

*These notes refer to the European Parliament (Representation) Act 2003 (c.7) which received Royal Assent on 8 May 2003*

## **EUROPEAN PARLIAMENT (REPRESENTATION) ACT 2003**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the European Parliament (Representation) Act 2003 (c.7) which received Royal Assent on 8 May 2003. They have been prepared by the Lord Chancellor's Department in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

#### **SUMMARY**

3. This Act extends to the whole of the United Kingdom (UK) and Gibraltar.
4. The two principal purposes of the Act are:
  - a) To establish a mechanism by which the numbers of Members of the European Parliament (MEPs) representing the UK can be reduced consequent upon the accession of new member states to the European Union (EU), as agreed by the Treaty of Nice.
  - b) To enfranchise the Gibraltar electorate for the purposes of European Parliamentary elections, as of 2004, following a ruling of the European Court of Human Rights, which the UK has accepted.

#### **BACKGROUND**

##### **Changes in total number of United Kingdom MEPs**

5. The Treaty of Nice (March 2001) provides for the enlargement of the EU to potentially include 12 new Member States to make a total of 27. As a consequence, it provides that there will be an enlarged European Parliament of a maximum 732 MEPs, with representation roughly divided between each member state according to

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its population size. Existing member states are obliged to make reductions in the number of their MEPs to make space so that accession states have fair representation in the European Parliament. The Treaty provides for the UK to have 72 seats - a reduction of 15 from the current 87 seats.

6. Currently it is expected that 10 new States will accede before the 2004 elections. The Accession Treaty signed in Athens provides for the UK to have 78 MEPs for the 2004 elections based on the accession of 10 States.

7. This Act:

- establishes a mechanism by which the UK can adjust the number of MEPs;
- provides for the Electoral Commission to undertake reviews and report their recommendations about the numbers of MEPs representing electoral regions in European Parliamentary elections; and
- provides order-making powers to implement changes following their recommendations.

### **Gibraltar**

8. Gibraltar is an overseas territory of the UK. It exercises self-government except in matters of defence, internal security and foreign affairs, which are reserved to the UK. The Treaty Establishing the European Community (the EC Treaty) applies to Gibraltar by virtue of Article 299(4) which provides that the EC Treaty applies to European territories for whose external relations a member state is responsible. However, certain provisions of the EC Treaty do not apply to Gibraltar, as set out in Article 28 of the UK's Act of Accession 1972, and Gibraltar is not a separate member state.

9. Under European Community (EC) law, elections to the European Parliament are governed by the EC Act on Direct Elections of 1976 (EC Act 1976). Annex II to this Act states that "The United Kingdom will apply the provisions of this Act only in respect of the United Kingdom". Gibraltar forms part of Her Majesty the Queen's Dominions, but is not part of the United Kingdom. For this reason, when provision was originally made in the UK for European Parliamentary elections (by the European Parliamentary Elections Act 1978), Gibraltar was not included.

10. In 1999, the European Court of Human Rights considered the case of *Matthews v UK* (28 EHRR 361). Ms Matthews had claimed that the exclusion of the Gibraltar electorate from enfranchisement in the European Parliamentary elections was a breach of human rights. The Court ruled that the European Parliament formed a part of Gibraltar's legislature and held that the UK was bound by its conventions to secure the right for the people of Gibraltar to elect the European Parliament. The UK accepted the judgement of the Court and its obligation to secure the enfranchisement

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of the Gibraltar electorate.

11. The UK tabled an amendment to the EC Act 1976 in March 1999, but were unable to secure the unanimous agreement of the Council to such an amendment. In November 2001, the Government announced to Parliament that the UK would act unilaterally to enfranchise the Gibraltar electorate by means of UK domestic legislation. This Act will provide for the entirety of UK electoral law, as it applies to European Parliamentary elections, to be applied to Gibraltar for those purposes, modified as necessary to ensure practical application.

#### **TERRITORIAL APPLICATION: WALES**

12. The whole Act applies to Wales. The nature of the application of *Part 2* to Wales will depend on whether it is selected as the existing electoral region to be combined with Gibraltar to form the combined region under *section 9*. There is no effect on the National Assembly for Wales.

#### **COMMENTARY ON SECTIONS**

##### **Part 1: Changes in total number of United Kingdom MEPs**

###### ***Section 1: Electoral regions in the United Kingdom***

13. This section replaces section 1 of the European Parliamentary Elections Act 2002 (2002 Act), and restates the existing position in a way which makes subsequent changes to the total number of MEPs - and the numbers of MEPs for each region - more easily achievable across the UK as a whole. It does not itself change the numbers of MEPs in any region.

###### ***Section 2: References to changes under Community law***

14. Section 2 defines “change under Community law” in *sections 3* and *5*. It has the effect of limiting changes which can be implemented under *section 5* to ones made either by a Treaty specified in section 1(2) of the European Communities Act 1972 (following an amendment made by an Act) or by an EC instrument made under such a Treaty.

###### ***Section 3: Recommendations by Electoral Commission relating to changes in number of United Kingdom MEPs***

15. Section 3 establishes a mechanism for reviews of the distribution of MEPs in the UK to take place when a change to the numbers under EC law has been agreed or is anticipated. The UK must take action to make sure that no more than the agreed number of MEPs are elected for the UK as a whole, though their distribution between

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the UK electoral regions is a matter for the UK alone.

16. *Subsections (1) and (3)* therefore give the Lord Chancellor the power to require the Electoral Commission to make recommendations within a specified period about the distribution of MEPs according to a total number specified by him. That number will be the number agreed at European level, or one the Lord Chancellor anticipates will be agreed. It is possible that the timing of the accession ratification process will be such that the Lord Chancellor will need to ask the Electoral Commission to begin work on calculations before a final number has been agreed. Provision has therefore been made for him to ask for calculations to be made for one or more different numbers.

17. *Subsection (4)* sets out the objectives which the Electoral Commission must achieve when making their recommendations. Each region is entitled to a minimum of 3 MEPs and subject to that the Commission must ensure that as nearly as possible the ratio of electors to MEPs is the same in each region.

#### ***Section 4: Section 3: meaning of "elector"***

18. This section defines the electorate to be used by the Electoral Commission when calculating the new distribution and in making their recommendations. It is possible for the same person to be registered at more than one address for the same electoral region. There is however no reliable means of identifying from the registers themselves the few cases where this may have happened. Subsection (3) allows the Commission to assume that separate registrations relate to different people.

#### ***Section 5: Orders implementing changes in the number of United Kingdom MEPs***

19. Section 5 gives the Lord Chancellor the power to make an order giving effect to a change in Community law in the number of MEPs to be elected for the United Kingdom and a recommendation made by the Electoral Commission as to their distribution in the regions by altering the total number and distribution of UK MEPs. The order must be made within twelve months of the Electoral Commission's recommendation. It can be made before the Treaty provision or other instrument making the change comes into force and before the Treaty has been specified in section 1(2) of the European Communities Act 1972, but it cannot come into force until those measures have come into force.

#### ***Section 6: Orders under section 5: supplementary***

20. Section 6 makes supplementary provision to the order making power under *section 5*. It provides that the draft orders implementing the recommendations of the Electoral Commission by amending section 1 of the 2002 Act are to be approved by both Houses of Parliament before they can be made. If a draft order is rejected or withdrawn it can be amended by the Lord Chancellor with the consent of the Electoral

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Commission and re-laid for approval. The Electoral Commission can only consent to an amendment if satisfied that they would have been able to recommend the change made by the order (that is so that the distribution still complies with the requirements of section 3(4)). There is also power to make consequential; transitional; or saving provisions, and if an order making such provisions does not also amend section 1 of the 2002 Act, it is subject to the negative resolution procedure.

***Section 7 and Schedule: Periodic reviews of distribution of MEPs and Schedule 1A to the 2002 Act***

21. This section inserts a new section and Schedule into the 2002 Act and replaces the periodic reviews formerly undertaken in England by the Secretary of State about a year before each election. The inserted Schedule provides for this periodic exercise to take place on the same basis as the re-numbering exercise provided for by *section 3*. That is, the whole of the UK will be considered at the periodic reviews (not just the English regions) and the principles set out in *section 3(4)* will apply.

22. The new Schedule requires the Electoral Commission to carry out the periodic reviews rather than the Secretary of State. However, the Commission will not be required to carry out a periodic review if a review under *section 3* has recently been concluded, or has begun, or is expected to begin shortly. A similar process for making recommendations and for making subsequent orders applies to periodic reviews as to *section 3* reviews.

23. The new Schedule 1A to the 2002 Act refers throughout to the Secretary of State rather than the Lord Chancellor. That follows the wording of other provisions of that Act which confer functions on the Secretary of State. The Transfer of Functions (Transport, Local Government and the Regions) Order 2002 provides for the Lord Chancellor and the Secretary of State to have concurrent powers in relation to these functions.

***Section 8: Consequential amendments***

24. Section 8 makes consequential amendments to the 2002 Act in consequence of *Part 1* of the Act.

***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

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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.

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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 Gibraltarian 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*.

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***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

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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

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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.

**Part 3: Supplementary**

***Section 25: Financial provisions***

44. Section 25 makes provision, in accordance with rules of House of Commons procedure authorising various expenditure under the Act to be met out of public funds. It also ensures that subordinate legislation under the Act may provide for expenditure under that legislation (including expenditure in Gibraltar) to be paid out of public funds.

***Section 26: Functions of Lord Chancellor exercisable concurrently with Secretary of State***

45. Section 26 enables the Secretary of State to exercise the powers that are specified in the Act to be exercisable by the Lord Chancellor. Under the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, responsibility for European Parliamentary elections transferred to the Lord Chancellor, although the Secretary of State also retains powers under that legislation. Who in practice will make any particular provision of subordinate legislation is likely to depend upon which Minister of the Crown (that is the Lord Chancellor or any of the individual Secretaries of State) has been entrusted with handling the relevant law. Under this Act an approach consistent with the Transfer of Functions Order has been taken (see also paragraph 22).

**COMMENCEMENT**

46. The whole of *Parts 1 and 3 and sections 9 and 10* of the Act come into force in the UK on Royal Assent, but will be brought into force for the purposes of Gibraltar by commencement orders.

47. The other sections in the Act which provide for or depend on the making of secondary legislation to, for example, apply UK law affecting European parliamentary elections to allow for the inclusion of Gibraltar in the UK system, will come into force by commencement order.

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## PARLIAMENTARY HISTORY

Stage	Date	Hansard Ref
House of Commons - Presentation and First Reading	21 Nov 2002	c800
Second Reading	10 Dec 2002	c173-222
Committee Stage - 1 <sup>st</sup> Sitting (afternoon)	7 Jan 2003	SC - A
Committee Stage - 2 <sup>nd</sup> Sitting (morning)	9 Jan 2003	SC - A
Committee Stage - 3 <sup>rd</sup> Sitting (afternoon)	9 Jan 2003	SC - A
Committee Stage - 4 <sup>th</sup> Sitting (morning)	14 Jan 2003	SC - A
Committee Stage - 5 <sup>th</sup> Sitting (afternoon)	14 Jan 2003	SC - A
Committee Stage - 6 <sup>th</sup> Sitting (morning)	16 Jan 2003	SC - A
Report Stage and Third Reading	3 Feb 2003	c41-113
House of Lords - First Reading	4 Feb 2003	c644
Second Reading	20 Feb 2003	c1227-45
Grand Committee	13 Mar 2003	c29-56GC
Report Stage	27 Mar 2003	c956-65
Third Reading	7 Apr 2003	c12-4
Commons' Consideration of Lords' Amendments	28 Apr 2003	c70-104
Lords' Consideration of Commons' Amendments	29 Apr 2003	c581-82

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