 Paragraph 3 contains some modifications to section 128 of the 2000 Act relating to counting officers and sets out that the referendum area means the United Kingdom and Gibraltar.
- 77 Paragraph 4 creates the role of Regional Counting Officers specifically for the referendum. Paragraph 4(1) provides that the Chief Counting Officer may appoint a Regional Counting Officer for the regions listed in that sub-paragraph. The regions are the same as those used for European Parliamentary elections, with Gibraltar forming part of the South West region.
- 78 Paragraph 5 (1)(a) imposes a duty on a local authority within a voting area (as defined in section 8) to place the services of their officers at the disposal of the counting officer. As regards Regional Counting Officers, paragraph 5(1)(b) imposes an equivalent duty on a local authority responsible for a voting area which falls within a region in respect of which a Regional Counting Officer is appointed. Sub-paragraph (2) defines what a local authority is in this context. Paragraph 5(3) imposes a duty on the Government of Gibraltar to place the services of its public officers at the disposal of the counting officer for Gibraltar and the Regional Counting Officer for the South West region (which includes Gibraltar), if appointed.
- 79 Paragraph 6 relates to the role, duties and powers of the Chief Counting Officer, Regional Counting Officers and counting officers, and applies in addition to the provisions relating to the Chief Counting Officer and counting officers in section 128 of the 2000 Act. Sub-paragraph (1) requires the Chief Counting Officer, Regional Counting

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Officers and counting officers to do whatever things are necessary for conducting the referendum in the manner set out in the legislation.

- 80 Paragraph 6(2) sets out the responsibilities of a counting officer with respect to the voting area for which he or she is appointed.
- 81 Paragraph 6(3) provides that responsibility for printing the ballot papers for a voting area may be taken by the Chief Counting Officer or, in the case of a voting area in a region for which a Regional Counting Officer is appointed, the Regional Counting Officer. Responsibility for printing the ballot papers will otherwise rest with counting officers (paragraph 6(2)(b)).
- 82 Paragraph 6(4) provides that each Regional Counting Officer is responsible for certifying the total number of ballot papers counted and total votes cast in favour of each answer to the referendum question in respect of the region for which the Regional Counting Officer is appointed. This corresponds to the duties imposed on the Chief Counting Officer and counting officers under section 128(5) and (6) of the 2000 Act.
- 83 Paragraph 6(5) provides that the Chief Counting Officer may issue directions to Regional Counting Officers or counting officers relating to the discharge of their functions in preparation for, or during, the referendum poll, including directions requiring the provision of information. Provision is also made for Regional Counting Officers to issue directions to counting officers for voting areas within their region (paragraph 6(6)), but only where this is authorised or required by the Chief Counting Officer (paragraph 6(7)). Under paragraph 6(8), a Regional Counting Officer or counting officer to whom a direction is given is required to comply with it.
- 84 Paragraph 7 provides that the Chief Counting Officer, a Regional Counting Officer or counting officer may, in writing, appoint deputies to discharge all or any of the officer's functions (sub-paragraphs (1) and (2)). Sub-paragraph (3) also enables a Regional Counting Officer to appoint such clerks as may be necessary to assist him or her in his or her functions in relation to the referendum.
- 85 Paragraph 8 allows Regional Counting Officers and counting officers to correct errors or omissions that arise during the preparation for and conduct of the referendum. This will apply to errors and omissions that are made by the Regional Counting Officer or counting officer themselves and also errors and omissions made by other persons who have functions in connection with the referendum (including registration officers, presiding officers, clerks and staff). By way of example, documents, such as official poll cards, printed with incorrect details would be capable of correction under this provision.
- 86 Paragraph 9 relates to public notices that are required to be given by the Chief Counting Officer, a Regional Counting Officer or a counting officer. It provides that the officer must post the notice in a conspicuous place in the area or region for which the officer acts or must publicise it in such other manner as the officer thinks desirable.
- 87 Paragraph 10 relates to the role of the Electoral Commission. Paragraph 10(1) provides that the Electoral Commission has a duty to promote public awareness of the referendum and how to vote in it. Paragraph 10(2) imposes a duty on the Electoral Commission to publish the most accurate estimate reasonably possible of the turnout in each of England, Wales, Scotland, Northern Ireland and Gibraltar, and specifies that this information must be included in any report on the referendum submitted by the Commission under section 6(1)(b) of the 2000 Act. Paragraph 10(3) defines "turnout" as the percentage of those entitled to vote in the referendum who did so.

- 88 Paragraph 11 requires the Chief Counting Officer, Regional Counting Officers, counting officers and registration officers to take whatever steps they consider appropriate to encourage participation in the referendum. This is modelled on section 69 of the Electoral Administration Act 2006, which imposes a duty on returning officers and registration officers to encourage participation in elections. In addition, where such steps are taken, the Chief Counting Officer is required to take whatever steps the officer thinks appropriate to facilitate co-operation between those officers.
- 89 Paragraph 12 makes provision for the funding of the referendum. Under sub-paragraph (1) Regional Counting Officers and counting officers are entitled to recover their charges in respect of the referendum provided they relate to services necessarily rendered, or expenses necessarily incurred, for the efficient and effective conduct of the referendum and they do not exceed the overall maximum recoverable amount specified in regulations made by the Minister. These regulations may also specify, or make provision for determining, the maximum amount which Regional Counting Officers or counting officers may recover for services or expenses of a specified description (sub-paragraph (4)). The Minister is required to obtain the consent of Treasury to the making of these regulations.
- 90 Under sub-paragraphs (2) and (3), the Electoral Commission has the power to reduce the fee element of charges that are paid to Regional Counting Officers and counting officers for the performance of their duties in the conduct of the referendum. The power to reduce a fee will apply where the service rendered by a Regional Counting Officer or counting officer was, in the opinion of the Electoral Commission, inadequately performed. The level of reduction (which may reduce the fees to nil) is to be determined by what the Commission (or, in certain cases, a court or auditor) thinks is reasonable in all the circumstances. The power does not extend to allow the reduction of any sum payable for expenses.
- 91 The Electoral Commission is required to pay to Regional Counting Officers and counting officers the charges that they are entitled to recover (sub-paragraph (8)). However, the Electoral Commission can apply for the account to be taxed under paragraph 13 before payment.
- 92 There is provision in sub-paragraph (5) for the Electoral Commission, with the consent of Treasury, to authorise payment of more than the maximum recoverable amounts specified in the regulations if the conditions in sub-paragraph (6) are satisfied.
- 93 The Electoral Commission is also empowered in sub-paragraph (9) to pay advances to the Chief Counting Officer, Regional Counting Officers and counting officers upon request.
- 94 Under sub-paragraph (7) there is provision for the Chief Counting Officer, who is the Chair of the Electoral Commission to recover expenses for the effective conduct of the referendum in certain limited circumstances.
- 95 Under sub-paragraph (10) the Electoral Commission may make regulations regarding the time when and the manner and form in which accounts are to be rendered to the Commission for the purpose of payment of the Chief Counting Officer's or the Regional Counting Officers' or the counting officers' charges.
- 96 Sub-paragraph (12) provides that any sums required by the Electoral Commission for making payments under paragraph 12 are to be charged on and paid out of the Consolidated Fund.

- 97 Paragraph 13 makes provision in respect of applications for a Regional Counting Officer's or counting officer's account to be taxed before payment and is based on section 30 of the 1983 Act which provides for the taxation of returning officers' accounts in the context of parliamentary elections. Sub-paragraph (2) provides that the court may tax the account as it thinks fit and finally determine the amount payable to the Regional Counting Officer or counting officer.
- 98 Where an application for taxation of a Regional Counting Officer's or counting officer's account has been made, sub-paragraph (3) allows the Regional Counting Officer or counting officer to apply to the court to examine any claim made by a person ("the claimant") against the officer in respect of any charges included in the account. In this situation, the court may allow, disallow or reduce the claim against the Regional Counting Officer or counting officer but must first give the claimant the opportunity to be heard and to tender evidence (sub-paragraph (4)).
- 99 Paragraph 14(1) provides that, if directed to do so by the Treasury, the Electoral Commission must prepare accounts in respect of their expenditure in relation to the referendum. The accounts must be prepared in accordance with any directions given by the Treasury (sub-paragraph (2)); those directions might include the matters set out in sub-paragraph (3). The Electoral Commission is required to submit the accounts to the Comptroller and Auditor General and the Speaker's Committee as soon as practicable after it receives a direction under sub-paragraph (1) (sub-paragraph (4)). The Speaker's Committee is established under section 2 of the 2000 Act and has general oversight of the exercise of the Electoral Commission's functions. Under paragraph 18 of Schedule 1 to the 2000 Act, the Electoral Commission's accounts for any financial year must be submitted to the Speaker's Committee as well as to the Comptroller and Auditor General.
- 100 Paragraph 15 relates to how the result of the referendum may be challenged in legal proceedings. It provides that any challenge in respect of the number of ballot papers counted or votes cast as certified by the Chief Counting Officer, a Regional Counting Officer or a counting officer must be brought by way of judicial review (sub-paragraph (1)(a)). In addition, the challenge must be commenced within six weeks of the date of the relevant certificate (sub-paragraphs (1)(b) and (2)). The six-week period is intended to ensure that sufficient time is allowed for challenges to be brought while avoiding prolonged delay in the final result of the referendum being known.

## Commencement

101 Clause 10 sets out that the clauses 6 to 11 will commence on Royal Assent. The remaining clauses and Schedules 1 to 3 will come into force on the day appointed by regulations made by the Minister.

## Financial implications of the Bill

102 The costs for the conduct of the referendum will be met from the Consolidated Fund.

## Parliamentary approval for financial costs or for charges imposed

103 A money resolution in the House of Commons will be required to authorise the following:

- The payment of charges connected to the referendum of the Chief Counting Officer, Regional Counting Officers and counting officers.
- The increased expenditure of the Electoral Commission resulting from additional functions connected to the referendum.

## Related documents

104 Political Parties, Elections and Referendums Act 2000

<http://www.legislation.gov.uk/ukpga/2000/41/contents>

105 Representation of the People Act 1983

<http://www.legislation.gov.uk/ukpga/1983/2>

106 Memorandum of the Bill's compatibility with the European Convention on Human Rights

<https://www.gov.uk/government/publications>

## Annex A - Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Clauses 1 to 11	Yes	Yes	No	Yes	No	Yes	No
Schedules 1 to 3	Yes	Yes	No	Yes	No	Yes	No

# EUROPEAN UNION REFERENDUM BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the European Union Referendum Bill as introduced in the House of Commons on 28 May 2015 (Bill 2).

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Ordered, by the House of Commons to be Printed, 28 May 2015.

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