

PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Voting system for parliamentary elections

Section 1: Referendum on the alternative vote system

26. *Section 1* provides that a referendum on whether to change the voting system for parliamentary elections is to be held on 5 May 2011 unless before that date the Minister makes an Order to appoint an alternative date that is before 31 October 2011. Such an Order will be subject to the affirmative resolution procedure and may only be made if the Minister is satisfied that it is impossible or impracticable for the referendum to be held on 5 May, or that it cannot be conducted properly if held on that day. Any Order may include supplemental or consequential provision and may, for the purposes of making such provision, amend or modify the Act or other primary or secondary legislation. Subsections (7) and (8) set out the question that will appear on the ballot papers in English and Welsh. Subsection (9) gives effect to Schedule 1 to the Act (described in detail below) which makes further provision for the purposes of this referendum.

Section 2: Entitlement to vote in the referendum

27. *Section 2* provides for who is entitled to vote in the referendum. Under *subsection (1)(a)*, a person is entitled to vote in the referendum if, on the date of the referendum, he or she would be entitled to vote in a parliamentary election. This includes a person who is entitled to vote in a parliamentary election as an overseas elector by virtue of section 1 of the Representation of the People Act 1985.
28. *Subsection (1)(b)* enables a peer, who is disqualified by common law from voting in parliamentary elections, to vote in the referendum if, on the date of the referendum, he or she would be entitled to vote in a local government election. Subsection (1)(b) also enables a peer to vote in the referendum if he or she is entitled to vote at a European Parliamentary election by virtue of section 3 of the Representation of the People Act 1985. This latter category comprises peers who are resident outside the UK.

Section 3: Conduct of the referendum

29. *Section 3* provides that the referendum must be conducted in accordance with the rules set out in *Schedule 2* to the Act. *Section 3* also gives effect to *Schedules 3 and 4* which provide further detail about the conduct of the referendum. *Schedule 3* relates to absent voting in the referendum and *Schedule 4* provides for the application of provisions of existing electoral legislation for the purpose of the referendum. These Schedules are described in more detail below.

Section 4: Combination of poll

30. *Section 4* provides that the poll for the referendum must be combined with (and only with) the polls for the following elections or local referendums held on the same day: local authority and mayoral elections and local government referendums in England; the Welsh Assembly general election; the Scottish parliamentary general election; and the Northern Ireland Assembly general election and local elections in Northern Ireland. Section 4 also gives effect to Schedules 5 to 8 which provide detail about the conduct of the combined polls in each of England, Wales, Scotland and Northern Ireland respectively. These Schedules are described in more detail below. Subsection (8) deals with the position if, under existing legislative powers, the date of the poll for any of those elections is changed. Subsection (9) enables provision to be made by Order in a case where a new date for the referendum is fixed by Order under the power given by section 1 and that new date is also the date of another poll to be held in the United Kingdom or any part of it. Any Order may provide that in those circumstances the referendum is not to be taken together with any such poll. An Order may include supplemental or consequential provision, including provision modifying or amending the Act or any other provision in primary or secondary legislation.

Section 5: Press comment etc not subject to spending controls

31. *Section 5* provides that, for this referendum, expenses incurred in the publication of non-advertising material in a newspaper or periodical, or in a broadcast by the BBC, S4C and other licensed broadcasters are not “referendum expenses” for the purposes of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”). This means that such expenses will not be caught by the spending restrictions that the 2000 Act places on individuals or organisations that campaign in this referendum.

Section 6: Control of loans etc to permitted participants

32. *Section 6 and Schedule 9* have the effect of regulating loans made to permitted participants who campaign in the referendum on the voting system. The controls are similar to those made in relation to registered political parties by Part 4A of the 2000 Act. The provisions of the Act do not apply to a loan to a registered political party that is not a minor party, which would be governed by Part 4A of the 2000 Act. Schedule 9 to the Act contains provisions preventing a permitted participant from entering into certain regulated transactions with persons who are not “authorised participants” (e.g. individuals who are not on the electoral register). It also imposes certain reporting requirements. *Subsection (1)* of section 6 introduces the Schedule. *Subsection (2)* ensures that permitted participants provide a statement of regulated transactions in their return about referendum expenses. *Subsection (4)* ensures that the addresses of individuals who enter into regulated transactions with permitted participants are made available for public inspection (and this corresponds to the rules in the 2000 Act about donations). *Subsection (5)* ensures that regulated transactions are aggregated with donations for the purpose of determining whether the donations need to be reported. *Subsection (6)* ensures that the civil sanctions made available to the Electoral Commission by Schedule 19C to the 2000 Act may be imposed by the Commission in respect of the offences contained in paragraphs 8(1) to (12). *Subsections (7) and (8)* ensure that the provisions about reporting apply to transactions entered into before section 6 comes into force, but the provisions about the consequences of entering into unauthorised transactions (or making a transfer of an interest in a transaction to an unauthorised entity) and the offences relating to doing so do not apply to any transaction entered into (or transfer made) before the section comes into force.

Section 7: Interpretation

33. This section defines certain terms used in Part 1 of the Act. This includes providing that the voting area for the referendum on the voting system will be a district in England for which there is a district council, a county in England in which there are no districts

with councils, a London Borough, the City of London, the Isles of Scilly, a constituency for the National Assembly for Wales, a constituency for the Scottish Parliament and Northern Ireland. Under this section, a single definition of “registration officer” is also provided throughout Part 1 of the Act.

Section 8: Commencement or repeal of amending provisions

34. This section deals with the coming into force, or repeal, of the provisions in the Act that are referred to as the “alternative vote provisions”. The “alternative vote provisions” are section 9, Schedule 10 and Part 1 of Schedule 12; and the effect of these provisions would be to alter the voting system for parliamentary elections to the alternative vote system.
35. If there is a “yes” vote in the referendum (that is, more people vote yes than vote no) then the alternative vote provisions must be brought into force on the same day as the coming into force of an Order in Council giving effect to the Boundary Commissions' recommendations for altering the parliamentary constituencies made under the revised scheme in Part 2 of the Act.
36. If there is a “no” vote in the referendum, the alternative vote provisions must be repealed.
37. *Subsection (3)(b)* makes a saving provision. It provides that where an Order is made to bring the AV provisions into force the Order will not apply to any election which takes place before the first general election that is held after AV comes into force. The effect is that a general election, rather than a by-election, will be the first election to be held using AV.

Section 9: The alternative vote system: amendments

38. *Subsections (1) and (2)* insert two new rules into the Parliamentary Elections Rules contained in Schedule 1 to the 1983 Act, which set out the key practical implications of the alternative vote system: how votes would be given (new rule 37A) and how they would be counted and the winning candidate determined (new rule 45A). *Subsection (2)* also inserts new rule 45B which stipulates the information to be given after each stage of counting.
39. Under new rule 37A (inserted by *subsection (1)*), voters mark candidates on the ballot paper in order of preference, using 1, 2, 3 etc. Voters may mark as many preferences as they wish, up to the number of candidates standing in the constituency at the election.
40. *Subsection (2)* inserts a new rule 45A which sets out how votes are to be counted under the alternative vote system. The key principle (contained in new rule 45A(1)) is that votes should be counted to give effect to the preference or preferences that voters express when marking their ballot paper. The candidate who is elected is determined by allocating votes in line with those preferences. It may be necessary for more than one stage of counting to take place for this to happen. The remainder of new rule 45A describes the circumstances in which more than round may be needed and what is to happen during each round.
41. Paragraph (2) of the new rule provides that if after the counting of voters' first preferences, any candidate has more votes than the other candidates put together (ie more than 50% of the votes) then that candidate is elected.
42. Under paragraph (3) if no candidate has more than 50% of the votes at this stage, then there would be a further round of counting. The candidate with fewest votes is eliminated. If voters who chose that candidate as their first preference also expressed other preferences each vote originally allocated to the eliminated candidate is reallocated to the candidate remaining in the count that the voter ranked highest. Where a ballot paper does not express any further preferences, or the preferences relate to candidates who have already been eliminated, the ballot paper plays no further part

*These notes refer to the Parliamentary Voting System and Constituencies
Act 2011 (c.1) which received Royal Assent on 16 February 2011*

in the counting. If a candidate has more than 50% of the votes left in the count once this reallocation of votes has taken place, the candidate is elected. If not, then a further round of counting will take place and the candidate now with fewest votes is eliminated and their votes reallocated. This process continues until one candidate has more than 50% of the votes left in the count and is elected.

43. New rule 45B (also inserted by *subsection (2)*) requires the returning officer to make publicly available a record of all the information listed in that rule at the end of each counting stage (except the final stage, at which the candidate is elected and the result is declared under rule 50) so that candidates and their agents and other persons at the count are aware of the state of play at the end of each counting stage.
44. *Subsection (4)* gives the Lord President of the Council and the Secretary of State an order-making power to make amendments to primary or secondary legislation that are consequential on amendments made by this section or Schedule 10. An order made under this subsection would be subject to the affirmative resolution procedure. Before making an order, *subsection (8)* requires the Lord President of the Council or Secretary of State to consult the Electoral Commission.