



European Parliament (Representation) Act 2003

2003 CHAPTER 7

PART 2

GIBRALTAR

New combined electoral region

9 Combination of Gibraltar with existing electoral region

Gibraltar is to be combined with an existing electoral region in England and Wales to form a new electoral region ("the combined region") for the purposes of European Parliamentary elections taking place after 1st April 2004.

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

- (1) The Electoral Commission must, before 1st September 2003—
 - (a) consider which of the existing electoral regions in England and Wales should be combined with Gibraltar; and
 - (b) report its conclusions (with a recommendation as to which existing region should be so combined) to the Lord Chancellor.
- (2) Before determining what recommendation to make under subsection (1)(b) the Electoral Commission must consult the Governor, the Chief Minister and the leader of each political party represented in the House of Assembly of Gibraltar.
- (3) The report required by this section must be published by the Electoral Commission and laid before Parliament by the Lord Chancellor.

11 Establishment of combined region

- (1) The Lord Chancellor may by order—
 - (a) specify the existing electoral region to be combined with Gibraltar to form the combined region; and
 - (b) make provision establishing the combined region.
- (2) The existing electoral region specified under subsection (1)(a) must (subject to section 13(8)) be the one recommended by the Electoral Commission under section 10.
- (3) The Lord Chancellor must consult the Electoral Commission before making an order under this section.

12 Power to make consequential etc provision

- (1) The Lord Chancellor may by order make such provision as he considers necessary or expedient in consequence of, or in connection with, the inclusion of Gibraltar in an electoral region for the purposes of European Parliamentary elections.
- (2) Such an order may be made before or after the combined region is established under section 11.
- (3) Without prejudice to the generality of subsection (1), the provision which may be made under this section includes provision about—
 - (a) the registration of political parties established in Gibraltar (as a condition for nomination in relation to a European Parliamentary election in the combined region) and the obligations of registered parties in Gibraltar and their officers;
 - (b) the control of any description of donation to registered parties in Gibraltar or to their members or officers;
 - (c) the obligations of persons providing programme services in or to Gibraltar, and the functions of any public authority in Gibraltar responsible for the regulation of persons providing such services, in relation to European Parliamentary elections and election campaigns.
- (4) In subsection (3)—

“donation” includes anything which is (or corresponds to) a donation within the meaning of Part 4 of the Political Parties, Elections and Referendums Act 2000 (c. 41); and

“programme services” includes services which would, if Gibraltar were part of the United Kingdom, be programme services (including digital services), teletext services or local delivery services for the purposes of the Broadcasting Act 1990 (c. 42).
- (5) The Lord Chancellor must consult the Electoral Commission before making an order under this section.
- (6) The power under this section is not restricted by any power conferred by section 17 (or any other power to make subordinate legislation which is exercisable by the Lord Chancellor).

13 Sections 11 and 12: supplementary

- (1) This section applies to orders under section 11 or 12.

- (2) The power to make such an order is exercisable by statutory instrument.
- (3) Such an order may—
 - (a) confer power to make subordinate legislation;
 - (b) make consequential, supplementary, incidental, transitional or saving provision;
 - (c) make provision extending or applying to (or extending or applying only to) Gibraltar or any part of the United Kingdom; and
 - (d) make different provision for different electoral regions or for different parts of the combined region.
- (4) Such an order may modify, exclude or apply (with or without modifications) any enactment.
- (5) Such an order may not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (6) Subsection (5) does not apply to an order (not being an order which specifies the existing electoral region to be combined with Gibraltar) if it appears to the Lord Chancellor that by reason of urgency the order should be made without being approved in draft.
- (7) Where an order is made without being approved in draft, by virtue of subsection (6)—
 - (a) it must be laid before Parliament after being made; and
 - (b) if it is not approved by a resolution of each House of Parliament within the period of 40 days after the date on which it is made, the order shall cease to have effect at the end of that period.
- (8) If a motion for the approval of a draft order which specifies the existing electoral region to be combined with Gibraltar is rejected by either House or withdrawn by leave of the House, the Lord Chancellor may, after consulting the Electoral Commission, alter the draft order.
- (9) If, apart from this subsection, an order to which this section applies would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it shall proceed as if it were not such an instrument.

Electoral registration and voting in Gibraltar

14 The Gibraltar register

- (1) There shall be a register of European Parliamentary electors in Gibraltar (referred to in this Act as “the Gibraltar register”) maintained by the European electoral registration officer for Gibraltar.
- (2) The Clerk of the House of Assembly of Gibraltar shall (by virtue of his office) be the European electoral registration officer for Gibraltar.

15 Gibraltar franchise for European Parliamentary elections

- (1) A person is entitled to vote in Gibraltar as an elector at a European Parliamentary election if on the day of the poll he—
 - (a) is registered in the Gibraltar register;

- (b) is not subject to a legal incapacity to vote in Gibraltar at such an election (age apart);
 - (c) is a Commonwealth citizen or a citizen of the European Union (other than a Commonwealth citizen); and
 - (d) is at least 18 years of age.
- (2) Subsection (1)(a) has effect subject to any enactment which provides for alterations made after a specified date in the register to be disregarded.
- (3) In section 8 of the 2002 Act (persons entitled to vote), at the end there is added—
- “(8) The entitlement to vote under this section does not apply to voting in Gibraltar.”

16 Entitlement to be registered in Gibraltar

- (1) A person is entitled to be registered in the Gibraltar register if, on the relevant date, he—
- (a) is resident in Gibraltar;
 - (b) is not subject to a legal incapacity to vote in Gibraltar at a European Parliamentary election (age apart);
 - (c) is a qualifying Commonwealth citizen or a citizen of the European Union (other than a qualifying Commonwealth citizen); and
 - (d) is at least 18 years of age.
- (2) A person is also entitled to be registered in the Gibraltar register if, on the relevant date, he—
- (a) is not resident in Gibraltar but qualifies for registration in Gibraltar as an overseas elector;
 - (b) is not subject to a legal incapacity to vote in Gibraltar at a European Parliamentary election (age apart);
 - (c) is a Commonwealth citizen; and
 - (d) is at least 18 years of age.
- (3) Subsections (1) and (2) have effect subject to or in accordance with any provision made under section 17.
- (4) In this section “the relevant date” is the date on which an application for registration in the Gibraltar register is made or treated (by virtue of any enactment) as having been made.
- (5) In this section “qualifying Commonwealth citizen” means a Commonwealth citizen who—
- (a) does not, under the law of Gibraltar, require a permit or certificate to enter or remain in Gibraltar; or
 - (b) for the time being has (or is by virtue of any provision of the law of Gibraltar to be treated as having) a permit or certificate entitling him to enter or remain in Gibraltar.

17 Regulations relating to sections 14 to 16

- (1) The Lord Chancellor may by regulations—

- (a) make provision about the Gibraltar register and the manner in which it is to be maintained;
 - (b) confer functions on the European electoral registration officer for Gibraltar;
 - (c) prescribe requirements to be complied with in connection with the registration of electors in the Gibraltar register;
 - (d) prescribe circumstances in which a person is legally incapable of voting in Gibraltar at a European Parliamentary election;
 - (e) make provision for determining whether a person is or may be treated as resident in Gibraltar for the purposes of section 16;
 - (f) prescribe conditions which must be satisfied by a person in order for him to qualify for registration in Gibraltar as an overseas elector;
 - (g) impose a disqualification for registration in Gibraltar as a European Parliamentary elector;
 - (h) make provision enabling a person who has not attained the age of 18 to be entered on the Gibraltar register with a view to his being able to vote at a European Parliamentary election in Gibraltar after he has attained that age; and
 - (i) amend the definition of “qualifying Commonwealth citizen” in section 16 if he considers it necessary or expedient to do so in consequence of developments in the law of Gibraltar relating to immigration control.
- (2) The provision which may be made under subsection (1) includes anything which corresponds to any provision that may be made for the United Kingdom in regulations under section 53 of the Representation of the People Act 1983 (c. 2) (regulations as to registration etc).
- (3) Regulations under this section may (without prejudice to the generality of the paragraph in subsection (1) under which they are made) make provision corresponding to any provision of—
- (a) sections 3 and 3A of the Representation of the People Act 1983 (incapacity of offenders detained in prison or in a mental hospital) and any other provision relating to incapacity from voting;
 - (b) sections 5 to 7C and 14 to 17 of that Act (residence, declarations of local connection and service qualifications) and any other provision relating to residence for electoral purposes; and
 - (c) sections 1 and 2 of the Representation of the People Act 1985 (c. 50) (registration of British citizens overseas) and any other provision relating to overseas electors.
- (4) The Lord Chancellor must consult the Electoral Commission before making regulations under this section.

18 Section 17: supplementary

- (1) This section applies to regulations under section 17.
- (2) The power to make such regulations is exercisable by statutory instrument.
- (3) Such regulations may—
- (a) make consequential, supplementary, incidental, transitional or saving provision;

- (b) make provision extending or applying to (or extending or applying only to) Gibraltar or any part of the United Kingdom; and
 - (c) modify, exclude or apply (with or without modifications) any enactment.
- (4) Such regulations may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Subsection (4) does not apply to any regulations if it appears to the Lord Chancellor that by reason of urgency the regulations should be made without being approved in draft.
- (6) Where regulations are made without being approved in draft, by virtue of subsection (5)—
- (a) the regulations must be laid before Parliament after being made; and
 - (b) if the regulations are not approved by a resolution of each House of Parliament within the period of 40 days after the date on which they are made, the regulations shall cease to have effect at the end of that period.

Miscellaneous provisions

19 Extension of 2002 Act to Gibraltar

The provisions of the 2002 Act, other than Schedules 3 and 4, extend to Gibraltar.

20 Returning officers

- (1) Section 6 of the 2002 Act (returning officers) is amended as follows.
- (2) In subsection (2) for “and for Wales” there is substituted “and Wales (including the combined region)”.
- (3) For subsection (5) there is substituted—
- “(5) The Secretary of State may by regulations confer functions on the returning officers for the electoral regions and on local returning officers.
- (5A) For the purposes of subsection (5) “local returning officer” means—
- (a) a person who is, in relation to parliamentary elections, an acting returning officer (in England and Wales) or a returning officer (in Scotland); or
 - (b) the European electoral registration officer for Gibraltar (within the meaning of section 14 of the European Parliament (Representation) Act 2003).”
- (4) In subsection (7) for the words from “the council” to “must” there is substituted—
- “(a) in the case of an electoral region other than the combined region, the council of a relevant area falling wholly or partly within that region; and
 - (b) in the case of the combined region, the council of a relevant area falling wholly or partly within that region and the Government of Gibraltar,

must”.

- (5) In section 17 of the 2002 Act (interpretation), there is inserted at the end—
““combined region” means the electoral region which includes Gibraltar.”

21 Disqualification from office of MEP

- (1) In section 10 of the 2002 Act (disqualification)—
(a) in subsection (3), after “Kingdom” there is inserted “or Gibraltar”;
(b) after subsection (4) there is inserted—
“(4A) The Secretary of State may by order provide for persons of a description connected to Gibraltar (including any description of persons who are disqualified for membership of the Gibraltar House of Assembly) to be disqualified from the office of MEP.
(4B) The Secretary of State must consult the Electoral Commission before making an order under subsection (4A).”
- (2) In section 11(5) of the 2002 Act (power to amend maximum security for costs in disqualification proceedings), after “order” there is inserted “(a)” and at the end there is inserted “; and
(b) prescribe a different figure for applications where the electoral region concerned is the combined region.”
- (3) In section 13 of the 2002 Act (Parliamentary procedure for regulations and orders under that Act), after subsection (3) there is inserted—
“(3A) An order under section 10(4A) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
(3B) Subsection (3A) does not apply if it appears to the Lord Chancellor that by reason of urgency the order should be made without being approved in draft.
(3C) Where an order is made without being approved in draft, by virtue of subsection (3A)—
(a) it must be laid before Parliament after being made; and
(b) if it is not approved by a resolution of each House of Parliament within the period of 40 days after the date on which it is made, the order shall cease to have effect at the end of that period.”

22 European Parliamentary elections regulations

In section 7 of the 2002 Act (regulation-making powers: general), after subsection (4) there is inserted—

- “(4A) Without prejudice to the generality of the power under which they are made, regulations under this Act may make different provision for different electoral regions and, in particular, for the part of the combined region which is in England and Wales and for Gibraltar.”

23 Jurisdiction of courts

- (1) Without prejudice to the generality of the power under which it is made, subordinate legislation to which this section applies—

- (a) may make provision for a judge of the Supreme Court of Gibraltar to be appointed as an additional judge (with the two judges acting under section 123 of the Representation of the People Act 1983 (c. 2) as applied for the purposes of European Parliamentary elections) for the trial of an election petition relating to the election of MEPs in the combined region; and
 - (b) may, for the purposes of such an election petition—
 - (i) confer the powers, jurisdiction and authority of a judge of the High Court on any Gibraltar judge who is so appointed; and
 - (ii) make any other provision necessary to secure that a Gibraltar judge so appointed is treated as if he were a judge of the High Court.
- (2) Without prejudice to the generality of the power under which it is made, subordinate legislation to which this section applies may—
- (a) confer jurisdiction over any matter connected with the election of MEPs in the combined region on an election court constituted under section 123 of the Representation of the People Act 1983 (as applied for the purposes of European Parliamentary elections);
 - (b) confer jurisdiction over any such matter (not being a matter within the jurisdiction of the election court) on—
 - (i) one or more courts in the United Kingdom;
 - (ii) one or more courts in Gibraltar (whether specified in the subordinate legislation or left to be determined by or under the law of Gibraltar); or
 - (iii) one or more courts in the United Kingdom and one or more courts in Gibraltar.
- (3) This section applies to—
- (a) an order under section 12;
 - (b) regulations under section 17; and
 - (c) regulations under section 7 of the 2002 Act.

24 Effect of statutory powers on capacity of Gibraltar legislature

- (1) The capacity (apart from this Act) of the Gibraltar legislature to make law for Gibraltar is not affected by the existence of a power under this Part or the 2002 Act to make subordinate legislation extending to Gibraltar.
- (2) Subsection (1) does not affect the operation of the Colonial Laws Validity Act 1865 (c. 63) in relation to subordinate legislation made under such a power.