

REGIONAL ASSEMBLY (PREPARATIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Referendums

Section 1: Assembly referendums

21. **Section 1** gives the Secretary of State the power to order a referendum to be held in a region on the establishment of a regional assembly there. Such an order must specify the date of the referendum.
22. Two preconditions need to be satisfied before the Secretary of State can make an order for the holding of an assembly referendum. The first precondition is that he must consider the level of interest in the region in holding such a referendum (*subsection (4)*). However, *subsection (6)* means that the Secretary of State does not, in fact, need to consider the level of interest in *subsection (4)* if certain requirements are met. These are, first, that the order is made within two years of a direction to the Boundary Committee to conduct a local government review of the region concerned (prior to which he will have already considered the level of interest in the holding of an assembly referendum). Secondly, that, before making the order, he has no cause to think that the level of interest in holding a referendum in the region has changed materially since giving the direction.
23. What constitutes a material change is defined in *subsection (7)*. In effect, the Secretary of State is required to cast himself back to the time when he gave a direction to the Boundary Committee in relation to the region. He must then ask himself whether he would have given that direction if the level of interest which he thinks exists now (when he is considering making an order for the holding of an assembly referendum) had been the same when he gave the direction.
24. If the conditions in *subsection (6)* are not satisfied the Secretary of State has to consider the level of interest. In this connection *subsection (8)* requires him to consider views expressed, information provided to him, and any published material he thinks appropriate.
25. The second precondition to the making of an order for a referendum is that the Boundary Committee have made recommendations arising out of their review of the local government structure of the region (*subsection (5)*).

Section 2: Local government referendums

26. Where the Secretary of State makes an order causing an assembly referendum to be held, *subsection (2)* of section 2 requires him to make an order causing a referendum to be held in each county area in the region about the Government's proposals for the structure of local government in that area. That is to say, he must also hold local government referendums in the region.

27. *Subsection (5)* provides that the options to be put to the voters in each county area are such of the recommendations for structural change of the Boundary Committee as the Secretary of State thinks appropriate (subject to any modifications that he makes to those recommendations). There must be at least two options for structural change for each county area in the region.
28. “County area” is defined in *subsection (3)* as the area of an existing county council where there are both county and district councils. But if one or more of the options for structural change is for a unitary authority with an area crossing the county boundary, the “county area” is the combined areas of the county councils in question (*subsection (4)*).
29. *Subsection (6)* means that a local government referendum under subsection (2) must be held on the same day as the assembly referendum for the region.
30. *Subsection (7)* prevents the Secretary of State from making an order for the holding of a local government referendum until six weeks after he has received the recommendations of the Boundary Committee.
31. *Subsection (8)* gives the Secretary of State a power to vary (subject to Parliamentary approval) an order for a local government referendum. This permits, for example, minor corrections to the description of the options for a county area.
32. But the Secretary of State cannot revoke an order for a local government referendum unless he also revokes the order for the assembly referendum (in which event he is obliged to revoke the order for a local government referendum). This prevents him from cancelling the local government referendum(s) while proceeding with the assembly one.
33. *Subsection (9)* provides a Minister of the Crown with a wide power to make provision, by order, in connection with local government referendums. For instance, this allows provision to be made regulating the conduct of such referendums; requiring the Electoral Commission to report on how they are administered; and prescribing rules about the publication of information relating to them. The power in subsection (9) includes power to apply any enactment relating to elections or referendums, to modify provisions made under the PPER Act in relation to an assembly referendum and to provide for the creation of offences.

Section 3: Referendum questions

34. **Section 3** sets out the question to be asked in assembly referendums and the first part of the question to be asked in local government referendums. It also sets out brief preambles about the purpose of each referendum (which must precede each question on the ballot paper).
35. The section contains two versions of the preamble for a local government referendum, depending on whether there is a single ballot paper or two separate ballot papers. The Government’s aim, where possible, is to have a single ballot paper where an assembly referendum is held simultaneously with a local government referendum. But it might be necessary to have separate ballot papers, for example where the local government options are numerous or particularly complex and would render a single ballot paper unwieldy.
36. An order under section 2(2) causing a local government referendum to be held must set out the text of the options that will appear in the referendum question and any explanatory material about the options that will be made available to voters when voting. *Subsection (7)* requires the Secretary of State to consult the Electoral Commission on these things. When laying an order he must report to each House of Parliament the Commission’s response as to the intelligibility of the text of the options and any views they express on the explanatory material.

Section 4: Entitlement to vote

37. **Section 4** provides for who is entitled to vote at each type of referendum under the Act. So under *subsection (1)*, a person is entitled to vote in an assembly referendum if, on the date of the referendum, he is entitled to vote at the election of councillors for any electoral area in the region.
38. Similarly, under *subsection (2)*, a person is entitled to vote in a local government referendum if, on the date of the referendum, he is entitled to vote at the election of councillors for any electoral area in the county area where the referendum is being held. Those living in existing unitary areas are not entitled to vote in a local government referendum.
39. *Subsections (3) and (4)* provide a regulation-making power that allows provision to be made qualifying the basic entitlement to vote set out in the preceding subsections. Thus provision may be made so that alterations to a register of electors are to be ignored if made after a specified date. So, for example, if a referendum is to be combined with a local government election, it may be desirable to ensure that alterations to a register of electors for the purposes of entitlement to vote in a referendum can be made no later than they could be made for the election.

Section 5: Referendum period

40. **Section 5** requires the Secretary of State to set, by order, the referendum period for each assembly referendum. This relates to provisions in Part 7 of the PPER Act which impose limits on expenditure and controls on the publication of referendum-related material during the referendum period. This period will generally need to be a minimum of 10 weeks (by virtue of sections 103 and 109 of the PPER Act).

Section 6: Further referendums

41. **Section 6** provides that, where an assembly referendum in a region has resulted in a 'no' vote, a second or subsequent assembly referendum cannot be ordered for at least another seven years.
42. *Subsection (4)* enables the Secretary of State to cause a local government referendum to be repeated (independently of an assembly referendum) where the result of a prior local government referendum is declared or held to be invalid by a court. *Subsections (5) and (6)* apply provisions in section 2 of the Act to any such repeat referendum as if it is a local government referendum ordered under section 2(2). But no further local government referendums are required to be held in a county area where the result is not invalid.
43. *Subsection (7)* has the effect that the Secretary of State is only required to consult the Electoral Commission on the wording of the question or explanatory material for any such repeat referendum where that wording or material differs from the first local government referendum.

Section 7: Combination of polls

44. **Section 7** enables provision to be made by order for the polls at an assembly or local government referendum to be combined with one another or with other polls for any election or at referendums held under Part 2 of the Local Government Act 2000.
45. *Subsection (2)* expressly provides for the order-making power to cover the making of provision in connection with the combination of polls, the creation of criminal offences and the application of enactments relating to referendums or elections.
46. Examples of what such an order might provide are: a requirement for the same polling station to be used; for different coloured ballot papers to be used; and the application

(with or without modifications) of provision made under section 129(1) of the PPER Act.

Section 9: Provision of information to voters

47. Under section 108 of the PPER Act, the Electoral Commission has the power to designate one “permitted participant” (such as a political party or a campaign group) as a campaign representative for each possible outcome of an assembly referendum. The benefits of such a designation are outlined in paragraph 16 above.
48. But if, for whatever reason, the Electoral Commission do not act under section 108, section 9 gives the Commission the power to make available to those entitled to vote in an assembly referendum information aimed at promoting awareness about the arguments for and against each answer to the referendum question.
49. *Subsection (6)* similarly enables the Electoral Commission to provide information for persons entitled to vote at a local government referendum in order to promote awareness about the arguments relating to the options proposed for unitary local government. This power is not subject to the procedural requirements that apply to the power to provide information to voters in assembly referendums.

Section 10: Expenditure

50. *Section 10* enables provision to be made, amongst other things, for payment by the Electoral Commission of counting officers’ charges in connection with referendums held under Part 1 of the Act.

Section 11: Legal challenge

51. *Section 11* circumscribes the circumstances under which the formal result of a referendum under the Act may be challenged in legal proceedings. It does this by prohibiting the courts from considering any challenge to a certificate of the number of ballot papers or votes cast (as produced by a Chief Counting Officer or counting officer or person with the equivalent role) unless the challenge is brought by way of judicial review. In addition, the proceedings for such a challenge must be commenced within six weeks of the date of the relevant certificate. A six week period ensures that the process of establishing an elected assembly is not unduly delayed, whilst allowing sufficient time for challenge.

Section 12: Supplementary

52. This section sets out supplementary matters relating to Part 1. The effect of *subsection (1)* is that, notwithstanding provision in or under Part 1 of the Act in connection with the conduct of assembly referendums, an order under section 129(1) of the PPER Act for or in connection with referendums would nonetheless apply to assembly referendums. *Subsection (2)* clarifies that this will be the case in respect of any order under section 129(1) of the PPER Act, whenever made.
53. *Subsection (4)* requires the Secretary of State to consult the Electoral Commission before making an order containing provision:
 - in connection with a local government referendum (section 2(9));
 - for the combination of polls (section 7(1));
 - for the payment by the Electoral Commission of counting officers’ charges in connection with a referendum held under the Act (section 10(1)).
54. The section also provides for the interpretation of certain terms and expressions used in Part 1 (*subsections (5) to (7)*).