

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### EUROPEAN UNION (REFERENDUM) BILL

*Fifth Sitting*

*Tuesday 10 September 2013*

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CLAUSE 3 agreed to.

Adjourned till Wednesday 11 September at five minutes to Nine o'clock.

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**Saturday 14 September 2013**

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**The Committee consisted of the following Members:**

*Chairs:* MR JOE BENTON, ANNETTE BROOKE, JIM SHERIDAN, †MR GARY STREETER

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|--|--|
| † Bain, Mr William ( <i>Glasgow North East</i> ) (Lab)                 | † Reynolds, Emma ( <i>Wolverhampton North East</i> ) (Lab)             |
| † Burley, Mr Aidan ( <i>Cannock Chase</i> ) (Con)                      | † Sheerman, Mr Barry ( <i>Huddersfield</i> ) (Lab/Co-op)               |
| Campbell, Mr Gregory ( <i>East Londonderry</i> ) (DUP)                 | † Smith, Miss Chloe ( <i>Parliamentary Secretary, Cabinet Office</i> ) |
| † Dowd, Jim ( <i>Lewisham West and Penge</i> ) (Lab)                   | Vaz, Keith ( <i>Leicester East</i> ) (Lab)                             |
| † Ellwood, Mr Tobias ( <i>Bournemouth East</i> ) (Con)                 | † Wharton, James ( <i>Stockton South</i> ) (Con)                       |
| † Hart, Simon ( <i>Carmarthen West and South Pembrokeshire</i> ) (Con) | † Williamson, Gavin ( <i>South Staffordshire</i> ) (Con)               |
| † Hopkins, Kelvin ( <i>Luton North</i> ) (Lab)                         | Kate Emms, <i>Committee Clerk</i>                                      |
| † Horwood, Martin ( <i>Cheltenham</i> ) (LD)                           | † <b>attended the Committee</b>  |
| † Latham, Pauline ( <i>Mid Derbyshire</i> ) (Con)                      |  |
| Lidington, Mr David ( <i>Minister for Europe</i> )                     |  |

# Public Bill Committee

Tuesday 10 September 2013

[MR GARY STREETER *in the Chair*]

## European Union (Referendum) Bill

### Clause 3

#### CONDUCT OF THE REFERENDUM AND FURTHER PROVISIONS

2 pm

**Emma Reynolds** (Wolverhampton North East) (Lab): I beg to move amendment 83, in clause 3, page 2, line 7, leave out ‘by order’ and insert ‘present further legislation to Parliament to’.

**The Chair:** With this it will be convenient to discuss the following:

Amendment 81, in clause 3, page 2, line 13, after second ‘a’, insert ‘super-affirmative resolution’.

Amendment 80, in clause 3, page 2, line 14, at end insert

‘(5) Results for the referendum will be published according to European parliamentary constituencies, except that Gibraltar’s results shall be published separately from the rest of the South West.’.

Amendment 91, in clause 3, page 2, line 14, at end insert

‘(5) If the turn out for the vote is found to be less than 50 per cent of electors, the referendum is to be considered invalid.’.

Amendment 92, in clause 3, page 2, line 14, at end insert

‘If it appears to the Secretary of State that less than 40 per cent of the persons entitled to vote in the referendum have voted “no” in reply to the question posed in the referendum he shall lay before Parliament the draft of an Order for the repeal of this Act.’.

Amendment 99, in clause 3, page 2, line 14, at end add

‘(5) Polls shall be combined as set out in the Schedule [Combination of Polls].’.

#### New schedule 3—‘Combination of polls

(1) Where the date of the poll for one or more of the following is the same as the date of the poll for the referendum, the polls are to be taken together—

- (a) a local authority election in England;
- (b) a local referendum in England;
- (c) a mayoral election in England;
- (d) a Welsh Assembly general election;
- (e) Welsh local elections;
- (f) a Scottish parliamentary general election;
- (g) Scottish local elections;
- (h) the general election of members of the Northern Ireland Assembly;
- (i) local elections in Northern Ireland.

(2) If any of the elections referred to in subsection (1) are not held on the same day as the referendum, that subsection does not apply.

(3) In this section—

“local authority election in England” means the election of a councillor of any of the following—

- (a) a county council in England;
- (b) a district council in England;
- (c) a London borough council;
- (d) a parish council.

“local referendum in England” means a referendum held in England under Part 2 of the Local Government Act 2000;

“mayoral election in England” means an election in England for the return of an elected mayor as defined by section 39(1) of the Local Government Act 2000;

“Northern Ireland local election” means a local election as defined by section 130(1) of the Electoral Law Act (Northern Ireland) 1962;

“Scottish parliamentary general election” means an ordinary election under section 2 of the Scotland Act 1998;

“Welsh Assembly general election” means an ordinary election under section 3 of the Government of Wales Act 2006.’.

It is a pleasure to serve under your chairmanship once again, Mr Streeter. I want to speak to the amendments tabled in my name and those of my hon. Friends the Members for Huddersfield and for Glasgow North East. Amendments 83 and 81 seek to ensure that Parliament, not just the Government and the Electoral Commission, has a say in the arrangements for a possible future referendum. As currently drafted, clause 3(2) gives the Secretary of State the power to lay a statutory instrument before Parliament to set

“the rules in accordance with which the referendum is to be conducted.”

Amendment 83 would remove that power and the rules would instead have to be made by primary legislation. The amendment seeks to restore power and scrutiny to Parliament. Statutory instruments are often used for making minor and inconsequential changes, but membership of the European Union is of such national importance that Parliament should have the opportunity to consider the arrangements for a referendum.

Amendment 81 is related, in that it would require any order laid before Parliament under clause 3 to be approved by the super-affirmative procedure. Briefly, as we have discussed it previously, the super-affirmative procedure would allow a Committee of both Houses 60 days to consider the important matter and to make resolutions and recommendations to any draft order. At the end of that 60-day period, having had due time to take note of the recommendations put forward by the Committee, the Minister would prepare a statement to Parliament, either to agree or disagree with them. The Minister could then choose either to go ahead with an unamended draft order or to lay a revised draft order to take into account the issues raised during the process.

In the time between the Minister’s laying the draft order, including any changes, and approval being given, either House, via the appropriate scrutiny Committee, could also recommend that the draft order should not proceed. In that eventuality, the only way for the draft order to proceed would be for the relevant House to reject the recommendations in the same parliamentary Session.

Amendment 81 would help to guarantee that Parliament will have a full say in the arrangements for any future referendum. That is particularly important given the significance of a referendum for our membership of the European Union and its wide-ranging consequences. Such a high level of scrutiny is relevant in this case.

As we briefly discussed in a previous sitting, prior to the Legislative and Regulatory Reform Act 2006, which introduced the super-affirmative resolution procedure, there was no scope for Parliament to amend a statutory instrument. I chose the procedure because it is appropriate given the importance of any future referendum and its arrangements.

Amendment 80 returns to what happens to Gibraltar, which we debated at length in a previous sitting. The amendment is connected to the one to which I spoke in that sitting. It is important that those in Gibraltar have a say on whether the UK, and therefore Gibraltar, remains a member of the European Union, but it is also important that we should be able to amend this Bill to reflect that situation. The Minister for Europe, who is not here today, said that he would give the issue some thought.

If that previous amendment was made, amendment 80, which is linked to it, would essentially seek to give Gibraltar a separate count of its vote, so that we would know whether the Gibraltarians wanted to remain in the EU. That would be an appropriate way of dealing with an unusual situation. As we discussed last week, Gibraltar has a Member of the European Parliament; none of our other overseas territories has, so it is a particular and special case. I hope that later in the consideration of the Bill we can reach some cross-party consensus about how we deal with the specific case of Gibraltar.

Amendment 91, in the name of my hon. Friends the Members for Huddersfield and Glasgow North East, would require that there be a turnout threshold in a future referendum of 50% for that referendum to be valid. That subject warrants further debate, which may happen today or later on. Different countries have different arrangements for thresholds in referendums; some countries have them and some do not. I will come to that shortly.

In the most recent referendum in the UK, about the alternative vote, only 42.2% of the population voted. We know that there was a clear no vote against the introduction of a new alternative vote system. If the result had been the other way round—let us say, hypothetically, that there had been a yes vote for a new voting procedure—but the turnout had been 42%, questions would have been asked about whether the result was valid, given that how we vote in our country is of such constitutional importance.

**Martin Horwood** (Cheltenham) (LD): Does the hon. Lady not think that she is walking down a rather dangerous path by challenging the legitimacy of votes with turnouts of, say, less than 40 or 42%? In fact, those are quite respectable percentages, by the standards of some local and European regional elections. Is it not a pretty long-standing principle of British democracy that the election or question is decided by the people present and voting? By qualifying that, we threaten to undermine important principles of British democracy.

**Emma Reynolds:** I disagree with the hon. Gentleman. Referendums, especially those that involve constitutional change, are different from normal elections—that is, local, national or European elections. As we discussed in a previous sitting, referendums do not come around very often. The last referendum on our EU membership was in 1975.

In a previous sitting, we discussed whether 16 or 17-year-olds should have the right to vote in any such referendum, because it is a once-in-a-generation, life-changing vote. The hon. Gentleman put forward all sorts of arguments about that. I am not saying that the threshold should be definitely 40% or definitely 50%; I will come to the amendment on the 40% threshold in the names of my hon. Friends. However, I do think that a threshold should be considered. The measure is not unusual; these things are being considered in other countries.

We discussed the Quebec independence referendums of 1980 and 1995. In Canada now, there are proposals to put in a threshold for any future Quebec independence referendums, so a debate on whether there should be a threshold is not irregular or unusual. Referendums, and particularly those that involve constitutional change, stand in marked contrast from normal elections, such as local elections, general elections or European elections.

There was a similar debate before the 1975 referendum, which perhaps my hon. Friend the Member for Luton North remembers. Before that referendum, an amendment was moved in the House of Commons that sought to put in a turnout threshold. That amendment was rejected by the Government at the time, so there was no turnout threshold for that referendum. There was, however, a healthy 65% turnout in that referendum.

In 1979, the so-called Cunningham clause—named after George Cunningham, then an MP—put a 40% threshold into the Scottish devolution legislation. That is the rationale behind amendment 92. The measure was controversial, and I say to the hon. Member for Cheltenham that I simply put forward these amendments as ideas. I do not say that I recommend either amendment 92 or 91, but they are worth considering because of precedent.

Back in 1979, the referendum saw a narrow majority of those who voted in favour of the devolution proposals, but some parts of Scotland voted against. With a turnout of 62.9%, it was calculated that the yes vote fell considerably short of the required 40% of the electorate. The then Labour Government therefore tabled an order to repeal the Scotland Act 1978, which was on those devolution proposals. Parliament, however, did not vote on that order until after the change of Government in May 1979. Regardless of who was in power, the 40% threshold was applied.

In the UK, different procedures have been used for different referendums, but it is also worth looking at European examples for comparison. In Denmark, when there is a referendum of non-constitutional significance there is a 30% turnout threshold, but for constitutional change there is a 40% turnout threshold. In Italy, in any referendum—regardless of whether it is on constitutional change—there is a turnout threshold of 50% of all registered voters. What the amendments suggest is not unprecedented, either in the UK or elsewhere, and it is worth considering.

In Canada, the 1995 referendum was extremely close. There was not even one percentage point between the yes and no votes. The anti-separatist vote won, but by a

[*Emma Reynolds*]

narrow margin. Since then, the Canadian Parliament has passed legislation called the Clarity Act. That Act demands a clear question—we talked about the wording of the question and what we could learn from the Quebec example, so I will not go into that now—and a clear majority for the federal Parliament to recognise the validity of a referendum. However, in what is perhaps an ironic twist, the Clarity Act does not clearly say what is meant by a “clear majority”. As far as I am aware, in Canada they are now considering what would constitute a clear majority and whether in future there should be a turnout threshold.

2.15 pm

The hon. Member for Cheltenham has tabled amendment 99, which concerns the day of the referendum. I am sympathetic to his amendment because it is worth holding any future referendum on the same day as either a general election or local elections. Obviously, it could not be held on the same day as local elections throughout the country, but if many cities and towns were covered, or, as was the case this year, many of the counties were covered, it would reduce expenditure, which we will talk about in our discussion of the next clause, and be more cost-efficient. It would also be a good way to boost turnout.

**Martin Horwood:** I should clarify that new schedule 3, which I have tabled, talks about a combination of polls where

“the date of the poll for one or more of the following is the same as the date of the poll for the referendum”.

In other words, when the dates are the same, the election and referendum would effectively be organised together. It is not actually about whether or not the days are the same; it is about the two elections being held in tandem, in organisational terms, when the days are the same.

**Emma Reynolds:** I misunderstood the hon. Gentleman’s amendment, although I did so in an optimistic way. If he meant to combine the days, that would have been a good thing. Perhaps we could discuss that in later stages of our consideration of the Bill.

**Kelvin Hopkins** (Luton North) (Lab): I am very sympathetic to the idea of changing days for elections. In a recent debate in the Chamber, it was suggested that we might have two days or a weekend for elections or referendums. However, there were religious considerations, because obviously Friday would affect Muslims, Saturday would affect Jews and Sunday would affect Christians. If one held a poll on a Saturday and Sunday, the Muslims and Christians could vote on Saturday and the Jews and the Muslims could vote on the Sunday without difficulty.

**Emma Reynolds:** I find myself in disagreement with my hon. Friend, which is obviously unusual. I prefer the convention we have, which is to vote on a Thursday. People are all so used to that by now. It is a tradition that we have had for years and I worry about what breaking it might mean for the turnout.

If we are to have the referendum that is set out in the Bill, regardless of which side of the argument we are on, it will be in everybody’s interest that there is a good turnout. That is why I would recommend that the referendum coincides with an existing election, as the AV referendum did. That might not be possible in terms of the timing, but it would at least be desirable, not only for cost purposes but to ensure that the threshold is high and that people are not inconvenienced by having to vote many times in the space of a month or two.

It is to our merit that in the past we have combined local and European elections, for example, and we are to do the same thing next year. We are a pragmatic nation. I still think that we should keep the day as Thursday, but when we can combine elections and referendums, we should. That is in all our interests, no matter which side of the argument we are on.

**Martin Horwood:** It is a pleasure to serve under your chairmanship once again, Mr Streeter.

The hon. Member for Wolverhampton North East tabled amendments 83 and 81, which I find slightly frustrating. I find these constant attempts to introduce further steps inside legislation slightly irritating, even with Government Bills. Such attempts became an endemic problem under the previous Government, who constantly introduced little sub-paragraphs enabling Secretaries of State to take steps at a later stage, rather than putting measures in the Bill. We are in danger of creating an endlessly tautological process of legislating to allow further legislation to be introduced at a later stage, and I find that a bit disingenuous. Parliament has to take responsibility at the time that it passes legislation. We have to take responsibility in this Parliament for passing or not passing a Bill, either amended or unamended. If we pass it unamended, we will be rushing headlong into a situation that could genuinely damage the UK’s national interest, and I think that hon. Members who are prepared to vote for it in that form ought to take responsibility for it. They should not insert a get-out clause or an escape hatch into the Bill, which would give them wriggle room in the future.

If the Bill is passed and a new Government and Parliament are elected, that Parliament should face up to the public with its decision either to proceed with the legislation and honour what has been put in the Bill, or to repeal it. If we insert escape hatches and qualifications that would enable the Bill to be defeated in a less high-profile way in the future, we would not be doing the Bill any favours or helping the public debate on the future of Britain within the European Union. We have to fess up and be honest with the public about what we are voting for. I am therefore not inclined to support amendments 83 and 81, which seem to be methods of introducing escape hatches and loopholes into the Bill.

However, I have a lot of sympathy with amendment 80. It is a useful and important amendment, which highlights the anomalous position of Gibraltar. As it stands, the effect of the clause would be to have one of the most bizarre voting declarations in the history of British democracy. I suspect that Gibraltar’s result, which would be announced separately from that for the south-west of England, would be that precisely no people voted for the question and none voted against it, because none of them would be qualified to vote; the other clauses limit the referendum to the Westminster franchise. Under the

Westminster franchise, citizens of Gibraltar are not allowed to vote in the British parliamentary election system. Therefore, there would be a bizarre non-referendum in Gibraltar. It is an indication of how ill-thought out and rushed the Bill is. It would be a fantastic gift to the mischievous elements in Spanish politics who would like to point out that the British love referendums and respecting the wishes of the people of the Falklands and Gibraltar when it suits us, but that when it comes to a Bill such as this we are suddenly not willing to give the people of Gibraltar a say in their own future in the European Union. We are effectively threatening to evict them from the European Union without the courtesy of asking them. Amendment 80 highlights that anomaly; it is therefore very important, and I would like to see it succeed.

**Mr Barry Sheerman** (Huddersfield) (Lab/Co-op): Are we not on a promise from the other Minister about coming back to us on the anomalous position of Gibraltar? He said that either he would come back to the Committee before it finishes, or a change could be made in the House of Lords. We are on a promise from the Minister. Does the hon. Gentleman recall that?

**Martin Horwood:** Yes, I do recall that. I think we have to refer to him as the hon. Member for Aylesbury, rather than the Minister, because he said he was not acting in his capacity as a Minister of the Government.

**Emma Reynolds:** Right hon.

**Martin Horwood:** Yes, right hon.

**Mr Tobias Ellwood** (Bournemouth East) (Con): He is still a Minister.

**Martin Horwood:** He is still a Minister in his spare time, when not attending this Committee. I would also be interested to hear from the Parliamentary Secretary, Cabinet Office, the hon. Member for Norwich North, who can update us on the thinking of the right hon. Member for Aylesbury on this subject, and on his promise to return after considering the problem of Gibraltar to make suggestions about how the issue can be resolved. That would be an interesting thing to hear from the hon. Member for Norwich North.

Then we have what I have to describe, with all due respect, as two rather odd amendments—91 and 92. They introduce the qualifications around percentages. Unless more than 50% or not less than 50% have voted, there will be an instantaneous repeal of the Bill, which is a bit drastic. As I indicated in my intervention on the hon. Member for Wolverhampton North East, I do not have a great deal of sympathy with this. She should be a little bit careful. If she advances the principle that a certain percentage is needed for a voting result to qualify as legitimate, 50% is not that high. If she pushed it in the course of argument as high as 60%, she might find herself in some difficulty. To quote one election result at random, in the 2010 general election the turnout in Wolverhampton North East was only 58.8%. A couple of elections previously, it was just under 53%. That is getting dangerously close to a percentage that she appears to argue would not deliver a legitimate result.

**Emma Reynolds:** I thank the hon. Gentleman for taking such a keen interest in my constituency. I have not taken such a keen interest in his, or in his election literature. We discussed that in a previous sitting. I made it clear in my speech that I think there is a significant difference between referendums that would be once in a generation and life changing and local, national or European elections. I said that there was a big difference between those two cases. I do not think that his comparison is relevant.

**Martin Horwood:** The hon. Lady makes a reasonable reply, but I am not persuaded. If we are holding a vote, we have to set its terms. We have to encourage the highest possible turnout. We have to encourage participation and have an active debate. In the end, we have to accept the answer. In a binary vote where there is only a yes/no answer, we have to accept a simple majority. If one side wins the vote then we have to respect that result in a democratic system.

**Mr Sheerman:** I am surprised by the distance the hon. Gentleman is travelling to compare this referendum with other elections. I am not all that proud of my turnout: it was slightly above that of Wolverhampton North East, but not much higher. It is a real problem in our democracy that 65% of people voted in the last election. In many of our metropolitan areas it was much lower than that. Party membership in our country has slumped to an all-time low in all parties. There is this lack of interest. Referendums are more important because they might change the whole nature of our country for a long time into the future. I have to support my hon. Friend because she spoke to my amendment, which she did elegantly and well while I was discussing something with the Leader of the Opposition's office, which was a good excuse—[*Interruption.*] Personally, I do not like referendums at all. I always associate them with Mussolini and Tony Benn.

**The Chair:** Order. The hon. Gentleman can seek to catch my eye in a moment. Interventions should be brief.

**Martin Horwood:** I am grateful for that brief intervention. At least the hon. Gentleman was supporting his own amendment, which he did not do on a previous occasion.

**The Parliamentary Secretary, Cabinet Office (Miss Chloe Smith):** Mr Streeter, I respect the need for short interventions, but has my hon. Friend acquainted himself with the figures for by-elections, which are life changing in many ways? A life-changing by-election took place in Glasgow North East in 2009 in which the turnout was 33%. I am proud to say that the turnout at my by-election earlier that year was 45.8%.

**Martin Horwood:** Well, with 45% the hon. Lady would not have had a legitimate result according to this amendment. This illustrates the point that politicians must be very careful about throwing around percentages that they suggest are definitive in terms of making a result legitimate. Referendums are different and special, and yet those who remember the narrow win that was de-legitimised in the original Scottish devolution referendum

[*Martin Horwood*]

will be aware from many Scottish colleagues of the resulting sense of betrayal. I do not think it helped the political process at all. It is down to us to encourage the highest possible turnout, the highest possible participation, and if our electorates do not respond to that, it is a measure of our success as politicians and a measure of the success of the political system, or perhaps the design of the political system. I do not think setting an artificial bar on the turnout gets around that problem.

2.30 pm

We come finally to amendment 99, and the linked new schedule 3, which again uses something from the Parliamentary Voting System and Constituencies Act 2011, the Act which introduced the alternative vote referendum. It sets out the rules for the combinations of polls. Yet again, we are in territory which suggests that this is not a particularly well thought out or carefully planned piece of legislation. It is wise sometimes to have some time and thought before rushing into print with a Bill, even a private Member's Bill. It is quite useful to take Government and civil service advice on it, to have pre-legislative scrutiny, to have a Bill that is exhaustive and comprehensive and not as short as possible so that it can be squeezed through on a party political timetable with limited amendments. Here we have an obvious and major administrative loophole.

There is no provision for the combination of polls. The combination of polls is not just about when elections are held on the same day, as the hon. Member for Wolverhampton North East said earlier. It is making sure that the administration of those elections can be taken together. Similar arrangements were made for the AV referendum. The list of things that can be combined with the referendum is given in new schedule 3. They include local authority elections in England or Wales, Welsh Assembly elections, in Scotland the parliamentary general election or local elections, and Northern Ireland Assembly elections and local elections. This touches on issues such as the combined use of polling stations, the organisation of the counting of votes, the appointment of returning officers, the declarations of results and the employment of staff. It is very important to consider whether elections or votes held on the same day can be administratively taken together.

Perhaps we can imagine a situation in which there might be some argument for not combining elections or there might be something contentious. It is difficult in the English context to imagine why that would be—it is obviously sensible if holding these elections on the same day to combine them administratively. However, let's think about other possible scenarios, for instance—as we have discussed on many occasions in this Committee already—the interaction between this vote and the referendum in Scotland.

If Scotland had voted for independence and was intending as a matter of Government policy to remain a member of the European Union—to renegotiate or negotiate entry into the European Union as a new member state—and it saw this referendum as a complete waste of money and a distraction from the process of negotiating favourable terms for Scotland's entry into the European Union, would the Scottish Government instruct local authorities in Scotland to collaborate in

holding this referendum? Could the taking together of these polls be taken for granted? I am not absolutely sure it could. What if the Scottish Government decided to be awkward, and said that this was an English initiative and legacy legislation from the United Kingdom which it did not wish to honour? They might even attempt to repeal the Bill if it applied in Scotland—it would depend whether independence or the vote on independence had taken place. Perhaps they might instruct their local government officials not to be returning officers for the referendum, if these issues had not been resolved in advance through a clause like this. We think of this as fine-tuning and administrative detail, but the reason is to stop things going wrong under certain situations.

We might also imagine a Mayor of London—a pro-European who saw the future wealth and prestige of the city as being at stake—not wanting to co-operate. If there was a legal basis on which he could refuse to co-operate, save some money and make a political point at the same time, such a complication might arise.

So it is important to have amendment 99 and new schedule 3 in the Bill. This is indicative of a deeper problem with the Bill. It has not really been thought through; it has not been produced in the way that good and important legislation should be produced. It should have had pre-legislative scrutiny. It should have had proper work by civil servants and by experts in constitutional law poring over it for months before it was introduced. It should have been exhaustive and comprehensive, and not presented in this bizarrely constrained form, which was designed to make it as small as possible so that it could get through Committee as fast as possible with as few amendments as possible. That was, essentially, to suit the party-political timetable of the Conservative party.

**James Wharton** (Stockton South) (Con): I have listened with interest to the hon. Gentleman's argument. The Bill is a private Member's Bill because we have a coalition Government; the Liberal Democrats would not allow the Government time to introduce a Bill that Parliament could have debated thoroughly. Given what the hon. Gentleman has just said, will he join me in lobbying his Liberal Democrat colleagues in Government to agree to Government time being given for a Bill should this one not be successful?

**Martin Horwood:** I hate to contradict the hon. Gentleman, who promoted the Bill. I welcome his second intervention in the substantial debate on this piece of legislation. Of course, he is completely wrong. There have been hundreds of hours of Government time in this Parliament given to an EU referendum piece of legislation. The European Union Act 2011 was in Government time, and it was the agreed position of the Conservative party that we implemented in policy. The Liberal Democrats would probably not have bothered to go forward with it. They were not so concerned—

**The Chair:** Order. I blame the promoter of the Bill for taking us down a slightly unfortunate path. Perhaps we can now marshal our thoughts on the quality of the amendment. I think the hon. Gentleman was about to conclude his remarks, although I might be wrong. Let us focus on new schedule 3.

**Martin Horwood:** I was about to conclude, Mr Streeter. You are quite right. We have spent enough time talking about the European Union Act, which took a great deal of Government time. We do not need to discuss it further in this Committee.

Amendment 99 and new schedule 3 are important. They are part of the process that should have happened before this Bill came to Committee. They are indicative of how rushed and ill prepared the legislation is. I am afraid they tell a story about the reasons behind the Bill being introduced in the first place, but I am happy to recommend them to the Committee. I also support amendment 80, which was tabled by the hon. Member for Wolverhampton North East.

**Mr Sheerman:** I apologise for being late, Mr Streeter. I was detained in another place.

**Mr Ellwood:** You have only been here five minutes.

**The Chair:** Order. Please continue, Mr Sheerman.

**Mr Sheerman:** At least I can repair the damage and speak to the amendment in my name. I want to put the record straight. The referendum would be very special. It would change our constitution and affect the lives of the people in our country into the far distant future, so we must take it seriously. I have never liked referendums. I always associate them with a Mussolini style of Government. He liked referendums and he was an expert at phrasing them to get a favourable reply.

Referendums were also much favoured by Tony Benn and I disagreed with him. I am not being disrespectful, but, in the battle for the soul of the Labour party, I was not on Tony Benn's side. The fact is that I am dubious about referendums. We seem to get more all the time, which is probably not a great innovation in the British constitution. From the days of Harold Wilson and Tony Benn, we have had people using them more regularly.

There is nothing wrong with building in this special quality of having to reach a particular bar for a vote to be legitimate. I do not know whether it should be 40%, 50% or 60% but an extremely important constitutional change like this should have a bar at some level. There are a lot of arguments as to why participation in politics has reduced. People argue that perhaps it is a sign of contentment. I can remember when I was a university lecturer talking about the difference in turnout between US and UK elections. Election turnout in the US was derisory compared with ours, but we have gone the same way now. Some could argue that politics is peripheral, that people are more content and much more interested in their lifestyle.

The reason why people do not vote is complex. In a sense we do need quite a short, sharp shock, so I would be in favour of a bar of 40% or 50%—the higher one would be better. I also do not like the idea of having it on the same day as regular elections because this is so special that we should not mix it up. I want the people who will vote on a referendum to go into that polling booth and have a stark choice, one election: are we going to vote for this or are we going to vote against it?

**Martin Horwood:** When we look at opinion polls, we accept the statistical significance of samples as small as 1,000 or 2,000 of the electorate to give us an indication

of what the rest of the population thinks. If we had a referendum in which an overwhelming majority of those who actually participated voted one way or the other, but the turnout was just less than the bar that the hon. Gentleman suggests, can he not imagine the sense of irritation and frustration of people being cheated of the result for which they quite clearly voted and which was almost certainly highly indicative of the views of the rest of the population had they bothered to turn out? Surely that would lead to a very frustrating and irritating situation?

**Mr Sheerman:** As usual, the hon. Gentleman deploys a very good argument well, but we disagree. I think it is a stark choice. The toughest thing a politician can do is annoy the electorate. Sometimes we have to make ourselves unpopular. Sometimes we are too keen on listening to the latest poll, or the latest bit of gossip that started off as a poll. Sometimes we have to make up our minds about decisions that we know will irritate the electorate no end. We do irritate the electorate no end—apart from my constituents, of course, who are very satisfied with their Member of Parliament, they tell me. We want to have a strong confirmation that this is the right path for generations to come. This is why this amendment was tabled, and why I think it is the right amendment.

If I had had my way, I would have tabled an amendment that would have forced people to vote or given some inducement to vote. I prefer the carrot, so that people have £100 off their community charge or whatever if they vote, rather than the Australian system of a fine if they do not vote. We should look at inducements to vote. Why not have one for the European referendum, if one is held? There would be nothing wrong with that. It would be good to make people dead keen to vote. We could offer £100 to a charity of their choice or youth unemployment or something like that. We should think outside the normal parameters in deciding how the referendum is organised.

**Gavin Williamson** (South Staffordshire) (Con): It is well known in this Committee that the hon. Gentleman is a veteran Member of this House. I believe that he was around when the Scottish and Welsh devolution Bills were put through when the former Member for Sedgefield was Prime Minister. Did he support such amendments for those devolution referendums?

**Mr Sheerman:** I have a terrible feeling I probably did; I was probably whipped to do just that. So, this is the time for confessions, is it not? [*Laughter.*] May I also confess, Mr Streeter, as long as I am not out of order, that on the very first referendum I was confronted with—on whether we should stay in the European Union—I voted to be out of the European Union in my early days in politics. I then became a very strong pro-European over time, as I became wiser and more thoughtful in this place.

We live to regret quite a few things. The important thing in life, though, is to learn from experience. The hon. Gentleman is probably under some sort of parliamentary protection, otherwise I would have reported him to the ageism commission.

2.45 pm

**Kelvin Hopkins:** It is a pleasure to serve under your chairmanship, Mr Streeter; I think that it is for the first time.

[Kelvin Hopkins]

First, may I say that I am unstinting in my admiration for my hon. Friend the Member for Wolverhampton North East, the shadow Europe Minister? However, on this occasion I am afraid that I have to disagree with her on the voting thresholds for referendums. I can see from her point of view and that of my hon. Friend the Member for Huddersfield that they might be a disadvantage, because if—for example—39% of the population voted to stay in the European Union and 10% voted to come out, they would lose on both these criteria. The referendum would not count and somebody like me might say, “Well, that one doesn’t count. We will have another one, get the votes up and see how we go again.” And we could come back. If, on the other hand, there was a vote the other way round, with 39% wanting to come out and 10% wanting to stay in, and then those who felt strongly were denied that result there would be considerable anger in the population, and rightly so.

There are all sorts of complications with the thresholds for levels of voting, and unusually I find myself in agreement with the hon. Member for Cheltenham; just occasionally we agree with each other. So I do not really think that thresholds are a good idea.

My hon. Friend the Member for Wolverhampton North East is absolutely right—I was around at the time of the 1975 referendum and I voted no on that occasion. I have not changed my view; in fact, my view has rather been reinforced by the economic problems that have arisen within the European Union ever since. I say “the European Union”, not “Europe”, because Europe is a continent of wonderful peoples and wonderful countries, and the European Union is a political construction imposed upon those peoples, sometimes by choice but not always. So I disagree on the two amendments about that issue.

As to the question of Gibraltar, the Gibraltarians have shown time and again that they want to be British—overwhelmingly—rather than Spanish, and on this occasion they ought to be asked how they would like to vote. Would they like to vote separately, or as part of a UK-wide referendum? There are also the implications of possibly coming out of the European Union. Would they like to stay with Britain and remain under the overall umbrella of being British, or would they prefer to stay within the European Union? So there are complications, but I think that the Gibraltarians might be asked beforehand how they would like to vote. I suspect, and hope, that they would choose to be British first, rather than Spanish, and that would be an overriding factor in their vote on the European Union.

I am not really in favour of these amendments in general, so I thought I would make a few remarks. My hon. Friend the Member for Wolverhampton North East obviously referred to my time in politics, but I was not a Member of this House at the time of the 1975 referendum; I only came in as a more mature politician in 1997. However, I was very politically active earlier and I have to say that I was the agent for the no vote in Bedfordshire in 1975.

**Miss Smith:** It is a pleasure to join others here this afternoon under your chairmanship, Mr Streeter. It simply falls to me to offer a few points about existing

Government policy on the amendments that we are considering today. I am confident that others will then conclude our debate.

I will make a few points about amendments 81 and 83, which in my view are unnecessary; they would add unnecessary primary legislative detail. Hon. Members will be well aware that the Political Parties, Elections and Referendums Act 2000 already caters for much of what the amendments seek to do. In particular, amendment 81 seeks to lengthen the Bill unnecessarily. To my knowledge, the super-affirmative resolution, which can come in various forms, has not to date been used for referendum legislation and I am not persuaded of the need to begin that in this case.

Moving on to amendments 91 and 92 on thresholds, I was delighted to hear the range of views. I dare furnish a little biographical contribution of my own. I am delighted to have been first elected in a by-election in 2009 where the turnout did exceed the bar suggested today. However, I am sad to say that the by-election of one of the hon. Members proposing the amendment did not. I am sure that the hon. Member for Glasgow North East was aware of the 33% turnout in his constituency in 2009 when he proposed the amendment.

**Kelvin Hopkins:** The Minister might be interested to know of research done by Professor John Curtice in Glasgow showing that there is a strong correlation between declining turnout and the narrowing difference between political parties. I think that is very significant. I want to see our party as distinctly different from the Conservatives, and then turnout would go up.

**Miss Smith:** The hon. Gentleman makes an interesting point and perhaps seeks to draw us down an avenue of intellectual and academic splendour that we may not have time to go into today. I can reassure him that I, too, wish to see clear blue water between us and the Labour party and I am confident that voters will resoundingly endorse us on that basis at the next election, especially after my hon. Friend the Member for Stockton South has done so well in bringing this private Member’s Bill before the House.

Returning to amendments 91 and 92, it is important to note that the Government’s view has always been that a simple majority suffices in such polls. In fact, the legislation that underpinned the 2011 AV referendum was consistent with that. That august body, the House of Lords Constitution Committee, which rules over us all—extremely learned colleagues, as some hon. Members will have the privilege of knowing, if they have visited or sat before them—has said much the same. Simple majorities are persuasive for polls such as these.

**Mr Sheerman:** Is that the august body that has been taking the hon. Lady to task over the Bill that she is partly seeing through the House at the moment? Is that the same august body or a different one?

**Miss Smith:** All the bodies of the House of Lords are august. May I add, Mr Streeter, how delighted I am to be here with you in this Committee today? As hon. Members know, there are two Committees going on today and I am a Minister with links to both. I am delighted that the toss of the coin brought me here.

That concludes a few helpful comments on amendments 91 and 92. I now turn to amendment 80, which refers to Gibraltar. Of course, I stand by the promise given to the Committee by my right hon. Friend the Minister for Europe when he was last here. I am sure he wishes he were here. Perhaps he is in the main Chamber or perhaps he and I are moonlighting on each other's Committees. I am delighted to support and endorse what he said to the Committee. He will, as promised, return with further thoughts on the main Gibraltar issue.

I have a couple of points to make about amendment 80. I note a turn of phrase rather oddly used by the hon. Member for Cheltenham. I thought I heard him say that he thought this amendment was useful specifically because it highlighted an anomaly, because there was an anomaly in the rest of the Bill. I do not share that as a concept of good quality legislation. Perhaps he wants to correct me on that.

**Martin Horwood:** The hon. Lady quotes me more or less correctly. The value of the amendment is that it highlights the anomaly and therefore the need to amend the rest of the Bill, which would then render this amendment not anomalous. It would be part of a logical whole if the Bill did the proper job of giving the people of Gibraltar a vote in this referendum, should it take place.

**Miss Smith:** That is a sort of hair spray, Blu Tack and paperclips theory of legislation, to keep something holding something else in place while the honour of my right hon. Friend the Member for Aylesbury rests on his return.

**Martin Horwood:** On the subject of paperclips, if the right hon. Member for Aylesbury has finished shuffling his next door, could the hon. Lady tell us when he plans to return to the Committee to give us his thoughts on the involvement of the people of Gibraltar in any future referendum on membership of the European Union? The time for our deliberations is fast beginning to run out and we would not want to miss his wise words on the future of Gibraltar in this context.

**Miss Smith:** Time is indeed running out so I shall continue with my comments on the amendment with a reassurance to the hon. Gentleman and all others that my right hon. Friend the Minister for Europe will return.

**Mr Sheerman:** I have not heard that expression about how to put policy together before. What was it—hair spray and whatever? Having come from Treasury questions earlier, I wonder whether the hon. Lady was a style guru to the Chancellor of the Exchequer for his present new look.

**The Chair:** Chloe Smith, on the Bill.

**Miss Smith:** For once, in my relatively short—five minutes long—parliamentary career, I am stumped. I have no style advice to offer the Chancellor on his choice of hair product; perhaps listening hairdressers in our constituencies might take that offer up.

Let me return to amendment 80, to make a very serious point. The amendment cuts across the provisions that are already made in PPERA, which would apply to the referendum under the Bill as they would to any other. We can also draw examples from the Parliamentary Voting System and Constituencies Act 2011 that would also suggest that such an amendment is unnecessary.

**Emma Reynolds:** Given the hon. Lady's great experience in these matters, will she be a little more direct and explain what she means when she says that PPERA cuts across amendment 80? I did not get the sense of what she was saying, so it would be helpful if she could explain that further.

**Miss Smith:** I am delighted to do so. It is a simple point, which is just that that Act already provides for the methods of counting and returning. They are already laid out and so it is not necessary to put them in the Bill.

**Emma Reynolds:** I intervene again because we are considering a particular case regarding the constitutional position of Gibraltar. That would not come up in a European parliamentary election: we would not need to count those votes separately. We are discussing determining whether the good people of Gibraltar want to stay in the European Union, and I am not aware that provisions have been made for such a particular case.

**Miss Smith:** I can confirm that, for the European parliamentary elections in 2014, votes will be counted separately for each local authority, as they already are in other European elections in our experience; they will therefore also be counted separately for Gibraltar. What the amendment seeks is possible by using the counting and returning methods allowed for any referendum under PPERA and through the rather common-sense approach to how we already count in European parliamentary elections. We can therefore surmise that this is an unnecessary addition to primary legislation.

**Martin Horwood:** The hon. Lady needs to clarify that point for me, because I cannot see how we could have a separate declaration of result for Gibraltar in a European parliamentary election: Gibraltar forms part of one electoral region that elects by proportional representation, so second preferences, third preferences and so on have to be integrated into the final result across the whole region. We cannot have a separate declaration of a result in Gibraltar within the result for the region, so there would have to be a separate approach. In order to get a final declaration of a result from Gibraltar alone, there would have to be a different arrangement from the one that pertains in the European parliamentary elections—unless the hon. Lady can explain why that would not be the case.

3 pm

**Miss Smith:** I will simply clarify the words that I used, which were that those votes will be counted separately at the level of local authorities, and therefore also for Gibraltar. We know that from our own experience. I am confident that the hon. Gentleman has sat and watched, as I have done, on the day after a European parliamentary election and understood the results as they pertained to

[Miss Chloe Smith]

his area. I hear his point about the method used to aggregate votes—I do not believe that it is proportional representation, but let us not get into the technical details of voting systems here on the hoof—but, as I have explained, the Bill does not need to introduce additional arrangements because PPERA already provides for the returning and counting methods used by returning officers.

**Martin Horwood:** I have to seek further clarification, because it is simply not the case that votes are counted separately. The elections are conducted by a list system of proportional representation, so the decisions on which candidates are included, which have achieved quota and which have been excluded from the count, are taken on a constituency-wide basis. They are not taken on the basis of one part of a constituency, such as Gibraltar. The process is functionally different from that proposed in the amendment, which suggests that the count and result for Gibraltar should be separate from those of the rest of the south-west of England.

**Miss Smith:** We are getting into unnecessary detail concerning the wording, because I understand the distinction that the hon. Gentleman is making between counting and declaring. I simply used the word counting. Clearly, it is possible to open ballot boxes on a local authority level. I understand his point that once those votes have been processed through the remainder of the counting and declaration system, it is harder to see the original result, but the proposal is unnecessary because PPERA stipulates that a returning officer must count those votes.

I turn, finally, to new schedule 3 and amendment 99. The Parliamentary Voting System and Constituencies Act 2011 set out the rules governing poll combination such as that which the hon. Gentleman proposes, and it would be entirely reasonable to expect that such combination could take place in this referendum. According to my reading of the Bill, it would be perfectly possible for the order made by the Secretary of State under clause 1(3) to provide for such pragmatic combination of polls.

**Emma Reynolds:** It is appropriate, on Gibraltar national day, that we have had a good discussion about Gibraltar, and I would like to take this opportunity to wish the good people of Gibraltar a happy national day. We will return to this subject at a later stage, and we are all looking forward to hearing from the Minister for Europe his promised further thoughts about whether the franchise for the future referendum should extend to Gibraltar.

As the hon. Member for Cheltenham has said, Gibraltar is in an anomalous situation, because no other overseas territories have representation in the European Parliament through the UK. I do not want to press amendment 80 to a vote, because, as the hon. Gentleman pointed out, it stands side by side with a previous amendment about extending to Gibraltarians the entitlement to vote. As the Bill stands, Gibraltarians will not have the right to vote, so amendment 80 makes no sense at all.

**James Wharton:** I listened to the earlier discussion about the reality of counting in referendums and elections and reference was made to European elections. For

clarity, does the hon. Lady accept that, when such votes are counted, although not officially announced area by area, the overall figure comes about through individual areas counting up and then feeding the figures into a central point? In European elections, the individual areas are local authority areas. Were Gibraltar to find itself included in future, that would include Gibraltar. It is relatively easy to see how each area voted.

**Emma Reynolds:** I do not disagree. The reason for proposing that the provision be put in the Bill is that previous amendments regarding entitlement to vote were accepted. The hon. Gentleman is right that local authority areas will have their own counts, but the significance for Gibraltar of the outcome would be different from that for Wolverhampton, because Wolverhampton could not hope to stand alone. If the rest of the country voted no, but Wolverhampton voted yes, I do not think that Wolverhampton could hope to be a separate part of the European Union.

**Miss Smith:** Independence!

**Emma Reynolds:** Or that Wolverhampton could hope to be a papal independent state—not that we have a pope. I am digressing. If every single Gibraltarian voted to stay in the European Union, but the rest of the UK voted to withdraw, although it would be extremely difficult because Spain is a member of the European Union, Gibraltar could seek to negotiate membership of the EU in one way or another. That is why I wanted to make a distinct provision in the Bill for Gibraltar.

**Martin Horwood:** I am grateful to the hon. Lady for drawing the Committee's attention to the fact that today is Gibraltar's national day, so it is appropriate that we are discussing this issue. I congratulate the people of Gibraltar, but reiterate the Liberal Democrat policy that they should have, with respect to future self-determination, a say in all decisions affecting their own future, which could include their relationship with the UK, with Spain or with the European Union.

**Emma Reynolds:** I am sure that the good people of Gibraltar know that there is cross-party consensus in this House on the issue. The three main political parties represented in this Committee take the position that the hon. Gentleman just outlined about the people of Gibraltar having the right to self-determination. I do not want to stray any further from the debate, but I think we are all appalled by the political point scoring that we have seen from Spain in recent months. We hope that the border crisis comes to an end as soon as possible.

Amendment 80 should be considered at a later stage once we have heard the further thoughts of the Minister for Europe. It stands side by side with a previous amendment to a previous clause and I hope that they will go through in the final version of the Bill, but it is not appropriate to vote on amendment 80 now.

Equally, we had a wide-ranging discussion on whether there should be a threshold in the referendum. I take on board the comments of my hon. Friend the Member for Luton North and of the hon. Member for Cheltenham, but referendums are special cases and precedents both in the UK and elsewhere need to be considered. Such

amendments should be debated at a later stage, so I do not want to press them now. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 3 ordered to stand part of the Bill.*

*Ordered,* That further consideration be now adjourned.  
*—(James Wharton.)*

3.10 pm

*Adjourned till Wednesday 11 September at five minutes to Nine o'clock.*

