

PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Parliamentary Voting System and Constituencies Bill as introduced in the House of Commons on 22 July 2010. They have been prepared by the Cabinet 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.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE BILL

3. The Parliamentary Voting System and Constituencies Bill has 3 parts and 7 schedules. A summary of Parts 1 and 2 and background in relation to the Bill as a whole and each of those parts separately is provided below. Commentary is then provided on individual clauses and Schedules.

SUMMARY

4. A summary of the Bill is set out below.

Part 1: Voting system for parliamentary elections

5. Part 1 of the Bill provides for a referendum to be held, on 5 May 2011, on whether to change the voting system for United Kingdom parliamentary elections. The Bill prescribes the question that will be asked in that referendum as follows: “do you want the United Kingdom to adopt the ‘alternative vote’ system instead of the current “first past the post” system for electing Members of Parliament to the House of Commons?” The Bill makes provision for the franchise for the referendum, the

referendum period (during which controls on spending and donations by campaigners will apply and the official “yes” and “no” campaigns are designated by the Electoral Commission), the conduct of the poll, including absent voting, and how legal challenges to the result of the referendum may be brought. The Bill also includes provisions which make the amendments to the existing electoral legislation that it would be necessary to make to implement the alternative vote system in the event of a ‘yes’ vote in the referendum.

6. Further details on the alternative vote system are provided below.

Part 2: Parliamentary constituencies

7. Part 2 of the Bill provides that the number of parliamentary constituencies in the United Kingdom will be reduced to 600. It requires the Boundary Commissions to recommend constituency boundaries that ensure that the electorate of each constituency is no more than 5% more or less than the electoral quota for the UK. Factors are set out which the Commissions may have regard to when recommending constituency boundaries, subject to the parity principle. There will be two preserved constituencies, a limit on the geographical size of constituencies, and a method for resolving any complexities that may be caused by rounding issues in Northern Ireland. Part 2 also sets out a timetable for the four Boundary Commissions to carry out their reviews of constituencies, and the consultation process for the Commissions’ recommendations. The next general reviews are to be completed by the end of September 2013 and subsequent reviews will take place every five years.

BACKGROUND

General

8. The provisions contained in the Parliamentary Voting System and Constituencies Bill give effect to a commitment contained in *The Coalition: Our Programme for Government*. The document can be found at:

http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

9. This document set out the Government’s intention to:

“...bring forward a Referendum Bill on electoral reform, which includes provision for the introduction of the Alternative Vote in the event of a positive result in the referendum, as well as for the creation of fewer and more equal sized constituencies.”

10. This commitment forms part of a package of political reforms proposed by the Government, which also includes proposals to establish fixed term Parliaments, introduce a right of recall for MPs who have engaged in serious wrongdoing, reform of the House of Lords and speed up implementation of individual voter registration.
11. On 5 July 2010, the Deputy Prime Minister made a statement announcing that the referendum will take place on 5 May 2011 and that the House of Commons will be reduced from 650 to 600 Members.

Part 1: Voting system for parliamentary elections

12. Elections to the House of Commons are currently run under the ‘first past the post’ system of voting. Under this system, voters place a cross in the box next to the candidate they wish to vote for. The candidate with the greatest number of votes in the constituency wins and is elected as the MP.
13. The Bill provides for the question of whether or not the UK should adopt the alternative vote system for future parliamentary elections to be decided in a national referendum.
14. The alternative vote system retains the idea of the single member constituency within a majoritarian voting system. In order to win under the existing ‘first past the post’ system a candidate requires only a plurality of the votes (in other words, to achieve more votes than any of the other candidates). Under the form of the alternative vote specified in the Bill, candidates must achieve more than 50% of the votes in the count - either at the initial counting stage or, if necessary, at a further counting stage - in order to be elected. The alternative vote also contrasts with the existing electoral system in that voters may express a preference for as many or as few of the candidates on the ballot paper as they wish (they may vote for one candidate only if they wish). However, a key similarity between the two systems is that under both, a single member is elected to represent a single geographic constituency.
15. The key features of the alternative vote system set out in the Bill are that:
 - Voters rank candidates on the ballot paper in order of preference, using 1, 2, 3 etc.
 - Voters may express a preference for as many or as few candidates as they wish. This means that a voter may vote for one candidate only if they wish. This is known as an ‘optional preferential’ system.
 - If after the counting of voters’ first preferences, any candidate has more than 50% of the votes at this stage then he or she is declared the winner.
 - If no candidate has more than 50% of the votes counted, then there would be a further round of counting. The candidate in last place is eliminated, and each

vote originally allocated to the eliminated candidate is reallocated to a remaining candidate according to the next preference expressed on each ballot paper.

- Where there is no next preference given, the ballot paper cannot be reallocated and is no longer counted. If a candidate has more than 50% of the votes left in the count once this reallocation has taken place he or she is elected. If not, then a further round of counting will take place and the candidate now in last place is eliminated and their votes reallocated. This process continues until one candidate has more than 50% of the votes left in the count, and is elected.
16. A number of the key features of the conduct of a parliamentary election using the alternative vote system would broadly be the same as under the existing first past the post system, for example, in terms of the nomination of candidates, the provision of ballot papers and polling stations. However, changes would be required to certain areas of electoral law in order to hold an election under the alternative vote system, in particular the Parliamentary Elections Rules at Schedule 1 to the Representation of the People Act 1983 ('the 1983 Act') which set out how a parliamentary election is to be conducted (these amendments are set out in clause 7 of and Schedule 6 to this Bill). Most of these amendments arise from the need to acknowledge the concept of preferential voting and that in the event of multiple preference voting there may be more than one round of counting. Existing rules are based on the idea of a vote that can only ever benefit one candidate and the related notion of a single count.

Part 2: Parliamentary constituencies

17. There are four Boundary Commissions in the United Kingdom: one each for England, Wales, Scotland and Northern Ireland. The Boundary Commissions are permanent bodies, of which the Speaker of the House of Commons is Chair, constituted under the Parliamentary Constituencies Act 1986 ('the 1986 Act') which requires all the Commissions to keep the parliamentary constituencies under continuous review and periodically (every 8 to 12 years) to submit to the Secretary of State a report of their recommendations as to the constituencies into which their part of the UK should be divided. When a Commission submits a report to the Secretary of State, an Order in Council is laid before Parliament to give effect to the Commission's recommendations and is debated prior to being made.
18. The Commissions are independent, non-political and totally impartial bodies. They emphasise very strongly that the results of previous elections do not and should not enter their considerations when they are deciding their recommendations. Nor do the Commissions consider the effects of their recommendations on future voting patterns.
19. However, the present Rules for redistribution have been criticised by parliamentarians, academic commentators and, in its fifth Report, the Boundary

Commission for England. An unintended effect of the drafting of the existing Rules according to which the Commissions make recommendations as to the boundaries of constituencies is that the number of MPs tends to increase at each general review. Furthermore, the current rules are contradictory, have no clear hierarchy, and do not prioritise equality in the number of electors per constituency, leading to large variations in the number of electors in each constituency. In addition, the review process is considered to be slow, particularly in England, where the fifth General Review took more than six years to complete. This leads to changes in boundaries which lag behind the movement of people. The inequality in electorate size also, as a result of provisions in the 1986 Act, applies between as well as within nations, resulting in fewer electors per constituency in Scotland, Northern Ireland and, in particular, Wales when compared with England.

20. Part 2 of the Bill replaces the existing Schedule 2 to the 1986 Act with a new set of Rules for the distribution of seats. The new Rules fix the size of the House of Commons at 600 members, provide for the number of constituencies in each part of the United Kingdom to be determined by reference to the size of the electorate in each part of the UK, and place a limit on the permitted variation in the number of registered electors for a constituency recommended by a Boundary Commission. As exceptions to this principle of electoral parity, the Bill provides for two preserved constituencies in Scotland. The Bill places a limit on the geographical size of a constituency, and makes provision to address the potential impact of rounding to a whole number when apportioning constituencies to Northern Ireland. Part 2 of the Bill also reforms the process for conducting boundary reviews; in particular ending the practice of holding local inquiries, and extending the consultation period from the present one month to twelve weeks. Reports are due from the Commissions under this legislation before 1 October 2013 and every five years from that point. Finally, the legislation breaks the present link between Westminster constituencies and constituencies of the National Assembly for Wales.

TERRITORIAL EXTENT AND APPLICATION

21. The Bill extends to the whole of the United Kingdom, with the exception of Part 2 of Schedule 3 which extends only to Northern Ireland and makes provision specific to Northern Ireland's electoral system. The subject matter of the Bill is reserved to the Westminster Parliament. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

COMMENTARY ON CLAUSES

Part 1: Voting system for parliamentary elections

Clause 1: Referendum on the alternative vote system

22. *Clause 1* provides that a referendum is to be held on 5 May 2011 on whether to change the voting system for parliamentary elections. *Subsections (3) and (4)* set out the question that will appear on the ballot papers in English and Welsh. *Subsection (5)* gives effect to Schedule 1 to the Bill (described in detail below) which makes further provision for the purposes of this referendum.

Clause 2: Entitlement to vote in the referendum

23. *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. This includes a person who is entitled to vote in a parliamentary election as an overseas elector by virtue of section 1 of the Representation of the People Act 1985.
24. *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. *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.

Clause 3: Conduct of the referendum

25. *Clause 3* provides that the referendum must be conducted in accordance with the rules set out in *Schedule 2* to the Bill. *Clause 3* also gives effect to *Schedules 3 and 4* which provide further detail about the conduct of the referendum. *Schedule 3* relates to absent voting in the referendum and *Schedule 4* provides for the application of provisions of existing electoral legislation for the purpose of the referendum. These Schedules are described in more detail below.

Clause 4: Control of loans etc to permitted participants

26. *Clause 4 and Schedule 5* have the effect of regulating loans made to permitted participants who campaign in the referendum on the voting system. The controls are similar to those made in relation to registered political parties by Part 4A of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”). The

provisions of the Bill do not apply to a loan to a registered political party that is not a minor party, which would be governed by Part 4A of the 2000 Act. Schedule 5 to the Bill contains provisions preventing a permitted participant from entering into certain regulated transactions with persons who are not “authorised participants” (e.g. individuals who are not on the electoral register). It also imposes certain reporting requirements. *Subsection (1)* of the clause introduces the Schedule. *Subsection (2)* ensures that permitted participants provide a statement of regulated transactions in their return about referendum expenses. *Subsection (4)* ensures that the addresses of individuals who enter into regulated transactions with permitted participants are made available for public inspection (and this corresponds to the rules in the 2000 Act about donations). *Subsection (5)* ensures that regulated transactions are aggregated with donations for the purpose of determining whether the donations need to be reported. *Subsection (6)* ensures that the provisions about reporting apply to transactions entered into before clause 4 comes into force, but the provisions about the consequences of entering into unauthorised transactions and the offences relating to doing so do not apply to any transaction entered into the clauses comes into force.

Clause 5: Interpretation

27. This clause defines certain terms used in Part 1 of the Bill.

Clause 6: Commencement or repeal of amending provisions

28. This clause deals with the coming into force, or repeal, of the provisions in the Bill that are referred to as the “alternative vote provisions”. The “alternative vote provisions” are clause 7, Schedule 6 and Part 1 of Schedule 7; and the effect of these provisions would be to alter the voting system for parliamentary elections to the alternative vote system.
29. If there is a "yes" vote in the referendum (that is, more people vote yes than vote no) then the alternative vote provisions must be brought into force on the same day as the coming into force of an Order in Council giving effect to the Boundary Commissions' recommendations for altering the parliamentary constituencies made under the revised scheme in Part 2 of the Bill.
30. If there is a "no" vote in the referendum, the alternative vote provisions must be repealed.

Clause 7: The alternative vote system: amendments

31. *Subsections (1) and (2)* insert two new rules into the parliamentary elections rules (PER) contained in Schedule 1 to the Representation of the People Act 1983, which set out the key practical implications of the alternative vote system: how votes would

be given (new rule 37A) and how they would be counted and the winning candidate determined (new rule 45A). Subsection (2) also inserts new rule 45B which stipulates the information to be given after each stage of counting.

32. Under new rule 37A (inserted by *subsection (1)*), voters mark candidates on the ballot paper in order of preference, using 1, 2, 3 etc. Voters may mark as many preferences as they wish, up to the number of candidates standing in the constituency at the election.
33. *Subsection (2)* inserts a new rule 45A which sets out how votes are to be counted under the alternative vote system. The key principle (contained in new rule 45A(1)) is that votes should be counted to give effect to the preference or preferences that voters express when marking their ballot paper. The candidate who is elected is determined by allocating votes in line with those preferences. It may be necessary for more than one stage of counting to take place for this to happen. The remainder of new rule 45A describes the circumstances in which more than round may be needed and what is to happen during each round.
34. Paragraph (2) of the new rule provides that if after the counting of voters' first preferences, any candidate has more votes than the other candidates put together (ie more than 50% of the votes) then that candidate is elected.
35. Under paragraph (3) if no candidate has more than 50% of the votes at this stage, then there would be a further round of counting. The candidate with fewest votes is eliminated. If voters who chose that candidate as their first preference also expressed other preferences each vote originally allocated to the eliminated candidate is reallocated to the candidate remaining in the count that the voter ranked highest. Where a ballot paper does not express any further preferences, or the preferences relate to candidates who have already been eliminated, the ballot paper plays no further part in the counting. If a candidate has more than 50% of the votes left in the count once this reallocation of votes has taken place, the candidate is elected. If not, then a further round of counting will take place and the candidate now with fewest votes is eliminated and their votes reallocated. This process continues until one candidate has more than 50% of the votes left in the count and is elected.
36. New rule 45B (also inserted by *subsection (2)*) requires the returning officer to make publicly available a record of all the information listed in that rule at the end of each counting stage (except the final stage, at which the candidate is elected and the result is declared under rule 50) so that candidates and their agents and other persons at the count are aware of the state of play at the end of each counting stage.
37. *Subsection (4)* gives the Lord President of the Council and the Secretary of State an order-making power to make amendments to primary or secondary legislation that are

consequential on amendments made by this clause or Schedule 6. An order made under this subsection would be subject to the affirmative resolution procedure. Before making an order, *subsection (8)* requires the Lord President of the Council or Secretary of State to consult the Electoral Commission.

Part 2: Parliamentary constituencies

Clause 8: Reports of the Boundary Commissions

38. *Clause 8* amends section 3 of the 1986 Act so as to alter the frequency and timing of reviews of the parliamentary constituencies. *Subsection (3)* amends section 3 of the 1986 Act so as to require the Boundary Commissions to submit boundary reports to the Secretary of State before 1 October 2013 and every five years subsequently. This replaces a requirement to report every 8 to 12 years. *Subsection (4)* amends section 3 of the 1986 Act so as to require the Boundary Commissions to submit progress reports to the Speaker of the House of Commons while a report is pending. *Subsection (5)* removes the ability for Boundary Commissions to produce interim reports in relation to particular areas between general reviews. *Subsection (6)* amends section 3 of the 1986 Act so as to require the Secretary of State to lay before Parliament a draft of an Order in Council for giving effect to the recommendations in the boundary reports (with or without modifications) as soon as may be after the submission of the last of the four reports, rather than, as now, as each report is submitted.

Clause 9: Number and distribution of seats

39. *Clause 9* replaces the rules under which the four Boundary Commissions make recommendations as to how their part of the UK should be divided into constituencies, which are currently set out in Schedule 2 to the 1986 Act. The clause substitutes a new Schedule 2. *Rule 1* of the new Schedule 2 sets the number of UK constituencies at 600. *Rule 2* provides for there to be less variation in the size of the electorate in each constituency than at present: the electorate of each constituency will be required to be within 5% either side of the UK electoral quota. The UK electoral quota is the registered electorate of the UK divided by the number of the constituencies in the UK (not including the two preserved constituencies set out in *rule 6* or their electorates).
40. *Rules 3 and 8* prevent the Boundary Commissions recommending constituencies that cross national borders and set out the procedure for calculating the number of constituencies which there are to be in each part of the UK. This is to be done by the Sainte-Laguë method (which is also the method used by the Electoral Commission for distributing seats to Scotland, Northern Ireland, Wales and the English regions for UK elections to the European Parliament). Under this method, the first constituency is allocated to the part of the UK with the largest electorate (that is to say, the part of the

UK with the largest number of people in the electoral register as at 1 December in the relevant year which, for the first review, is 2010). The next constituency and subsequent constituencies are allocated in the same way, except that the electorate of a part of the UK to which one or more constituencies have already been allocated is divided by twice the number of seats already allocated to that part of the UK plus one. The two preserved constituencies set out in *Rule 6* and their electorates are not included in the allocation process.

41. *Rule 4(1)* imposes a geographical size limit for constituencies of 13,000 square kilometres. This means that the Boundary Commissions may not draw up a constituency which is significantly geographically larger than the current largest constituency. *Rule 4(2)* provides for an exemption from the lower parity target of 95% of the UK electoral quota for a constituency larger than 12,000 square kilometres, if a Boundary Commission is satisfied that it is not reasonably possible for the constituency to comply with the parity rule. This resolves the problem that would be faced by a Boundary Commission which is unable to draw up a constituency that meets both the parity rule and the size limit in a sparsely populated area.
42. *Rule 5* sets out factors which the Boundary Commissions may take into account in determining constituency boundaries (subject to their complying with the electoral parity rule and the rule about the maximum geographical size of constituencies). The factors are similar to the existing ones. They may consider special geographical considerations, such as the size, shape and accessibility of a constituency. The Commissions may also take account of local government boundaries. Because of the parity principle in *rule 2* constituencies are likely to cross such boundaries more frequently than in the past, but where a Commission has two or more options for recommending how a constituency should be drawn, all of which adhere to the principle in *rule 2*, but only one of which would not involve crossing the boundary of a local government area, the rule would enable the Commission to recommend that option. As at present, the Commissions may consider local ties such as social, commercial, cultural and transport links that would be broken by changes in constituencies and, in the case of reviews after the first one following the passing of the Bill, any inconveniences which would result from a boundary change.
43. *Rule 6* provides for the two Scottish island constituencies of Na h-Eileanan an Iar (the Western Isles) and Orkney and Shetland to be preserved, and for the electorates of those two constituencies to be removed from the UK electorate and the Scottish electorate for the purposes of calculating the UK electoral quota.
44. *Rule 7* makes provision to compensate for the potential impact of *rules 3 and 8* on the average size of constituencies in Northern Ireland. Since the result of *rule 3* is that a whole number of constituencies is allocated to each part of the UK (which is done as set out in *rule 8*), it will almost always be the case that the number of constituencies

allocated to a part of the UK is very slightly higher or lower, by a fraction of a constituency, than its purely theoretical entitlement. This may have a consequential effect on the average size of a constituency in Northern Ireland which, because of the smaller electorate in Northern Ireland compared to other parts of the UK, might constrain the ability of the Boundary Commission for Northern Ireland (BCNI) to recommend constituencies within the parity principle in *rule 2*. *Rule 7* therefore provides that if the difference between the Northern Ireland electorate and the UK electoral quota multiplied by the number of seats in Northern Ireland exceeds one third of the UK electoral quota, and in the opinion of the BCNI it would unreasonably impair their ability to take into account the factors set out in *rule 5*, or would make the preparation of their report so complex that they would be unable to comply with the deadline for the submission of their report in section 3(2) of the 1986 Act, then the BCNI may propose constituencies that vary from the upper or lower limits imposed by *rule 2* by a fixed amount, being the difference between the UK electoral quota and the electorate of Northern Ireland as it exists on the review date divided by the number of seats allocated to Northern Ireland under *rules 3 and 8*.

45. *Rule 9* is an interpretation provision.

Clause 10: Boundary Commission proposals: publicity and consultation

46. *Clause 10* sets out the Boundary Commissions' responsibilities for publicising their provisional recommendations, and the consultation process once those recommendations have been publicised. *Subsection (1)* substitutes a new section 5 in the 1986 Act. Subsection (1) of new section 5 requires the Commissions to inform people in constituencies affected by their provisional recommendations of the effect of the recommendations. It gives them discretion as to how to inform people. This replaces the existing requirement to give notification through a local newspaper. The requirement to make a copy of the provisional recommendations available for inspection within the constituency is retained. There is provision for a twelve-week consultation period during which representations on the provisional recommendations may be submitted to the relevant Commission. This replaces the existing one month period for representations. If a Boundary Commission revises its provisional recommendations, the revised recommendations will also have to be publicised and consulted upon; but this does not apply if the Commission revises its recommendations a second time. *Subsection (2) of clause 10* repeals section 6 of the 1986 Act, thereby removing the existing practice of holding local inquiries, which are replaced by the process set out in new section 5.

Clause 11: National Assembly for Wales

47. Section 2 of the Government of Wales Act 2006 specifies that the National Assembly for Wales constituencies are the parliamentary constituencies in Wales. *Subsections*

(1) and (2) amend that section to specify that the Assembly constituencies are the constituencies specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006, as amended. The effect is that any future changes to Parliamentary constituencies made under the new rules introduced by this Bill (see clauses 8 to 10) would not change Assembly constituencies.

48. *Subsections (3) to (7)* make transitional provision to deal with interim reviews of constituencies in Wales which are ongoing or have not been implemented at the time when the Part 2 of the Bill comes into force. Where the Boundary Commission for Wales has informed the Secretary of State of its intention to consider making a report on any constituency in Wales but has not delivered it at the time Part 2 of the Bill comes into force, the Commission may give notice in writing to the Secretary of State of its intention to proceed with the report and must then comply with the requirements which applied before the coming into force of Part 2 of the Bill. Where the Commission has delivered a report recommending alterations to constituencies but no Order giving effect to its recommendations has been made, an Order must be laid before Parliament in accordance with the previous requirements. Such an Order will affect National Assembly for Wales constituencies (and, where appropriate, electoral regions) but not parliamentary constituencies.

Part 3: Miscellaneous and General

49. *Clause 12* makes provision in relation to orders made under powers given by the Bill.
50. *Clause 13* gives effect to Schedule 7 of the Bill (repeals).
51. *Clause 14* deals with the financial provision necessary as a result of the Bill.
52. *Clause 15* details the territorial extent of the provisions of the Bill.
53. *Clause 16* provides that the Bill comes into force on the date that it is passed. The exceptions to that are the provisions which would amend legislation in order to introduce the alternative vote system; these provisions come into force in accordance with provision made by an order under clause 6(1).
54. *Clause 17* gives the short title of the Bill.

Schedule 1: Further provisions about the referendum

55. *Schedule 1* of the Bill makes further provision about aspects of the referendum.
56. *Paragraph 1* of the Schedule sets out what will be the “referendum period” for the referendum on the voting system for parliamentary elections. The “referendum

period” is the period during which the controls on the donations and spending of permitted participants (that is individuals or organisations that campaign in a referendum) will apply. After this period has begun the Electoral Commission will, within a prescribed time, designate a separate organisation or individual to be the official voice of each of the “yes” and “no” campaigns. This paragraph of the schedule provides that the referendum period will run from the date of Royal Assent until the date of the poll itself.

57. *Paragraph 2 of Schedule 1* creates the role of Regional Counting Officers specifically for the referendum on the voting system for parliamentary elections. *Paragraph 2(1)* provides that the Chief Counting Officer may appoint a Regional Counting Officer for any region in Great Britain. *Sub-paragraph (2)* specifies that the regions for which Regional Counting Officers may be appointed are those used for the purposes of European Parliamentary Elections in relation to England, Scotland and Wales (specified in section 1 of and Schedule 1 to the European Parliamentary Elections Act 2002).
58. *Paragraph 2(3)(a)* provides that a Regional Counting Officer may be required by the Chief Counting Officer to appoint counting officers in the region for which he or she has been appointed. Appointments made under such delegation have the effect of discharging the duty of the Chief Counting Officer to appoint counting officers under section 128(3) of the 2000 Act (*sub-paragraph (4)*).
59. *Paragraph 2(3)(b)* imposes a duty on local authorities in a region in respect of which a Regional Counting Officer is appointed to make the services of their officers available to assist the Regional Counting Officer. This duty is additional to that specified in section 128(4) of the 2000 Act, which requires local authorities to make the services of their officers available to assist counting officers (*sub-paragraph (5)*).
60. *Paragraph 3* relates to the role, duties and powers of counting officers, Regional Counting Officers and the Chief Counting Officer 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 officers and counting officers to do all such things as may be necessary for conducting the referendum in the manner set out in the legislation.
61. *Paragraph 3(2)* sets out the responsibilities of a counting officer with respect to the voting area for which he or she is appointed.
62. *Paragraph 3(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 3(2)(b)*).

63. *Paragraph 3(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 counting officers and the Chief Counting Officer under section 128(5) and (6) of the 2000 Act.
64. *Paragraph 3(5)* provides that the Chief Counting Officer may issue directions to Regional Counting Officers or counting officers relating to the discharge of their functions at the referendum, 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 3(6)*), but only where this is authorised or required by the Chief Counting Officer (*paragraph 3(7)*). Under *paragraph 3(8)*, a Regional Counting Officer or counting officer to whom a direction is given is required to comply with it.
65. *Paragraph 4* 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)*). *Subparagraph (3)* also enables a Regional Counting Officer to appoint such clerks as may be necessary to assist him in his functions in relation to the referendum. Provision is made for counting officers to appoint clerks in rule 13 of Schedule 2 to the Bill.
66. *Paragraph 5* allows counting officers and Regional 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 counting officer or Regional 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.
67. *Paragraph 6* relates to public notices that are required to be given by the Chief Counting Officer, a Regional Counting Officer or a counting officer under Part 1 of the Bill. 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.
68. *Paragraph 7* of the Schedule provides that the Electoral Commission has a duty to promote public awareness of the referendum and how to vote in it.

69. *Paragraph 8* 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.
70. *Paragraph 9* enables a permitted participant to appoint a referendum agent for any voting area. Under rule 17 in Schedule 2 to the Bill, referendum agents are empowered to appoint polling agents to attend polling stations for the purpose of detecting personation and to appoint counting agents to attend at the counting of votes.
71. *Paragraphs 10 to 12* 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 (3)*), and for the counting officer to give public notice of the appointment (*paragraph 11(2)*).
72. *Paragraph 12* applies if a permitted participant revokes the appointment of a referendum agent or a referendum agent dies and, before that event, the referendum agent had appointed a polling agent or a counting agent. In this situation, the permitted participant must, as soon as possible, appoint another referendum agent and the responsible person must notify the counting officer of the new appointment (*sub-paragraphs (2) and (3)*).
73. *Paragraph 13* of the Schedule makes provision to ensure that a person cannot be the “responsible person” (within the meaning of Part 7 of the 2000 Act) for more than one permitted participant at the proposed referendum on the voting system.
74. *Sub-paragraph (1)* has the effect that an individual who is already the responsible person for a permitted participant cannot become a permitted participant in his or her own right. *Sub-paragraph (2)* of the paragraph provides that where a registered political party (which is not a minor party) becomes a permitted participant and the treasurer of that party had already registered as a permitted participant in their own right, that treasurer ceases to be regarded as a permitted participant in their own right. *Sub-paragraph (3)* of the paragraph provides that a declaration or notification given under section 106(2)(b) or (4)(b)(ii) of the 2000 Act by a body wishing to become a permitted participant does not comply with the requirement to name a responsible person if the person that it names is already the responsible person in relation to another permitted participant (whether as an individual or for another organisation) or is an individual who would become a responsible person by virtue of a notification given for another body at the same time. *Sub-paragraph (4)* of the paragraph

provides that where a registered political party (other than a minor party) becomes a permitted participant and the treasurer of that party was already a responsible person for another permitted participant, that treasurer ceases to be regarded as the responsible person for that other permitted participant and the other permitted participant has a period of 14 days in which to appoint a new responsible person.

75. *Paragraph 14* 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 on the alternative vote system, 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. The level of the grant paid to each designated organisation must be of the same amount, unless the Commission has withheld any instalment(s) to any of the designated organisation(s).
76. *Paragraph 15* of the Schedule makes provision on the aggregation of expenses by persons acting in concert at the proposed referendum on the voting system. *Sub-paragraph (1)* of the paragraph sets out the circumstances in which persons will be regarded as having acted in concert. *Sub-paragraph (2)* of the paragraph 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)* clarifies 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)* makes clear that the requirement to report common arrangement expenditure applies whether or not, at the time, the separate individuals or bodies concerned are permitted participants
77. *Paragraph 16* provides that the regulations referred to in *sub-paragraphs (1), (2) and (3)* apply to the display on any site of advertisements relating specifically to the referendum as they do to the display of advertisements relating to pending parliamentary elections.
78. Under *paragraph 17*, the legislative provisions referred to in *sub-paragraphs (1) and (2)* apply in respect of the use of premises for purposes connected with the referendum as they do in respect of the use of premises for purposes connected with parliamentary elections. The effect is that the use of certain premises for the holding of public meetings promoting or procuring a particular outcome in the referendum or for the purpose of taking the poll in the referendum will not, in itself, render those premises liable to rates.
79. *Paragraph 18* makes provision for payments to counting officers and Regional Counting Officers in respect of the referendum. Under *sub-paragraph (1)* counting

officers and Regional 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 an order (“the charges order”) made by the Minister (the Lord President of the Council or the Secretary of State). The charges order may also specify, or make provision for determining, the maximum amount which counting officers or Regional Counting Officers may recover for services or expenses of a specified description (*sub-paragraph (2)*). The Minister is required to obtain the consent of Treasury to the making of the charges order.

80. The Electoral Commission is required to pay to counting officers and Regional Counting Officers the charges that they are entitled to recover in accordance with *paragraph 18* on an account being submitted to them (*sub-paragraph (5)*). However, the Electoral Commission can apply for the account to be taxed under *paragraph 19* before payment. *Sub-paragraph (6)* provides for the Electoral Commission to pay to local authorities any amounts required to reflect an increase in superannuation contributions that result from a fee paid as part of a counting officer’s or a Regional Counting Officer’s charges.
81. There is provision in *sub-paragraph (3)* for the Electoral Commission, with the consent of Treasury, to authorise payment of more than the amounts specified in the charges order if the conditions in *sub-paragraph (4)* are satisfied. The Electoral Commission is also empowered in *sub-paragraph (7)* to pay advances to counting officers and Regional Counting Officers upon request.
82. Under *sub-paragraph (8)* 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 counting officers’ and Regional Counting Officers’ charges.
83. *Sub-paragraph (10)* provides that any sums required by the Electoral Commission for making payments under *paragraph 18* are to be charged on and paid out of the Consolidated Fund.
84. *Paragraph 18* is modelled on section 29 of the Representation of the People Act 1983, which provides for payments to returning officers in the context of parliamentary elections. Section 29 currently provides for these payments to be made by the Secretary of State but uncommenced amendments to that section made by paragraph 107 of Schedule 1 to the Electoral Administration Act 2006 transfer this function to the Electoral Commission. In making provision for payments to counting officers to be made by the Electoral Commission, *paragraph 18* is consistent with this aspect of the uncommenced amendments to section 29 as well as with the approach taken in

section 10 of the Regional Assemblies (Preparations) Act 2003, which provides for payments to counting officers by the Electoral Commission in the context of referendums held under that Act.

85. *Paragraph 19* makes provision in respect of applications for a counting officer's or Regional Counting Officer's account to be taxed before payment and is based on section 30 of the Representation of the People Act 1983 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 counting officer or Regional Counting Officer.
86. Where an application for taxation of a counting officer's or Regional Counting Officer's account has been made, *sub-paragraph (3)* allows the counting officer or Regional 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 counting officer, or Regional Counting Officer but must first give the claimant the opportunity to be heard and to tender evidence (*sub-paragraph (4)*).
87. *Paragraph 20(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.
88. *Paragraph 21* relates to how the formal result of a 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.

Schedule 2: Rules for conduct of the referendum

89. *Schedule 2* sets out the rules governing the conduct of the referendum. Part 1 of the Schedule includes provisions for the action to be taken before and during the poll; the counting of the votes; the declaration of the result and the retention of and access to documents relating to the referendum. The provisions are modelled on the parliamentary election rules contained in Schedule 1 to the Representation of the People Act 1983 with appropriate modifications made to reflect features specific to the referendum such as, for example, the creation of the role of Regional Counting Officer.
90. Part 2 of the Schedule sets out the forms to be used in the referendum including poll cards and the ballot paper.

Schedule 3: Absent voting in the referendum

91. Part 1 of *Schedule 3* is modelled on Schedule 4 to the Representation of the People Act 2000 and includes provision in relation to Great Britain which will enable people to apply for an absent vote specifically at the referendum on voting systems. Provision is also made for electors who already have a proxy or post vote for use at UK parliamentary elections to be able to vote by the same method for the referendum. Provisions are also included which allow the voting arrangements which are in place for peers at local government or European Parliamentary elections to be applied for the referendum. Part 2 is modelled on sections 5 to 11 of the Representation of the People Act 1985 and makes similar provision for Northern Ireland.

Part 1 – Great Britain

92. *Paragraph 2* determines the manner of voting in Great Britain of a person entitled to vote in the referendum, whether in person, by post or by proxy. The arrangements for absent voting in the referendum mirror and build on the existing arrangements for UK parliamentary, European parliamentary and local government elections.
93. *Paragraph 3* provides that if a person is on the postal voters list he or she can vote by post in the referendum. Similarly, if a person is on the list of proxies he or she can vote by proxy in the referendum.
94. *Paragraph 4* provides the circumstances in which a registration officer must grant an application from a person who wishes to vote by post or by proxy in the referendum.
95. Generally speaking, an application to vote by post or by proxy in the referendum must contain the applicant's signature. But *paragraph 4(7)* provides that the registration officer may dispense with the requirement for an applicant to provide a signature if

the officer is satisfied that the applicant is unable to do so due to any disability or due to an inability to read or write. The registration officer may also dispense with the requirement to provide a signature if he or she is satisfied that the applicant is unable to sign in a consistent and distinctive way.

96. Specific provision for handling applications from persons who have an anonymous entry in the electoral register is made by *paragraph 4(3)*.
97. *Paragraph 5* provides that the registration officer must, for the purposes of the referendum, keep a postal voters list and a list of proxies. The paragraph sets out the information that must be included in each list.
98. An ordinary elector is included on the postal voters list if he or she has successfully applied to vote by post for the referendum on the voting system or if he or she has a postal vote for UK parliamentary elections. Peers are included on the postal voters list if they have successfully applied to vote by post for the referendum or if they have a postal vote for either local government or European parliamentary elections.
99. An ordinary elector is included on the proxy voters list if he or she has successfully applied to vote by proxy for the referendum on the voting system or if he or she has an existing proxy vote for UK Parliamentary elections. Peers are included on the proxy voters list if they have successfully applied to vote by proxy for the referendum or if they have a postal vote for either local government or European parliamentary elections.
100. Where a peer has an absent voting arrangement for a local government election but no such arrangement for European parliamentary elections, the arrangements which are in place for the former election will be applied to the referendum. In circumstances where a peer has a postal vote for a local government election and a proxy vote for the European parliamentary election or vice versa, the postal voting arrangement will apply for the referendum.
101. *Paragraphs 6 and 7* set out certain requirements in relation to the appointment of proxies in the referendum.
102. *Paragraph 8* sets out the procedure for voting as a proxy. This paragraph includes provisions which enable a person who has been appointed as a proxy to apply to vote by post and provisions which enable such a person to apply to the registration officer for their referendum ballot paper to be sent to a different address to the one shown in the record. *Paragraph 8(6)* sets out the content of the proxy postal voters list which the registration officer is responsible for maintaining. A person is included on the proxy postal voters list for the referendum if he or she has either applied for a proxy postal vote for the purposes of the referendum or has an existing proxy postal vote for UK

parliamentary elections. A person who is entitled to vote by post as a proxy for a peer in either local government or European parliamentary elections is also to be included on the proxy postal voters list kept under paragraph 8(6).

103. *Paragraph 9* provides for the registration officer to provide the counting officer with the personal identifiers (dates of birth and signatures) of postal and proxy voters in the referendum. This will enable the counting officer to carry out verification of postal ballot papers. *Paragraph 10* outlines the information which the registration officer must either provide or give the counting officer access to. *Paragraph 10* provides that the registration officer may disclose personal identifiers collected in connection with applications for postal and proxy votes for the referendum to other registration officers or to persons dealing with legal proceedings in relation to elections. This will enable queries and challenges to voting arrangements to be dealt with effectively.
104. *Paragraph 11* provides that any person who makes a statement which he or she knows to be false in a declaration or form which is used for the purposes of Part 1 of this Schedule or attests an application knowing it to be false is guilty of an offence and liable on summary conviction to a fine. The fine would not exceed level five on the standard scale (currently £5,000). *Paragraph 11* also makes it an offence for a person to provide false information in connection with an application to vote by post or by proxy: this offence is based upon the offence in section 13(1A) of the Representation of the People Act 1983.

Part 2 –Northern Ireland

105. *Paragraphs 12-20* contain equivalent provisions with necessary adaptations for absent voting in Northern Ireland. This includes a requirement under *paragraph 15* for the registration officer to grant an application to vote by post or by proxy where:
- the officer is satisfied that the applicant is or will be registered to vote at the referendum;
 - the officer is satisfied that the applicant cannot reasonably be expected to vote in person on polling day;
 - the application contains the applicant's date of birth, signature and national insurance number; and
 - the application meets further requirements prescribed by regulations.

Schedule 4: Application to the referendum of existing provisions

106. *Schedule 4* provides that certain provisions within existing electoral law will apply for the purposes of the referendum, with modifications specified in the Schedule. In particular, the rules governing registration for, and conduct of, elections will apply in the case of the referendum. The modifications specified in the Schedule are necessary to take account of those aspects of the referendum which differ from elections.

107. This Schedule is comprised of four Parts. *Part 1* sets out which sections of the 1983 Act will apply, with the effect of using existing electoral registers for the purposes of the referendum, and in ensuring the integrity of the referendum process. *Parts 2 to 4* of the Schedule apply a number of existing provisions so as to deal in detail with matters such as the provision of registers to counting officers, applications for proxy or postal voting and the post-referendum access to certain documents used for the referendum.

Schedule 5: Control of loans etc to permitted participants

108. *Schedule 5* 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. These arrangements are set out in a new Schedule 15A that is to be treated as being inserted into the 2000 Act for the purposes of the referendum on the voting system for parliamentary elections. References below to paragraph numbers are to paragraphs in the new Schedule 15A.
109. Schedule 15A provides that loans and other transactions entered into by permitted participants for the purposes of funding referendum expenses will be subject to certain controls. Under paragraph 4 a permitted participant will be prohibited from entering into a regulated transaction (as defined in paragraph 2) with a person who is not an authorised participant (as defined in paragraphs (2) and (3)). Paragraphs 5 and 6 set out the effect on a transaction if it is entered into in breach of these rules and paragraph 8 establishes various offences that may apply in those circumstances. Paragraphs 10 to 16 provide that where regulated transactions are entered into, certain details of those transactions must be recorded and submitted to the Electoral Commission as part of a permitted participant's post-referendum return.

Schedule 6: The alternative vote system: further amendments

110. *Schedule 6* sets out further amendments required to be made to the 1983 Act and other primary legislation in order to replace the first past the post system with the alternative vote system.

Part 1: Amendments of the parliamentary elections rules

111. *Paragraph 2* substitutes rule 18 (poll to be taken by ballot) of the Parliamentary Elections Rules ('the PER') as set out in Schedule 1 to the 1983 Act to provide that votes must be given by ballot in accordance with new *rule 37A* which sets out how votes are given and the results determined in accordance with new *rule 45A* which sets out how the votes are to be counted. New *rules 37A and 45A* are to be inserted into the PER by clause 7.

112. *Paragraph 3* amends rule 29(5) of the PER to prescribe new wording for the notice that is required to be displayed in polling station compartments in order to explain how to vote.
113. *Paragraph (5)(1)* amends rule 46 of the PER to provide that a candidate or candidate's election agent may, at the time when any stage of the counting or re-counting of the votes is completed, request the returning officer to have the votes re-counted or again re-counted in relation to any or all of the stages that have been completed so far. The returning officer may refuse to comply with a request under these provisions if in the officer's opinion it is unreasonable.
114. *Paragraph 5(3)* also amends rule 46 of the PER to provide that at any time before the declaration of the result, the returning officer may, if the officer thinks fit, have the votes re-counted in respect of any or all of the counting stages (whether or not there have been any previous re-counts). This puts on a statutory footing existing practices and is intended to address the situation where the result is very close (but this had not been apparent from earlier counting stages) and the returning officer thinks it necessary to re-count the votes from the earlier counting stages.
115. *Paragraph 6* amends rule 47 so that it sets out the circumstances in which a ballot paper under the alternative vote system shall be deemed to be rejected or not reallocated. Under the revised rule 47, a distinction is made between:
- ballot papers that are rejected at the outset and will play no part at all in the count, and
 - ballot papers that are included in the count initially but are not reallocated at a later stage of the count, due to the order of preferences on the ballot paper becoming unclear, and are therefore removed at that stage.
116. *Paragraph 6(2)* amends rule 47(1) of the PER. It retains the current provisions, whereby a ballot paper that does not bear the official mark or has anything written or marked on it by which the voter can be identified is rejected and will play no part at all in the count. Additionally,
- if a number 1 has not been marked against the name of any of the candidates or if a voter marks the number 1 against the name of more than one candidate, or
 - if the ballot paper is unmarked or is marked in a way that does not indicate a clear choice as to the voter's first (or only) preference,

then the ballot paper will be rejected as void and not counted at any stage. By virtue of rule 47(4) (as amended by *paragraph 6(5)*), the returning officer is required to

draw up a statement showing the number of rejected ballot papers under each of these heads.

117. *Paragraph 6(3)* substitutes new provisions for paragraph (2) of rule 47 of the PER. These set out circumstances where notwithstanding the provisions at rule 47(1) a ballot paper may be deemed valid by the returning officer, where the voter's voting intention is clear, and the way the ballot paper is marked does not itself identify the voter. For example, this would cover where a voter marks the ballot paper with a mark that is not a number but nevertheless the mark expresses a clear preference for a particular candidate.
118. In addition, inserted paragraphs (2A) and (2B) provide that if the first preference is clear, this and all other preferences may be deemed valid, until the order of preferences on the ballot paper becomes unclear. At that point, the other mark(s) on the ballot paper are ignored and the ballot paper is removed from the count. Paragraphs (3A) and (3B) (inserted by *paragraph 4*) provide that where this occurs the returning officer is required to endorse the words "not reallocated" on the ballot paper and an indication of the stage at which the mark(s) were ignored. The returning officer shall add to the endorsement the words "decision objected to" if an objection is made by a counting agent to his decision. The reason for endorsing the ballot papers in this way is so that if there is a re-count, returning officers will know at what stage the ballot papers were not reallocated by reason of rule 47(3A) and so will not have to take these decisions afresh. The requirement to endorse the ballot paper does not apply to ballot papers where the voter's order of preferences are clear but the ballot paper is not reallocated at a counting stage due to the ballot paper not showing a preference for any candidates remaining in the count and where this fact is clear.
119. *Paragraph 7* concerns equality of votes, where there are:
- two or more candidates with fewer votes than the other candidates but who have the same number of votes as each other,
 - three or more candidates, or remaining candidates, and they all have the same number of votes as each other, or
 - where the two remaining candidates have the same number of votes.
120. Under the present first past the post system, a tie between candidates is resolved by the drawing of lots. However, under the alternative vote system, the candidate would be either eliminated or elected, as appropriate, with reference to the number of voters' first preferences received by each candidate, or if that fails to resolve the tie, with reference to the number of votes allocated to each candidate at the next counting stage (if any). Where this does not resolve the tie, the returning officer will decide by lot which of the candidates is to be eliminated or elected.

121. *Paragraph 8* sets out provisions concerning the declaration of the result. It amends the list of information that the returning officer is required to declare and to give public notice of set out in rule 50 of the PER.
122. *Paragraph 9* concerns the return or forfeiture of a candidate's deposit and provides that a candidate's deposit shall be forfeited if the number of first preference votes obtained by the candidate is not more than one twentieth of the total number of votes allocated to candidates in accordance with voters' first preferences.
123. *Paragraphs 10 and 11* amend rules 61 and 62 of the PER concerning the death of an independent candidate at a parliamentary election so that these rules work under the alternative vote system.
124. *Paragraph 12* amends wording on certain forms in the Appendix of Forms in the PER: the Form of Front of Ballot Paper, Directions as to printing the ballot paper, and Form of directions for the Guidance of the Voters in voting. The changes to these Forms are consequential to parliamentary elections being held under the alternative vote system. Given that voters would be voting under a new voting system, the amendments are designed to provide clear guidance on how to cast a vote under the system and to make it clear that voters may express a preference for more than one candidate if they wish.
125. *Paragraph 12(2)(b) and (3)* removes the pre-printed numbering of candidates on the left-hand side of ballot papers. Under the current requirements for ballot papers, candidates are listed in alphabetical order by surname and put into rows that are numbered. The amendment is intended to address the concern that under the alternative vote system, pre-printed numbering on ballot papers could be a cause of confusion for voters and that voters could seek to use the numbers in some way in making their preferences and therefore lead to uncertainty about their intentions.

Part 2: Amendments of other provisions of the 1983 Act

126. *Paragraphs 14 to 22* make consequential amendments to other provisions in the Representation of the People Act 1983 ('the 1983 Act'). The amendments ensure that the various provisions are consistent with the alternative vote system.
127. *Paragraph 14* amends section 66 of the 1983 Act which concerns the secrecy of the ballot. Anyone attending at a polling station, the count or any other procedure at the elections in an official capacity or as an observer must maintain and aid in maintaining the secrecy of voting. The section has been amended so that the secrecy of the ballot requirements will cover information about how a voter has voted and so will include preferences expressed by a voter.

128. *Paragraphs 15 to 17* amend sections 113, 114 and 115 of the 1983 Act which contain the offences of bribery, treating and undue influence respectively. Whilst the nature of these offences and the penalties remain the same, the sections have been amended to clarify that references to '*voting or refraining from voting*' in the case of a parliamentary election includes a reference to marking (or refraining from marking) choices on the ballot paper. There is a similar clarifying provision in relation to references to '*the vote of any voter*' contained in these sections.
129. *Paragraph 19* inserts subsection (6A) into section 139 of the 1983 Act, which concerns the situation where an election court is considering an election petition and it appears that there is an equality of votes between any candidates at the election. Under the amendments, for parliamentary elections under the alternative vote, the court would resolve the tie by applying the same principles to ties as set out in revised rules 49, 49A and 62 which apply where there is an equality of votes.
130. *Paragraphs 20 and 21* amend section 165 and section 166 of the 1983 Act respectively. These sections provide for votes for a candidate in certain circumstances to be thrown away or disregarded. Under the amendments only the preferences obtained or given illegally would be thrown away/disregarded; the preferences that are validly given would continue to be used in the count. This reflects the fact that under the alternative vote system a ballot paper may show a preference for more than one candidate.
131. *Paragraph 22* amends section 199B of the 1983 Act which concerns the translations of certain documents. The amendments revise the wording on the enlarged sample copy of the ballot paper that must be displayed at every polling station. The revised wording is in line with that made to other notices in Schedule 6 and reflects that voters would be voting under a new voting system.

Part 3: Amendments of other enactments

132. *Paragraph 23* amends section 3A of the Political Parties, Elections and Referendums Act 2000 concerning the four Electoral Commissioners put forward by registered parties and makes provision for determining the size of two registered parties with the same number of MPs under the alternative vote system. Currently, the relative size of any two or more parties is determined by the number of MPs each party has – if they each have the same number, the party that secured the most votes at the most recent general election is deemed to be the larger party. The amendment provides that this will be determined in accordance with the total number of first preference votes cast for candidates standing for the party at the most recent general election.

FINANCIAL EFFECTS OF THE BILL

133. The costs of the referendum will be met from the Consolidated Fund. These costs split into three broad categories: the costs of the conduct of the poll; costs to the Electoral Commission, which has a number of roles in relation to the poll encompassing its administration and regulatory functions; and the cost of mailings by the two designated organisations campaigning in the referendum. The cost elements of the conduct of the proposed referendum are similar to those for a parliamentary general election. Since the proposed referendum on 5 May would be combined with the elections to the Scottish Parliament, Welsh and Northern Ireland Assemblies and English (and potentially Northern Ireland) local government elections on the same day, there will be costs savings from combination.
134. The costs of the parliamentary Boundary Commissions in completing the reviews of Parliamentary constituencies will be met through the relevant Departmental budgets by their sponsoring Departments. These arrangements are unchanged from those that presently exist for the resourcing of the parliamentary Boundary Commissions.

EFFECT OF THE BILL ON PUBLIC SERVICE MANPOWER

135. The Boundary Commissions will expand and contract in line with the demands of the Reviews, as they do at present. The referendum, and, if there were to be a “yes” vote, the implementation of the alternative vote at parliamentary elections, will be implemented through existing structures for delivery of elections.

IMPACT ASSESSMENT

136. The provisions contained within the Parliamentary Voting System and Constituencies Bill do not require an Impact Assessment.

EUROPEAN CONVENTION ON HUMAN RIGHTS

137. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).
138. The Deputy Prime Minister has made the following statement:
“In my view the provisions of the Parliamentary Voting System and Constituencies Bill are compatible with the Convention rights.”

A. The referendum

Right to free elections - Article 3 of Protocol 1 ECHR

139. Article 3 of Protocol No 1 to the European Convention on Human Rights provides: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure free expression of the opinion of the people in the choice of the legislature”.

Entitlement to vote in the referendum

140. One effect of clause 2 of the Bill is that those prisoners who are currently disqualified from voting in parliamentary elections by virtue of section 3 of the 1983 Act will also be unable to vote in the referendum. In light of the decision in *Hirst v UK (No 2)* (application 74025/01), the Government has considered whether this raises an issue under Article 3 of Protocol 1. Case law establishes, however, that referendums do not fall within the scope of Article 3 of Protocol 1 because they are not “elections concerning the choice of the legislature” and, accordingly, that no right to participate in a referendum is derived from that Article (*X v UK* (application 7096/75), in which the UK’s referendum on membership of the EEC was held to fall outside the ambit of Article 3 of Protocol 1; *Castelli v Italy* (applications 35790/97 and 38438/97); *Bader v Austria* (application 26633/95); *Nurminen v Finland* (application 27881/95); and *Hilbe v Liechtenstein* (application 31981/96)).
141. It follows that the Government considers that the provision made in respect of the franchise for the referendum in clause 2 does not engage Article 3 of Protocol 1 and that no issue of incompatibility with the ECHR arises in respect of either section 3 of the 1983 Act or any other ground of disqualification or exclusion from the referendum franchise.

Conduct leading to incapacity from voting in future parliamentary elections

142. By virtue of paragraph 1(5) of Schedule 4 to the Bill, a person convicted of a corrupt or illegal practice in relation to the referendum may become subject to a disqualification from voting in elections, being elected and holding office.
143. This engages Article 3 of Protocol 1. However, the rights in Article 3 Protocol 1 are not absolute and are subject to implied limitations. States have a wide margin of appreciation in this area. Conditions can be imposed and states are free to rely on aims other than those specified in Articles 8 to 11. The European Court of Human Rights has focused mainly on two criteria: whether there has been arbitrariness or a

lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people (*Zdanoka v Latvia* (2007) 45 EHRR 17).

144. The aim of these provisions is to uphold the integrity of the voting system (and by extension the proper functioning of a free and fair electoral system), to prevent crime and to enhance civic responsibility and respect for the rule of law. These are legitimate aims. As to proportionality, the disqualification applies only to those who have committed offences related to a democratic process and there is therefore a link between the nature of the sanction and the conduct of the individual concerned. The disqualification is time-limited and the length of the time-limit depends on the nature of the offence. Similar disqualification provisions already apply to offences committed in respect of parliamentary and local government elections and the Government does not think it objectionable for offences committed in respect of the referendum to carry the same consequences. The Government considers, therefore, that these provisions are proportionate.

Right to respect for private life – Article 8 ECHR

145. The Bill makes detailed provision for electoral registers to be altered for the purposes of the referendum, for registers and other documents (such as lists of proxy voters) to be used for the purposes of the referendum and for certain referendum documents to be retained (and open to public inspection) for a period after the poll.
146. The operation of these provisions involves the processing of individuals' personal data and therefore arguably engages Article 8 ECHR. To the extent that Article 8 is engaged, the provisions that involve the passing of personal data between officials and the keeping of that data are necessary to ensure that those who are entitled to vote in the referendum can do so and those who are not entitled to vote in the referendum cannot, and to ensure that materials are available for a reasonable period of time after the referendum in the event of a challenge or prosecution relating to the referendum. The provisions allowing public access to registers etc are limited and are justified on the basis of ensuring the accuracy and integrity of the register. The legislative scheme is in all material respects the same as that which is well established for parliamentary elections, it places restrictions on disclosure and use (backed with criminal offences) and, in the Government's view, is proportionate, involving no more impact on individuals' private lives than is necessary.
147. The Government therefore considers that these provisions are compatible with Article 8.

Right to a fair trial – Article 6 ECHR

Time limit on certain proceedings

148. Paragraph 20 of Schedule 1 provides that any proceedings questioning the number of ballot papers counted or votes cast in the referendum must be brought by way of judicial review and that the proceedings must be commenced within six weeks of the certification of the result. The Government has considered whether this is compatible with Article 6(1) ECHR, which includes the right of access to a court.
149. Certain proceedings concerning elections have been held to involve the determination of political rather than civil rights and therefore to fall outside the scope of Article 6. See *Priorello v Italy* (application 11068/84) which involved a challenge to an applicant's eligibility for office; *IZ v Greece* (application 18997/91) which involved a challenge to an election following a lack of ballot papers; *Pierre-Bloch v France* (application 24194/94) which involved a dispute over the election campaign expenses of a member of the French National Assembly; and *Krasnov and Skuratov v Russia* (applications 17864/04 and 21396/04), which involved the right to stand for election to the Russian State Duma. In *X v United Kingdom* (application 8208/78) the Commission decided that the right to take part in the work of the House of Lords "falls into the sphere of 'public law' rights outside the scope of Article 6". In *Bompard v France* (application 44081/02) the Court said that "proceedings concerning electoral disputes do not generally fall under Article 6" (see the more detailed consideration of this case in Section C below).
150. It could be argued therefore that paragraph 20 of Schedule 1 does not engage Article 6. The Government has nevertheless considered whether, if Article 6 is engaged, paragraph 20 is compatible with it. Where an apparent restriction engages Article 6(1), it will be compatible with the right protected by that Article if it is justified and proportionate in the pursuit of a legitimate aim (*Ashingdane v UK* (application 8225/78)). The Government considers that the limitation period imposed in paragraph 20 pursues a legitimate aim, namely to ensure that challenges to the referendum result can be brought but to avoid prolonged uncertainty about the outcome. In the Government's view the six-week time limit is proportionate to this aim and achieves the correct balance between the need for certainty about the referendum outcome and the need to ensure that there is an adequate opportunity to challenge the result in the event of any procedural difficulties. This approach also follows the most recent precedent for a referendum (i.e. the North-East regional assemblies referendum in 2005). While this is a shorter time limit than would otherwise apply in respect of judicial review applications, it is considered that the circumstances likely to give rise to a challenge are likely to be known (or capable of being known) shortly after the certification of the result and the six-week period therefore allows a reasonable time for any person to bring a challenge.

151. Further, legal challenges other than those specifically mentioned in paragraph 20 will not be subject to any particular restriction and will therefore be subject to the standard rules which govern the time for bringing judicial review challenges.
152. It follows that, if Article 6 applies at all, the Government considers that the provision made in respect of restricting certain types of legal challenges in paragraph 20 is justified and proportionate by reference to a legitimate aim and that no issue of incompatibility with the ECHR arises.

Defects that do not leave referendum open to challenge

153. Rule 12 in Schedule 2 provides that the polling districts and places for the referendum are those that would apply by virtue of section 18A, 18B and 18E(4) of the 1983 Act to a parliamentary election. Rule 12(5) provides that the number of ballot papers counted or votes cast as certified by the Chief Counting Officer or a Regional Counting Officer or counting officer may not be questioned by reason of any non-compliance with those sections of the 1983 Act or any informality relative to polling districts or polling places. This is intended to ensure that any administrative or technical defects in the designation of parliamentary polling districts (e.g. a failure by a local authority to keep polling districts or places under review) do not render the referendum result open to challenge.
154. Rule 12(5) is intended to mirror section 18E of the 1983 Act in respect of parliamentary elections. The Government considers that it is necessary and proportionate to provide certainty to the referendum result. It does not constitute a complete ouster – a challenge could still be brought on the basis that sections 18A, 18B and 18E(4) were not complied with – merely that the outcome of the referendum could not be questioned on this basis.
155. For the same reasons as those given above, it could be argued that rule 12 does not engage Article 6. To the extent that it does, this provision is justified and proportionate by reference to a legitimate aim and that no issue of incompatibility with the ECHR arises.

B. The introduction of the alternative-vote system (if the referendum results in a “yes” vote)

Right to free elections - Article 3 of Protocol 1 ECHR

156. The Government believes the alternative vote system to be compatible with Article 3 of Protocol 1 in principle. Article 3 of Protocol 1 requires no particular electoral

system as long as the system chosen is free, by secret ballot and ensures the free expression of the people (see *Mathieu-Mohin v Belgium* (1987) 10 EHRR 1).

157. Challenges to the existing first past the post system in the UK have failed on the basis that this system is compatible with Article 3 of Protocol 1. In particular in *Liberal Party, R and P v United Kingdom* [1980] 4 EHRR 106 the Liberal Party and two of its members claimed that the simple majority electoral system was a breach of Article 1 of Protocol 3 and Article 10, when taken with Articles 13 and 14, since the system effectively amounted to political discrimination against Liberals. The Commission held the application to be inadmissible, saying that even if the simple majority system operated to the detriment of small parties, it was a permissible system under Article 3 of Protocol 1 which allowed for the free expression of the opinion of the people. There was no violation of Article 3 of Protocol 1 taken alone or in conjunction with Article 14. There was no requirement that each vote has equal value in the determination of the composition of the legislature.
158. Having had regard to the above case law and general ECHR principles, the Government does not believe that the alternative vote system is in principle any more vulnerable than the first past the post system to successful challenge under Article 3 of Protocol 1.
159. In the Government's view the only specific amendments in the alternative vote provisions that potentially give rise to compatibility arguments are those contained in paragraphs 20 and 21 of Schedule 6 which make amendments to sections 165 and 166 of the 1983 Act respectively. The amendments provide that preferences expressed for a candidate should be 'thrown away' or disregarded where the candidate was incapable of being elected because he or his agent personally engaged as a canvasser or agent any person whom he knows or has reasonable grounds for supposing to be subject to an incapacity to vote at the election (section 165), or a court has found that votes cast for a candidate were obtained by the candidate or someone else through bribery, treating or undue influence (section 166). These proposals are as consistent as can be with the present approach under first past the post where the vote as a whole is disregarded (under the alternative vote system it is just the preferences for the candidate in question that are disregarded).
160. The Court's general approach to Article 3 of Protocol 1 is set out in *Zdanoka v Latvia*. The Government consider that these amendments engage Article 3 Protocol 1 but are in pursuit of a legitimate aim i.e. maintaining the credibility of the House of Commons by removing votes given in the above circumstances and prohibiting individuals who have received a serious penalty from representing the electorate and so taking decisions on important matters of policy and law. The Government also considers that the approach is proportionate given that preferences for candidates who are capable of being elected will still be counted.

C. Boundaries

161. All the provisions of Part 2 of the Bill, on parliamentary constituencies, engage Article 3 of Protocol 1 (right to free elections). It might also be argued that Article 6 (right to a fair trial) and Article 1 of Protocol 1 (protection of property) are engaged. Articles 13 (right to an effective remedy) and 14 (prohibition of discrimination) need to be considered alongside these other rights. However, the Government does not consider that the provisions in this Part of the Bill give rise to serious human rights concerns. The European Court of Human Rights has consistently held that member states have a wide margin of appreciation in complying with Article 3 of Protocol 1 and the Government considers that the proposals fall within that margin. The Court has also held that Article 6 rights (right to a fair trial) do not generally arise in the context of elections.

Right to free elections – Article 3 of Protocol 1 ECHR

162. The approach of the Strasbourg court to Article 3 of Protocol 1 was set out in *Zdanoka v Latvia*, in which the Grand Chamber said that ‘In examining compliance with article 3 of Protocol No 1, the Court has focused mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people. In this connection, the wide margin of appreciation enjoyed by the Contracting States has always been underlined.The standards to be applied for establishing compliance with article 3 of Protocol No 1 must therefore be considered to be less stringent than those applied under articles 8 to 11 of the Convention.’
163. The relevant principles applied by the Court are to be found in the case of *Bompard v France*. The European Court of Human Rights declared the application as inadmissible. It said:

"[The Court] has to satisfy itself that the conditions [imposed by states] do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. In particular, such conditions must not thwart “the free expression of the opinion of the people in the choice of the legislature”...

The Court further reiterates that, as regards the method of appointing the “legislature”, Article 3 provides only for “free” elections “at reasonable intervals”, “by secret ballot” and “under conditions which will ensure the free expression of the opinion of the people”. Subject to that, it does not create any “obligation to introduce a specific system”.

Here too the Court recognises that the Contracting States have a wide margin of appreciation, given that their legislation on the matter varies from place to place and from time to time.....

[T]he phrase “conditions which will ensure the free expression of the opinion of the people in the choice of the legislature” implies essentially – apart from freedom of expression (already protected under Article 10 of the Convention) – the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election.

It does not follow, however, that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of victory. Thus no electoral system can eliminate “wasted votes”....”

164. The Court held that the French boundary system could not in itself have had the effect of impeding the “free expression of the opinion of the people in the choice of the legislature”. Even if it could be shown that the failure to conduct a boundary review – for which it held that the French government had an adequate reason – had led to an unbalanced distribution of the electorate, that could not have curtailed the applicant’s rights to such an extent as to deprive them of their effectiveness.

Right to a fair trial - Article 6 ECHR

165. So far as the applicant's claim of a breach of Article 6 was concerned, the Court held in *Bompard* that:

"according to its settled case-law, proceedings concerning electoral disputes do not generally fall under Article 6 of the Convention since they concern the exercise of political rights and not “civil rights and obligations” or a “criminal charge”... the right to vote in an election is a political right and is not covered by the categories “civil rights” and “criminal charges”, within the meaning of Article 6 of the Convention; accordingly, any disputes relating to the exercise of such a right do not fall within the scope of that provision."

166. Other cases in which claims based on Article 6 failed are listed in Section A above.

Prohibition on discrimination – Article 14 ECHR

167. In *Liberal Party, R and P v United Kingdom* the Liberal Party and two of its members claimed that the simple majority electoral system was a breach of Article 3 of Protocol 1 and Article 10, when taken with Articles 13 and 14, since the system effectively amounted to political discrimination against Liberals and a restriction on

their freedom of expression. The Commission held the application to be inadmissible, since even if the system when applied gave results which were less advantageous to a particular party, this did not amount to discrimination contrary to Article 3 of Protocol 1 in conjunction with Article 14. Article 10, the Court held, did not apply.

Right to an effective remedy – Article 13 ECHR

168. Finally, the Court in *Bompard* rejected the claim that there had been a breach of Article 13, saying:

"The Court reiterates that the remedy provided for in Article 13 may only concern a right protected by the Convention.... Accordingly, having regard to its decision as to the complaint under Article 6 (see above), to which the Article 13 complaint is related, the Court finds that Article 13 does not apply in the present case."

Conclusions

169. The Government considers that this jurisprudence points clearly to the following conclusions in relation to this part of the Bill.

The revised procedure

170. Following *Bompard* in particular, the Government does not consider that Article 6 would apply to the revised procedure for boundary reviews, since it involves the determination of political rather than civil rights and therefore falls outside the scope of the Article. Article 3 of Protocol 1 would be engaged, but the Government considers that the revised procedure, which allows for voters and political parties to make representations on a Boundary Commission's original recommendations and on a first set of revised recommendations, does not infringe that Article, in that it too is not arbitrary or disproportionate and does not deny the people the free expression of their opinion in the choice of legislature.

The use of the registered electorate rather than the potential electorate or population

171. The same applies, as to both Article 6 and Article 3 of Protocol 1, to a challenge by a voter or party to the use of the registered electorate rather than the potential electorate (including those not registered) or the population to calculate the size of constituencies. The choice of the registered electorate, which is a more certain and up to date figure, is not unreasonable and falls within the margin of appreciation under Article 3 of Protocol 1, nor does it amount to unlawful discrimination under Article 14.

No system of reviews for the National Assembly for Wales

172. A challenge on the basis that the possibility of reviewing the National Assembly for Wales constituencies and electoral regions has been removed would be unlikely unless sufficient time passed without further legislation relating to Assembly constituencies and regions being passed for those constituencies and regions to be considered out of date. Even in that event, however, the judgment in *Bompard v France* suggests that such a challenge would be unsuccessful.

Preference for one party over another

173. Although the result produced by the new boundary system might favour one party over another, the judgment in *Liberal Party, R & P v United Kingdom* clarified that such results do not render a system discriminatory. The revised system of reviews – which in any event is a move towards the principle of equality of votes – is not arbitrary or discriminatory and does not interfere with the free expression of the opinion of the people.

MPs' loss of seats

174. A complaint of a loss of a seat through the reduction in the number of constituencies does not fall within Article 6 and the implication of *X v United Kingdom* is that it does not fall within Article 1 of Protocol 1 either.

No effective remedy

175. Given that none of the challenges under the substantive Articles is likely to succeed, the application of Article 13 does not arise.

No precise equality of votes

176. As mentioned, the new system will accord more closely with the principle of the equality of votes than does the current system. In any event, Article 3 of Protocol 1 does not require exact equality.

COMMENCEMENT

177. Commencement is dealt with in clause 16. With the exception of clause 7, Schedule 6 and Part 1 of Schedule 7, the Bill will come into force on the date of Royal Assent.
178. Clause 7, Schedule 6 and Part 1 of Schedule 7 are referred to as the “alternative vote provisions” and their effect would be to alter the voting system for parliamentary

*These notes refer to the Parliamentary Voting System and Constituencies Bill
as introduced in the House of Commons on 22 July 2010 [Bill 63]*

elections to the alternative vote system. The alternative vote provisions will come into force (if at all) in accordance with clause 6.

179. Under clause 6, if there is a "yes" vote in the referendum (that is, more people vote yes than vote no) then the alternative vote provisions must be brought into force on the same day as the coming into force of an Order in Council giving effect to the Boundary Commissions' recommendations for altering the parliamentary constituencies made under the revised scheme in Part 2 of the Bill.
180. If there is a "no" vote in the referendum, the alternative vote provisions must be repealed.

PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES BILL

EXPLANATORY NOTES

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Bill as introduced in the House of Commons on 22 July 2010 [Bill 63]*

*Ordered, by The House of Commons,
to be Printed, 22 July 2010.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON - THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited

£x.00