

PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Parliamentary Voting System and Constituencies Bill, as brought from the House of Lords on 14 February 2011. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 26, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister, except for amendments 1, 8, 16, 17, 19 and 20 which were opposed by the Government, and amendments 3, 5, 18 and 30 which were supported by the Government. In the following commentary, an asterisk appears in the heading of the paragraph dealing with a non-Government amendment that was opposed by the Government.

COMMENTARY ON LORDS AMENDMENTS

*** Lords Amendment 1, 8**

5. Lords Amendment 1 provides that if less than 40% of the electorate vote in the referendum, then the result (either ‘Yes’ in response to the referendum question or ‘No’) is not binding. There is no consequential amendment to clause 8, under which the referendum result is “binding” in the sense that – regardless of the level of voter turnout – the Minister must either implement the provisions of the Bill that give effect to the alternative vote system¹ (if there are more “Yes” votes than “No” votes and the condition in clause 8(1)(b) is met) or repeal those provisions (if there are more “No” votes than “Yes” votes). Lords Amendment 8 provides a definition of the terms “electorate” and “vote”, and determines how the turnout figure should be calculated.

¹ Throughout the explanatory notes the provisions which give effect to the alternative vote system (clause 9, schedule 10 and Part 1 of Schedule 11) are referred to as “the AV provisions”.

*** Lords Amendments 2, 3, 5**

6. Lords Amendment 2 provides that the referendum must take place before 31st October 2011.
7. Lords Amendment 3 provides that the referendum will be held on 5 May unless before that date the Minister makes an Order to appoint an alternative date. Any new date must be appointed in accordance with the obligation imposed by Lords Amendment 2. Such an Order will be subject to the affirmative resolution procedure and may only be made if the Minister is satisfied that it is impossible or impracticable for the referendum to be held on 5 May, or that it cannot be conducted properly if held on that day. Any Order may include supplemental or consequential provision and may, for the purposes of making such provision, amend or modify the Bill or any other provision in primary or secondary legislation.
8. Lords Amendment 5 enables provision to be made by Order in a case where the new date for the referendum fixed by Order under the power given by Lords Amendments 2 and 3 is also the date of another poll to be held in the United Kingdom or any part of it. Any Order may provide that in those circumstances the referendum is to be taken together with any such poll or is not to be taken together. An Order may include supplemental or consequential provision and may, for the purposes of making such provision, amend or modify the Bill or any other provision in primary or secondary legislation.

Lords Amendment 4

9. The effect of Lords Amendment 4 would be that existing legislative powers to change the date of the poll for the Northern Ireland Assembly, Scottish Parliamentary or Welsh Assembly elections are not affected by the combination provisions contained in clause 4 of the Bill. The combination provisions would not apply to any of those polls if held on a different date from the referendum.

Lords Amendment 6

10. The Electoral Commission was given new civil sanctions powers by the Political Parties and Elections Act 2009 which it is currently able to impose only in respect of offences or restrictions or requirements contained in the Political Parties, Elections and Referendums Act 2000 and prescribed in an Order. Amendment 6 makes available these sanctions in respect of the new offences relating to loans entered into by permitted participants which are included in paragraph 8 of Schedule 9 to the Bill.

Lords Amendments 7, 28, 29, 40, 41, 62

11. Lords Amendments 7, 28, 29, 40, 41 and 62 would ensure that there is a single definition of “registration officer” that applies throughout Part 1 of the Bill.

Lords Amendment 9

12. Lords Amendment 9 would replace the power in clause 8(4) to make transitional or saving provision with a specific saving provision on the face of the Bill. The effect of the saving provision is that the alternative vote provisions will not apply to any by-election held after the date on which the AV provisions are brought into force but before the first general election which takes place after that date.

Lords Amendments 10 to 13

13. The effect of Lords Amendments 10 and 11 is that a Boundary Commission report must be implemented unmodified unless the Commission specifies any modifications, in which case the report has to be implemented with those modifications. Lords Amendments 12 and 13 are consequential.

Lords Amendment 14

14. Lords Amendments 14 would add the Chief Survey Officer of Land and Property Services as Assessor to the Boundary Commission for Northern Ireland, amending paragraph 5 of Schedule 1 to the Parliamentary Constituencies Act 1986.

Lords Amendment 15

15. Lords Amendment 15 would broaden the scope of the functions of assistant Commissioners from “inquiring and reporting” under the direction of the Boundary Commissions to “assisting”. This would increase the flexibility the Boundary Commissions have in what they might ask the assistant Commissioners to do.

*** Lords Amendment 16, 19**

16. Lords Amendments 16 and 19 insert a new rule 5A, which would allow a Boundary Commission to propose a constituency that is 7.5% either side of the UK electoral quota (ie: within the range 92.5% - 107.5% of that quota). This would only be possible if, in the view of the Commission, it is “necessary” to do so in order to create a “viable” constituency”. The decision as to whether or not it is “necessary” must be made on two criteria:
 - i. there must be special geographical considerations or local ties, as defined elsewhere in the Bill;
 - ii. those consideration must be of an “exceptionally compelling nature”.

*** Lords Amendments 17, 20**

17. Lords Amendments 17 and 20 would prevent any constituency from including part of the Isle of Wight and part of the mainland, and would accordingly disapply the parity principle in rule 2 of the new Schedule 2 to the Parliamentary Constituencies Act 1986.

Lords Amendment 18

18. Lords Amendment 18 would allow the Boundary Commissions to take the boundaries of existing constituencies into account for the purposes of the review, if and to such extent as they see fit.

Lords Amendment 21

19. Lords Amendment 21 deals with a potential problem arising from the way that constituencies are allocated to the four parts of the UK. It is possible that when all but a small number of seats have been allocated by applying the process described in rule 8, two (or more) parts of the UK could be equally entitled to the remaining seat (or seats). The amendment provides that, if such a tie occurs, the next seat is allocated to that nation, of those that are tied, with the smaller or smallest total electorate. Although the probability of this situation arising is low, there are several sets of numbers which could produce this result.

Lords Amendments 22, 23, 24

20. Lords Amendments 22, 23 and 24 would add local government boundaries including boundaries of wards and of the City of London to the factors that may be considered by the Boundary Commissions.

Lords Amendments 25, 26, 104

21. Lords Amendments 25, 26 and 104 would replace the Bill's provisions on publicity and consultation and insert a new Schedule into the Parliamentary Constituencies Act 1986 on public hearings.
22. Amendment 25 substitutes a new section 5 in the 1986 Act, which requires the Boundary Commissions -
- i. to inform people of proposed recommendations for constituency boundaries and to give them 12 weeks in which to make written representations on the proposals;
 - ii. to hold public hearings between the 5th and 10th weeks of that 12 week period;
 - iii. at the end of that period, to publish the representations received and to give people 4 weeks to make counter-representations;

- iv. to inform people of revised recommendations (but not further revisions) and give them 8 weeks in which to make representations;
 - v. to take any written and oral representations into account.
23. The purpose of public hearings is to enable parties and the public to make representations about recommendations. There are to be between 2 and 5 in each English region and in each of Scotland, Wales and Northern Ireland, which between them must cover the whole of the proposals for the UK

Lords Amendment 27

24. Lords Amendment 27 would require a review to be held which would investigate the impact of the reduction in the number of MPs from 650 to 600. The majority of the members of the committee which carried out the review would be required to be MPs. The committee would be required to publish its findings. The arrangements for the review would be required to be put in place by any Secretary of State or the Lord President of the Council between June and November 2015 (ie: directly after the next scheduled general election if the Fixed-term Parliaments Bill, currently before Parliament, becomes law).

Lords Amendment 30

25. Lords Amendment 30 would insert a new sub-paragraph in paragraph 10 of Schedule 1. This would oblige the Chief Counting Officer for the referendum to take steps to facilitate co-operation between Regional Counting Officers, counting officers and registration officers if any of those officers take steps under paragraph 10 to encourage participation in the poll.

Lords Amendments 31 to 34

26. Lords Amendments 31 to 34 would give the Chief Counting Officer, who is the Chair of the Electoral Commission, a power to incur expenses for the effective conduct of the referendum in certain limited circumstances and make payments in respect of those expenses out of the monies to be provided from the Consolidated Fund.

Lords Amendment 35

27. Lords Amendment 35 would rectify a defect in the drafting, to provide that the referendum result is not invalidated by any non-compliance with rule 13(3) or (4) of the referendum rules (to do with the location of polling stations).

Lords Amendments 36, 37, 38, 42 to 61, 63 to 80, 86, 87, 90, 91, 94, 95

28. Lords Amendments 36, 37, 38, 42 to 61, 63 to 80, 86, 87, 90, 91, 94 and 95 would produce the result that an elector who registers or who is already registered for a postal vote at one of the polls combined with the referendum, and is entitled to vote in the referendum, is also automatically registered for a

postal vote for the referendum. Similar provision is made for those registered for other forms of absent vote.

Lords Amendment 39

29. Lords Amendment 39 would ensure that in Wales, if the polls for the referendum on the voting system and for the Welsh Assembly elections are combined, the relevant registration officer will be the same individual for both polls.

Lords Amendment 81

30. Lords Amendment 81 would ensure that the counting officer will be provided with any revisions which are made to any of the absent voters lists which are produced for the referendum.

Lords Amendment 82

31. The effect of Lords Amendment 82 would be that at the end of the referendum poll, postal votes returned after the close of the poll, envelopes returned as undelivered too late to be readdressed, and spoilt ballot papers returned too late to be replaced, should be retained by the Chief Electoral Officer and not forwarded on.

Lords Amendment 83

32. The effect of Lords Amendment 83 would be that the Local Government Act Referendums (Combination of Polls) Rules would apply to govern the conduct of a local government referendum that is combined with the referendum on the voting system.

Lords Amendments 84, 88, 92, 98, 101

33. The effect of Lords Amendments 84, 88, 92, 98 and 101 would be that at the end of the combined polls, the same access to copies of electoral documents is available as would have been available if the election had been taken alone.

Lords Amendments 85, 89, 93

34. Lords Amendments 85, 89 and 93 would allow counting officers to be provided with the relevant documents and information from registration officers which they will need in order to run the combined poll.

Lords Amendment 96

35. The effect of Lords Amendment 96 would be that when a combined postal voters list or a combined proxy postal voters list is created for the purposes of the referendum and combined elections in Northern Ireland, any provisions in other legislation that refer to the constituent lists are interpreted as referring instead to the combined list.

Lords Amendments 97, 99, 100

36. Lords Amendments 97, 99 and 100 would ensure that documents which relate solely to the Northern Ireland local elections are kept by the relevant local officer whereas the combined election and referendum documents are held by the Chief Electoral Officer. Amendment 97 would also ensure that, in the event of an election petition relating to a local poll in Northern Ireland, a court order could be made for the production of any necessary documentation relating to the local poll which has been combined with referendum documentation and retained by the Chief Electoral Officer for Northern Ireland.

Lords Amendment 102

37. Lords Amendment 102 would make a change to instruction 9 in Form 2 (Declaration of Identity to be used where proceedings on the issue and receipt of postal ballot papers combined) of Part 3 of Schedule 8 (combination of polls: Northern Ireland) to require voters to return all the postal ballot papers in their pack in the event that any ballot paper is spoilt and a replacement is required.

Lords Amendment 103

38. Lords Amendment 103 makes a consequential amendment to the definition of ‘qualifying party’ which is used in the provisions inserted in the Parliamentary Constituencies Act 1986 by the Bill by Lords Amendments 26 and 104. Those amendments provide for public hearings about Boundary Commission proposals. Lords Amendment 103 specifies that in the event that the alternative vote system is implemented, where share of the vote in the most recent parliamentary general election is used to determine whether a party is a ‘qualifying party’, and so entitled to make representations at a public hearing, this would be done with reference to the percentage of first preference votes received by the party at that election.

FINANCIAL EFFECTS

39. The additional costs of Public Hearings to the Boundary Commissions will be met through their sponsorship arrangements with Government departments.
40. Resources for the review of the impact of the reduction in the number of MPs will be a matter for the Secretary of State at that time.

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February 2011 [Bill 147]*

*Ordered, by The House of Commons,
to be Printed, 14 February 2011.*

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LONDON - THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited

£x.00