

EUROPEAN PARLIAMENT (REPRESENTATION) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Gibraltar

Section 9: Combination of Gibraltar with existing electoral region

25. The 2002 Act divides the UK into 12 electoral regions for the purpose of European Parliamentary elections. Section 9 provides that Gibraltar should be combined with an existing electoral region in England or Wales for the purposes of European Parliamentary elections taking place after 1 April 2004. That region is referred to in the Act as the combined region. The average electorate for the regions is 3.7 million people. Gibraltar's electorate is about 17,000 people.
26. The choice of region is restricted to the 9 English regions and Wales which forms a region on its own. The necessary legislative and administrative arrangements must be in place by the time of the next European Parliamentary elections in 2004.

Section 10 : Electoral Commission recommendation as to the electoral region to be combined with Gibraltar

27. **Section 10** requires the Electoral Commission to consider which electoral region Gibraltar should be combined with. They must report their conclusions to the Lord Chancellor along with a recommendation on which region has been chosen. *Subsection (2)* requires the Electoral Commission to consult the Governor, the Chief Minister of Gibraltar and the leader of each political party represented in the House of Assembly of Gibraltar before making a recommendation. It is expected that the Electoral Commission will wish to consult widely before making a recommendation.

Section 11 : Establishment of combined region

28. **Section 11** enables the Lord Chancellor to give effect by order to the recommendation of the Electoral Commission as to which electoral region Gibraltar should be combined with and to create the combined region. He is required to specify the region recommended by the Electoral Commission under **section 10** unless, in accordance with **section 13(8)**, following rejection of or withdrawal of a motion for approval of the order, he substitutes a different region after consultation with the Electoral Commission. Section 1 of the 2002 Act provides for England to be divided into nine electoral regions and for Wales to constitute one region. Schedule 1 to the 2002 Act sets out the constituent areas of each English region. *Subsection (1)* therefore provides for the order to specify the recommended region once known and includes power to amend the provisions for electoral regions in the 2002 Act to include Gibraltar in the combined region once it has been decided which region that is. *Subsection (3)* requires the Lord Chancellor to consult the Electoral Commission before making an order under this power.

Section 12: Power to make consequential etc provision

29. The underlying approach of the Act is that Gibraltar is to be treated as if it were as much a part of the combined region as the other areas of the region. The Act therefore makes provision for the whole corpus of electoral law that applies for the purposes of elections to the European Parliament to apply for these purposes to Gibraltar. Following closely the pattern of the 2002 Act it makes specific provision for some matters, for example, the franchise, or amends the 2002 Act for others, for example, the returning officer, and provides enabling powers to provide for the conduct of the elections by applying with modifications the provisions of electoral law for UK parliamentary elections.
30. **Section 12** enables the Lord Chancellor to make provision surrounding the creation of the combined region. The aim is that as far as possible electoral law for European Parliamentary elections will apply in the same way throughout the combined region. Subordinate legislation may be made, with the help of the supplementary powers in **section 13**, to apply the UK legislation about European Parliamentary elections, with modifications if necessary, for the purpose of allowing European Parliamentary elections to take place in Gibraltar. Certain particular areas of law which may be affected are specified in **subsection (3)** but the use of the powers is not limited to those areas. The Electoral Commission are to be consulted before the Lord Chancellor exercises such powers.

Section 13: Sections 11 and 12: supplementary

31. This section is supplemental to the powers in **sections 11** and **12**. It confirms that in addition to the power to apply UK law (with or without modifications) to allow for inclusion of the Gibraltar electorate in the UK system, UK law may also be modified or excluded. There is also power to adapt Gibraltar law. The word enactment contained in **subsection (4)** is defined in **section 27(2)**.

Section 14: The Gibraltar register

32. **Section 14** makes provision for an electoral register of Gibraltar European Parliamentary electors. In the UK, the electoral registers for European Parliamentary elections purposes are the following: the register of Parliamentary electors, the register of local government electors (in respect of peers), the register of peers resident outside the United Kingdom maintained under section 3 of the Representation of the People Act 1985 and the register of those entitled to vote by virtue of European Union citizenship under the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001. Gibraltar will need its own register, governed by similar rules and conditions to the UK registers and the powers to make regulations in **section 17** will be used to provide those rules and conditions. The electoral registration officer for the Gibraltar register is to be the Clerk to the House of Assembly of Gibraltar.

Section 15: Gibraltar franchise for European Parliamentary elections

33. **Section 15** sets out the franchise for voters in European Parliamentary elections in Gibraltar. It is very similar to the UK franchise. For example, electors are required to be Commonwealth citizens or citizens of the EU. Section 8 of the 2002 Act makes provision for the franchise at European Parliamentary elections. It cannot be applied to Gibraltar directly as, for example, Gibraltar will have a different register. Accordingly, the section disapplies section 8, for the purposes of voting in Gibraltar, and makes equivalent tailored provision for the Gibraltar electorate. As in the UK, additional detail will be set out by way of further provision and this will be done by regulations under **section 17**.

Section 16: Entitlement to be registered in Gibraltar

34. **Section 16** provides conditions for entitlement to be registered on the Gibraltar register. **Subsection (1)** is very similar to the rules for the UK electorate relating to the registers

that are used for UK purposes in European Parliamentary elections. *Subsection (2)* makes provision so that Commonwealth citizens qualifying for registration as overseas electors can also register to vote whilst overseas. By virtue of that paragraph and the regulation-making powers under *section 17*, the Lord Chancellor may prescribe similar conditions for registration as an overseas elector as apply to British citizens in respect of the UK. *Subsection (5)* reflects the conditions in the Gibraltar Immigration Control Ordinance as to rights to enter or remain in Gibraltar.

Section 17: Regulations supplementing sections 14 to 16

35. This section provides for the detail required to give full effect to sections 14 to 16 to be made in regulations. For example, *subsection (1)(e)* enables detailed provision to be made concerning residence. Regulations under *subsection (1)(h)* will enable individuals to register before they are 18 in order to vote once they are 18, as is the case under the relevant UK registers. In the UK certain individuals are disqualified for registration, such as those convicted of corrupt or illegal election practices, and the Lord Chancellor, under *subsection (1)(g)*, will be able to make similar provision for the Gibraltar register. *Subsection (3)* identifies certain particular provisions which are likely to be applied with modifications. For instance, in the UK convicted persons in UK penal institutions are not entitled to vote and the Lord Chancellor may apply a similar provision to Gibraltar convicted persons detained in penal institutions in that country.

Section 18: Section 17: supplementary

36. *Section 18* is supplementary to *section 17*. It is to ensure that the provisions in these sections are wide enough to do everything that is required and confirms that UK or Gibraltar legislation may be modified, excluded or applied with or without modifications.

Section 20: Returning officers

37. *Section 20* provides for the returning officer for the Gibraltar part of the combined electoral region. In UK European Parliamentary elections there are two types of returning officer: the regional returning officer and the local returning officers. The regional returning officer's task is, broadly, to co-ordinate the work of, and collect the results from, the local returning officers. Local returning officers are usually Parliamentary acting returning officers, within the meaning of section 28 of the Representation of the People Act 1983, who are themselves usually the electoral registration officers for the local authorities in which the constituencies are situated. Their functions, and those of the regional returning officers, are set out in regulations made under section 6 of the 2002 Act.
38. In Gibraltar, the local returning officer will be the Gibraltar European Parliamentary electoral registration officer. The regional returning officer for the combined region (including Gibraltar), will be selected by the Lord Chancellor under section 6(2) of the 2002 Act from acting returning officers in the UK part of the combined region.

Section 21: Disqualification from office of MEP

39. *Section 21* amends the 2002 Act so as to give power to the Secretary of State to disqualify certain classes of individuals from being entitled to stand as MEPs. The Secretary of State may use this power so that similar classes of individuals in Gibraltar to those who are disqualified in the UK are also disqualified from being MEPs. For example, in the UK persons disqualified include those disqualified from being a member of the House of Commons, and that includes civil servants. The Secretary of State may wish to provide that similar people in Gibraltar should be disqualified. (On the functions of the Secretary of State under the 2002 Act, see paragraph 22 above.)

Section 22: European Parliamentary election regulations

40. **Section 22** adds to the powers under section 7 of the 2002 Act to make regulations concerning European Parliament elections. The present regulations made under that provision are the European Parliamentary Elections Regulations 1999. They apply much of the body of law relating to Parliamentary elections with modifications to make appropriate provision for European Parliamentary elections. They include, amongst other matters, provision relating to the procedures for conduct of such elections, election campaigns, election offences and challenges to the result. The power is amended so that different provision can be made for Gibraltar and the UK or different electoral regions such as the combined region and the other regions. This may be necessary to reflect local differences.

Section 23: Jurisdiction of courts

41. This section ensures that the powers to make secondary legislation under **sections 12** and **17** of this Act and section 7 of the 2002 Act include power to confer jurisdiction over matters connected to the election of MEPs in the combined region on the courts of the UK or Gibraltar or both. Accordingly, it is possible, for instance, to make provision so that certain election offences can be tried in Gibraltar. Equally, provision may be made so that certain proceedings based on events taking place in Gibraltar should be brought before the UK courts.
42. However, in the case of the election court, which tries election petitions, the power can only be used to confer jurisdiction on that court for the whole of the combined region. The section also ensures that the relevant powers include power to appoint a judge of the Gibraltar Supreme Court to the election court in the combined region.

Section 24: Effect of statutory powers on capacity of Gibraltar legislature

43. This section confirms that this Act does not remove the power of the Gibraltar legislature to make legislation which is not contrary to provisions made by or under it or the 2002 Act.