

# EUROPEAN UNION REFERENDUM BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords amendments to the European Union Referendum Bill as brought from the House of Lords on 1 December 2015 (Bill 103).
- 2 These Explanatory Notes have been prepared by the Foreign and Commonwealth Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 60, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 References to the "2000 Act" in this document refer to the Political Parties, Elections and Referendums Act 2000.
- 6 All the Lords amendments were tabled in the name of the Minister, apart from Lords Amendment 1 which was tabled by Baroness Morgan of Ely and which was opposed by the Government.

## Commentary on Lords amendments

### Lords Amendment to Clause 2: Entitlement to vote in the referendum

#### Lords Amendment 1

- 1 Lords Amendment 1 would extend the referendum franchise to 16 and 17 year olds who, were it not for their age, would be entitled to vote in a parliamentary election.

### Lords Amendments to Clause 4: Conduct regulations, etc

#### Lords Amendments 2, 3 and 4

- 2 Lords Amendment 2 would make clear that the power to make regulations under Clause 4(1) does not include the power to modify or exclude any provision of what will become the European Union Referendum Act. Lords Amendments 3 and 4 would also narrow the power in Clause 4(2) to amend or modify, by regulations, what will become the European Union Referendum Act so that it applies only to relevant parts of the Act that may need to be changed in the event of the combination of the referendum with another poll.
- 3 The relevant parts of the Act are: the definition of "counting officer" in Clause 9(1); Clause 9(2) which defines the voting areas for the purposes of the referendum; and Schedule 3 which makes further provision about the referendum. The amendments would provide that the power may not be used to amend any other part of the Act. These amendments were made in response to a report of the House of Lords Delegated Powers and Regulatory Reform Committee.

### Lords Amendment 5: Duty to publish information on outcome of negotiations between member States

#### Lords Amendment 5

- 4 Lords Amendment 5 would introduce a new clause which would create a duty for the Secretary of State to publish a report setting out what had been agreed by member States following the renegotiation of the UK's membership of the European Union requested by the UK Government.
- 5 The report would also be required to set out the UK Government's opinion on what had been agreed and would need to be published before the period of 10 weeks ending with the date of the referendum.
- 6 The Secretary of State would be obliged to lay a copy of the published report before Parliament.

### Lords Amendment 6: Duty to publish information about membership of the European Union etc

#### Lords Amendment 6

- 7 Lords Amendment 6 would introduce a new clause which would create a duty for the Secretary of State to publish a report setting out information about rights and obligations that arise under European Union law as a result of the UK's membership of the European Union.
- 8 "Rights" refers to rights that the United Kingdom has as a member State, and also rights that are granted to individuals and organisations under EU law. This could include, for example, access to the single market.

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- 9 "Obligations" refers to the obligations arising under EU law that apply to the UK as a member State, to organisations or to individuals. For example, this could include the obligation on the UK as a member state to amend national law to implement EU law in particular areas.
- 10 The duty would also require the Secretary of State to include in the report examples of arrangements that other countries have with the European Union where they are not members of the EU.
- 11 The report would need to be published before the period of 10 weeks ending with the date of the referendum.
- 12 The Secretary of State would be obliged to lay a copy of the published report before Parliament.

## **Lords Amendment to Clause 6: Power to modify section 125 of the 2000 Act**

### **Lords Amendments 7 (to Clause 6) and 26 (to Schedule 1)**

- 13 Section 125 of the 2000 Act will place restrictions on the Government and publicly funded persons and bodies publishing material in the 28 days ending with the poll. However, as it stands, section 125 would not catch the Government of Gibraltar or any other Gibraltar body funded wholly or mainly out of Gibraltar public funds. The modifications of section 125 made by Lords Amendment 26 (to Schedule 1) would bring these Gibraltar entities into the scope of the section 125 restrictions.
- 14 Lords Amendment 7 (to Clause 6) would provide that the power to modify section 125 in Clause 6 applies to section 125 of the 2000 Act as modified by Lords Amendment 26. This would ensure that exclusions contained in any regulations made under Clause 6 could also apply to the Government of Gibraltar or any other Gibraltar bodies funded wholly or mainly out of Gibraltar public funds.

## **Lords Amendments to Clause 7: Regulations**

### **Lords Amendments 8 and 9**

- 15 Taken together, Lords Amendments 8 and 9 would provide that the regulations setting the start date of the process for designating lead campaigners are subject to the affirmative procedure and not the negative procedure. Regulations setting the start of the designation process will be made under paragraph 9 of Schedule 1 to the Bill. These amendments were made in response to a report of the House of Lords Delegated Powers and Regulatory Reform Committee.

## **Lords Amendment to Clause 9: Definitions**

### **Lords Amendments 10 (to Clause 9), 11 (to Schedule 1) and 42 (to Schedule 2)**

- 16 Lords Amendments 10 (to Clause 9), 11 (to Schedule 1) and 42 (to Schedule 2) would include a definition of "the referendum period" which would apply to the whole Bill.

## Lords Amendments to Schedule 1: Campaigning and financial controls

### Lords Amendment 12

- 17 The referendum period for the referendum is the period prescribed by regulations made by the Minister (as defined by clause 9 of the Bill) under paragraph 1 of Schedule 1 to the Bill. The referendum period is the regulated period immediately prior to the referendum during which the spending limits apply for permitted participants. Lords Amendment 12 would provide that the referendum period for the referendum must not be less than 10 weeks ending with the date of the referendum. This amendment was made in response to a report of the House of Lords Delegated Powers and Regulatory Reform Committee.

### Lords Amendment 13

- 18 Section 108 of the 2000 Act allows the Electoral Commission to designate permitted participants as organisations to whom assistance is available under section 110 of the 2000 Act. Where a referendum has only two outcomes (as is the case for the EU referendum), under section 108 of the 2000 Act, the Electoral Commission can only exercise the power to designate one organisation for each of the outcomes or not designate any at all. Lords Amendment 13 would enable the Electoral Commission to designate a lead campaigner for one side of the argument ("remain" or "leave") at the referendum without designating a lead campaigner for the other side. This would only apply where, for a particular outcome, either there were no applications, or the Electoral Commission was not satisfied that there was an applicant who adequately represented those campaigning for that outcome. In the event that only one campaigner was designated, that campaigner would not be entitled to a grant from the Electoral Commission of up to £600,000 (under section 110 of the 2000 Act) or to make a referendum broadcast (under section 127 of the 2000 Act).

### Lords Amendments 14, 15, 23 and 31

- 19 Lords Amendments 14, 15, 23 and 31 would ensure that the definition of public funds in the 2000 Act encompasses Gibraltar public funds for the purpose of the referendum.
- 20 Lords Amendment 31 would provide that section 160 of the 2000 Act, which sets out a list of defined terms used in the 2000 Act, would apply for the purposes of the referendum with the addition of a definition of Gibraltar public funds. As a result, Lords Amendment 14 would remove the current definition of Gibraltar public funds - which applies only with respect to the paragraph in which it appears - from the Bill.
- 21 Lords Amendment 15 would provide that the exclusion of expenses (on property, services or facilities) met out of public funds from the list of qualifying expenses for referendum purposes in Schedule 13 to the 2000 Act also includes expenses met out of Gibraltar public funds.
- 22 Lords Amendment 23 would provide that any grant provided from Gibraltar public funds would not be regarded as a donation to a permitted participant at the referendum. This would be in line with the existing position for grants from UK public funds.

### Lords Amendment 16 (to Schedule 1), 34, 35 and 36 (to Schedule 2)

- 23 Lords Amendment 16 would make clear that the power in Clause 11 of the Bill could be used to commence different paragraphs of Schedule 1 at different times. Lords Amendments 34, 35 and 36 would have the same effect for Schedule 2.

## Lords Amendments 17, 18, 19 and 20

- 24 Lords Amendments 17 to 20 would amend provisions relating to expenses incurred by persons acting in concert. The provisions apply where two or more campaigners incur referendum expenses as part of a common plan. The amendments would make it clear that campaigners do not have to account for expenditure by other participants in the common plan which have been incurred independently of the common plan.

## Lords Amendment 21

- 25 Lords Amendment 21 would have the effect that during the referendum period, a registered political party (other than a minor party) that has registered as a permitted participant can accept a bequest from an individual, where at any time within the period of 5 years ending with the date of the individual's death, they were on the electoral register for European Parliamentary elections in Gibraltar. This would ensure that, during the referendum period, the donation rules as they apply to bequests from Gibraltar electors to registered parties that register as permitted participants are the same as for bequests from UK electors to those parties.

## Lords Amendment 22

- 26 Lords Amendment 22 would apply where a registered political party (other than a minor party) registers as a permitted participant and receives donations from, or enters into transactions which are "regulated transactions" for the purposes of Part 4A of the 2000 Act with, certain individuals or bodies.
- 27 The Amendment would set a cap (the "permitted maximum") on the total value of donations from, and regulated transactions with, these individuals and bodies that the party can accept or enter into in the referendum period. The "permitted maximum" is equivalent to the maximum amount of referendum expenses that the party may incur during the referendum period. If the permitted maximum is exceeded, any excess is treated as having been received from an impermissible donor and must therefore be repaid.

## Lords Amendment 24

- 28 Lords Amendment 24 would include some additional modifications to the 2000 Act to ensure that it operates as intended in relation to the referendum.

## Lords Amendments 25 (to Schedule 1) and 33 (to Schedule 2)

- 29 There are provisions in the Bill modifying paragraph 2 of Schedule 6 and 6A to the 2000 Act. These modifications in effect duplicate other provisions in the Bill and Lords Amendments 25 and 33 would remove the duplication.

## Lords Amendments 27, 28 and 30

- 30 These Lords Amendments would amend provisions in the Bill which require certain persons to report on donations received before the referendum. As the Bill currently stands the periods for which reports must be prepared and the time limit for submission of the reports to the Electoral Commission is to be prescribed in regulations made by the Minister. Lords Amendment 27 would provide for the first reporting period to begin on commencement of the relevant provision and end on the seventh day of the referendum period. Lords Amendment 30 is consequential on this Amendment. Lords Amendment 28 would provide that the report must be sent to the Electoral Commission within a further period of seven days.

### Lords Amendment 29

- 31 Lords Amendment 29 would have the effect that the requirements to report donations prior to the referendum would apply to all donations received (after the commencement of the relevant provision) that are for the purpose of meeting referendum expenses. Under the Bill as it stands, permitted participants are only required to report donations that are for the purpose of meeting referendum expenses that are to be incurred in the referendum period.

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

### Lords Amendments 32 and 43

- 32 Lords Amendment 32 would spell out more clearly how certain reporting provisions in the 2000 Act in relation to regulated transactions will function when applied to this referendum. Lords Amendment 43 is consequential to Lords Amendments 32 and 38.

### Lords Amendments 37, 39 and 41

- 33 These Lords Amendments would amend provisions in the Bill which require certain persons to report on regulated transactions entered into before the referendum. As the Bill currently stands the periods for which reports must be prepared and the time limit for submission of the reports to the Electoral Commission is to be prescribed in regulations made by the Minister. Lords Amendment 37 would provide for the first reporting period to begin on commencement of the relevant provision and end on the seventh day of the referendum period. Lords Amendment 41 is consequential on this Amendment. Lords Amendment 39 would provide that the report must be sent to the Electoral Commission within a further period of seven days.

### Lords Amendment 38

- 34 Lords Amendment 38 would ensure that the contents of the reports about regulated transactions entered into before the referendum mirror the requirements for weekly transaction reports from registered political parties prior to a general election (under section 71Q of the 2000 Act).

### Lords Amendment 40

- 35 Lords Amendment 40 would have the effect that the requirements to report regulated transactions prior to the referendum would apply to all regulated transactions entered into (after the commencement of the relevant provisions) that are for the purpose of meeting referendum expenses. Under the Bill as it stands, permitted participants are only required to report regulated transactions entered into for the purpose of meeting referendum expenses that are to be incurred in the referendum period.

### Lords Amendment 44

- 36 Lords Amendment 44 would make clearer that the reports on regulated transactions that must be submitted prior to the referendum must cover third party security arrangements (referred to in the Bill as "connected transactions"), as well as regulated transactions to which the permitted participant is a party.

## Lords Amendment 45

- 37 Lords Amendment 45 would provide that a registered political party (other than a minor party) which registers as a permitted participant is able, during the referendum period, to enter into regulated transactions with the individuals and bodies who are eligible to donate to the party during that period under Schedule 1 to the Bill. Without the amendment, registered political parties (that are not minor parties) would not be able to enter into regulated transactions with these individuals or bodies, which would be a contrast to other permitted participants where Schedule 2 to the Bill does enable them to do so. The Amendment would also prohibit the terms of such a transaction being varied so as to increase in value.

## Lords Amendments to Schedule 3: Further provision about the referendum

### Lords Amendment 46

- 38 Lords Amendment 46 would amend existing legislation in England and Wales, Scotland and Northern Ireland, so that permitted participants can use information in electoral registers, for the purposes of complying with all of the relevant campaigning controls imposed by the 2000 Act (as modified by the Bill) and the Bill. Permitted participants are already entitled to access the registers; this amendment would allow them to use the information in the registers to comply with the new duties imposed on them. Existing legislation provides that it is a criminal offence to use information in the registers for a purpose other than one permitted by legislation.

## Financial Effects of Lords Amendments

- 39 The addition of 16 and 17 year olds to the referendum franchise (Lords Amendment 1) would be expected to incur in excess of £6 million of additional public expenditure. The Government estimates that approximately £4.2 million of this would form part of the costs of conduct of the poll and thus come from the Consolidated Fund to cover Counting Officers' and Regional Counting Officers' expenses, and for additional postage of campaign information, needed as a result of the additional 16 and 17 year old electors being added to the electorate for the referendum. The remainder, to fund additional electoral registration costs, would be met by Government departments and Local Authorities as part of registration work. Local Authorities may require additional funding to them from central government. The estimates do not include the further expenditure that would be incurred for any awareness raising activity or additional canvassing activities.

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