

# European Parliamentary and Local Elections (Pilots) Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Constitutional Affairs, are published separately as HL Bill 14 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

The Lord Falconer of Thoroton has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the European Parliamentary and Local Elections (Pilots) Bill are compatible with the Convention rights.



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Schedule – Other elections, etc



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**B I L L**

TO

Make provision for piloting in certain regions different methods of voting at the European Parliamentary general election in 2004 and at certain local elections held at the same time; and to enable consequential alterations to be made to voting procedures at local elections.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Piloting*

**1 Piloting conduct at European and local elections**

- (1) The Secretary of State may by order require that in relation to any of the pilot matters an election to which this section applies must be conducted—
  - (a) in the manner described in the order; 5
  - (b) in accordance with such provision made by order under section 2 which differs in any respect from that made by or under a relevant enactment. 10
- (2) The Secretary of State must not make an order under this section unless he first consults the Electoral Commission. 10
- (3) It is immaterial whether such consultation occurs before or after the passing of this Act.
- (4) The following are elections to which this section applies—
  - (a) the European Parliamentary general election of 2004 in a region specified in the order; 15
  - (b) a local government election in England and Wales if the poll at such an election is combined with the poll at the European Parliamentary general election in a region specified in the order.
- (5) An order under this section must not specify—
  - (a) London; 20

- (b) the combined region established by order under section 11 of the European Parliament (Representation) Act 2003 (c. 7) (region to be combined with Gibraltar).

## 2 Pilot order

- (1) If the Secretary of State makes an order under section 1 (the main order) he must also make an order under this section (the pilot order). 5
- (2) The pilot order must make provision in connection with such of the pilot matters to which the main order relates for the manner in which the conduct of an election to which section 1 applies may differ from conduct provided for by or under a relevant enactment. 10
- (3) In particular, the pilot order may make provision for voting to take place –
- (a) on more than one day (whether or not each of the days is a day appointed as a day of the poll); or
  - (b) at places other than polling stations.
- (4) The pilot order must make provision requiring the returning officer to provide (before the close of the poll at the election) polling progress information – 15
- (a) to such persons or organisations as are specified in the order or are of such descriptions as are so specified, and
  - (b) at such times and in such circumstances as are so specified.
- (5) Polling progress information is information as to the electors by whom it appears to the returning officer at the time the information is provided that a vote has been cast. 20
- (6) For the purposes of subsection (5) the returning officer must be taken not to have seen the contents of any ballot paper.
- (7) The returning officer is the person who is described as such in the order. 25
- (8) The Secretary of State must send a copy of the pilot order to –
- (a) each relevant local authority in a region specified in the main order;
  - (b) the Electoral Commission;
  - (c) the person who is by virtue of section 6 of the European Parliamentary Elections Act 2002 (c. 24) the returning officer for each region specified in the main order. 30
- (9) A local authority to whom a copy of the pilot order is sent must publish the order in their area in such manner as they think fit.
- (10) Subsections (2) and (3) of section 1 apply in relation to the pilot order as they apply in relation to the main order. 35

## 3 Pilot schemes under the 2000 Act

Section 10 of the Representation of the People Act 2000 (c. 2) (pilot schemes for local elections in England and Wales) does not apply to a local government election if the poll at the election is to be taken on the same day as the poll at the European Parliamentary general election of 2004. 40

*Reports***4 Electoral Commission report**

- (1) After any elections have been held in a region in accordance with provision made by order under section 2, the Electoral Commission must prepare a report in relation to the pilot matters on— 5
  - (a) the manner in which the elections were conducted;
  - (b) the different provision.
- (2) The Electoral Commission must consult such relevant local authorities in the region as they consider appropriate in connection with the preparation of the report. 10
- (3) Every relevant local authority in the region must give the Commission such assistance as they may reasonably require in connection with the preparation of the report.
- (4) The assistance may include— 15
  - (a) making arrangements for ascertaining the views of electors about the administration of the elections;
  - (b) reporting to the Commission allegations of personation and of other electoral offences or malpractice.
- (5) The report must include a copy of the orders made under sections 1 and 2.
- (6) The report must also include an assessment of the extent to which the manner in which the elections were conducted and the different provision— 20
  - (a) facilitated voting at the elections;
  - (b) encouraged voting at the elections;
  - (c) affected the incidence of personation or other electoral offences or malpractice; 25
  - (d) assisted the counting of votes at the elections;
  - (e) provided opportunities for savings in the costs of administering the elections or led to any increase in such costs.
- (7) The report must also include an assessment as to the following matters relating to the requirement by virtue of section 2 to provide polling progress information— 30
  - (a) its effect on the campaigning of candidates and political parties;
  - (b) the use made by candidates and political parties of the information;
  - (c) the views of electors and political parties about the provision of the information (including views as to its effect on turnout of voters and use of the information by candidates and political parties); 35
  - (d) its effect on the conduct and administration of the election.
- (8) The assessment must include a statement by the Electoral Commission as to whether in their opinion— 40
  - (a) the turnout of voters was higher than it would otherwise have been;
  - (b) electors found the procedures provided for their assistance easy to use.
- (9) Not later than the end of the period of three months beginning with the date of the declaration of the result of the European Parliamentary general election in the region the Electoral Commission must— 45
  - (a) send a copy of the report to the Secretary of State, and

- (b) publish the report in such manner as they think fit.
- (10) Different provision is provision made by order under section 2.
- (11) This section does not affect the duty of the Electoral Commission to prepare and publish under section 5 of the Political Parties, Elections and Referendums Act 2000 (c. 41) a report on the administration of the election. 5
- 5 Revision of procedures in light of report**
- (1) If a report is made under section 4 above on the conduct of a local government election section 11 of the Representation of the People Act 2000 (c. 2) (revision of procedures in the light of pilot schemes) applies as it applies if a report is made under section 10 of that Act, subject to the following modifications. 10
- (2) The reference in section 11(1) to provision similar to that made by a scheme under section 10 is to be read as a reference to provision similar to that made by an order under section 1 or 2 above for the conduct of the local government election.
- (3) Subsection (4) of section 11 is to be read as if it required the Secretary of State, when laying a draft of an order under that section, to lay a copy of each report of the Electoral Commission under section 4 above on the conduct of a local government election held in accordance with provision similar to that made by the order. 15
- Offences* 20
- 6 Personation: arrestable offence**
- (1) In relation to England and Wales, for the purposes of any election held in accordance with provision made by order under section 2, the offence of personation under section 60 of the Representation of the People Act 1983 (c. 2) must be treated as if it is an offence to which section 24(2) of the Police and Criminal Evidence Act 1984 (c. 60) (offences which are arrestable offences) applies. 25
- (2) In relation to Scotland, for the purposes of any election held in accordance with provision made by order under section 2, a constable may arrest without warrant a person whom he has reasonable cause to believe is committing or has committed the offence of personation under section 60 of the Representation of the People Act 1983. 30
- (3) Subsections (1) and (2) do not affect anything which may be done in pursuance of Rule 36 of Schedule 1 to the Representation of the People Act 1983 (arrest of challenged voter). 35
- 7 Time limit for prosecution of offences**
- (1) This section applies for the purposes of any election held in accordance with provision made by order under section 2.
- (2) A magistrates' court or (in Scotland) the sheriff may act under subsection (3) if it or he (as the case may be) is satisfied on an appropriate application— 40
- (a) that there are exceptional circumstances which justify the granting of the application, and

- (b) that there has been no undue delay in the investigation of the offence to which the application relates.
- (3) The magistrates' court or the sheriff (as the case may be) may extend the time within which proceedings for an offence must be commenced in pursuance of section 176(1) of the Representation of the People Act 1983 (c. 2) (time limit for prosecution of offences under that Act) to not more than 24 months after the offence is committed. 5
- (4) An appropriate application is –
  - (a) in relation to England and Wales, an application by a constable or Crown Prosecutor; 10
  - (b) in relation to Scotland, an application by the procurator fiscal.

*Other elections, etc*

**8 Other elections, etc**

- (1) The Schedule (which makes provision for certain other elections and referendums) has effect. 15
- (2) An order under section 1 may make provision in consequence of anything required or permitted in pursuance of the Schedule (including provision modifying or disapplying any enactment mentioned in the Schedule).

*General*

**9 Interpretation**

- (1) A region is an electoral region for the purposes of the European Parliamentary Elections Act 2002 (c. 24). 20
- (2) Local government election has the meaning given by section 203(1) of the Representation of the People Act 1983 (except that it does not include an election to the Greater London Authority). 25
- (3) The pilot matters are –
  - (a) when, where and how voting at an election is to take place;
  - (b) how the votes cast at the election are to be counted.
- (4) The relevant enactments are enactments relating to the conduct of European Parliamentary or local government elections (including the combination of polls at such elections). 30
- (5) A relevant local authority is –
  - (a) in relation to England, the council of a county or district, the Council of the Isles of Scilly or the council of a parish if the pilot order makes provision for the conduct of an election to the council; 35
  - (b) in relation to Wales, the council of a county or county borough or the council of a community if the pilot order makes provision for the conduct of an election to the council;
  - (c) in relation to Scotland, a local authority constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39). 40
- (6) This section applies for the purposes of this Act.

**10 Orders**

- (1) This section applies to orders made under this Act.
- (2) An order –
  - (a) may modify or disapply any provision made by or under a relevant enactment; 5
  - (b) may contain such consequential, incidental, supplementary or transitional provision or savings (including provision amending, replacing, suspending or revoking provision made by or under any enactment) as the Secretary of State considers appropriate.
- (3) An order may make different provision for different purposes. 10
- (4) An order under section 1 must be made by statutory instrument.
- (5) But no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (6) If a draft of an order under section 1 would apart from this subsection be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument it must proceed in that House as if it were not such an instrument. 15

**11 Expenditure**

- (1) There shall be paid out of money provided by Parliament –
  - (a) any expenses of the Secretary of State in making arrangements for the purposes of this Act in connection with the holding of the European Parliamentary general election of 2004; 20
  - (b) any increase attributable to this Act in the sums so payable under any other enactment.
- (2) There shall be charged on and paid out of the Consolidated Fund any increase attributable to this Act in the sums to be charged on and paid out of that Fund under any other Act. 25

**12 Extent**

This Act does not extend to Northern Ireland.

**13 Short title**

This Act may be cited as the European Parliamentary and Local Elections (Pilots) Act 2004. 30

## SCHEDULE

Section 8

### OTHER ELECTIONS, ETC

#### *Parliamentary by-elections*

- 1 (1) Rule 1 of the Parliamentary Elections Rules (timetable for elections) in Schedule 1 to the Representation of the People Act 1983 (c. 2) must be construed subject to this paragraph. 5
- (2) The writ for a by-election in a constituency which is situated in a region specified in an order under section 1 must not be issued on a day which by virtue of the timetable is likely to result in the by-election being held –
- (a) on the same day as the date of the poll at the European Parliamentary general election of 2004, or 10
- (b) on a day within the period which begins three weeks before, and ends three weeks after, that day.

#### *Welsh Assembly by-elections*

- 2 (1) If Wales is a region specified in an order under section 1 above, section 8 of the Government of Wales Act 1998 (c. 38) must be construed subject to this paragraph. 15
- (2) The presiding officer of the National Assembly for Wales must not fix the date of the poll for an election to fill a vacancy in the seat of a constituency member of the Assembly (the Welsh poll) for a day which – 20
- (a) is the same day as the date of the poll at the European Parliamentary general election of 2004 (the European poll), or
- (b) falls within the period which begins three weeks before, and ends three weeks after, the date of the European poll.
- (3) If, before the commencement of this paragraph, the presiding officer has fixed a date for the Welsh poll and the day falls within that period – 25
- (a) the poll must not be held on that date, and
- (b) the presiding officer must fix a new date in accordance with subparagraph (2).

#### *Local government by-elections: England and Wales* 30

- 3 (1) This paragraph applies to an election to fill a casual vacancy in the office of councillor (the local election) in pursuance of section 89 of the Local Government Act 1972 (c. 70) if the election is held in a region specified in an order under section 1.
- (2) In computing any period for the purposes of – 35
- (a) section 89(1), or
- (b) determining the period within which a casual vacancy must be filled in pursuance of section 89(6),

the period which begins four weeks before, and ends three weeks after, the date of the poll at the European Parliamentary general election of 2004 must be ignored.

- (3) If, before the commencement of this paragraph, a date has been fixed for the poll at a local election which is within the period mentioned in subparagraph (2) – 5
- (a) the poll must not be held on that day, and
  - (b) a date which falls not later than 7 days after the end of that period must be fixed for the poll.
- (4) Sub-paragraphs (2) and (3) do not apply to the extent that an order under this Act makes different provision in relation to the date of the poll at the local election. 10

#### *Mayoral elections, etc*

- 4 (1) This paragraph applies to – 15
- (a) an election for the elected mayor of a local authority;
  - (b) a referendum to be held in pursuance of Part 2 of the Local Government Act 2000 (c. 22) (referendums on proposals for local authority executive arrangements),
- if the election or referendum is held in a region specified in an order under section 1. 20
- (2) If the date of the poll at the election or referendum (the mayoral poll) is to be fixed without reference to any time or timetable the date must not fall within the period which begins three weeks before and ends three weeks after the date of the poll at the European Parliamentary general election of 2004.
- (3) If the date of the mayoral poll is to be calculated by reference to any time or timetable that period must be ignored. 25
- (4) If, before the commencement of this paragraph, the date of the mayoral poll was fixed or calculated as a date which falls within that period –
- (a) the mayoral poll must not be held on that date, and
  - (b) a new date must be fixed or calculated as mentioned in subparagraph (2) or (3) (as the case may be). 30
- (5) Local authority has the same meaning as in Part 2 of the Local Government Act 2000.

#### *Local government by-elections: Scotland*

- 5 If Scotland is a region specified in an order under section 1 above, the order may provide that section 15(2) of the Representation of the People Act 1985 (c. 50) does not apply to the poll at an election in Scotland under section 37 of the Local Government (Scotland) Act 1973 (c. 65) (election to fill casual vacancy in the office of councillor) if it is taken on the same day as the poll at the European Parliamentary general election of 2004. 40

#### *Modification of European election timetable immaterial*

- 6 For the purposes of this Schedule any modification of the timetable for the European Parliamentary general election by an order under section 2 which permits voting to take place on more than one day must be ignored.



# European Parliamentary and Local Elections (Pilots) Bill

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## B I L L

To make provision for piloting in certain regions different methods of voting at the European Parliamentary general election in 2004 and at certain local elections held at the same time; and to enable consequential alterations to be made to voting procedures at local elections.

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