

PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1: Further provisions about the referendum

66. *Schedule 1* to the Act makes further provision about aspects of the referendum.
67. *Paragraph 1* of the Schedule sets out what will be the “referendum period” for the referendum on the voting system for parliamentary elections. The “referendum period” is the period during which the controls on spending by permitted participants (that is individuals or organisations that campaign in a referendum) will apply. After this period has begun the Electoral Commission will, within a prescribed time, designate a separate organisation or individual to be the official voice of each of the “yes” and “no” campaigns. This paragraph of the Schedule provides that the referendum period will run from the date of Royal Assent until the date of the poll itself.
68. *Paragraph 2* provides that returning officers are automatically appointed as counting officers for the purposes of the referendum. In practice this means that in England, counting officers will be the same individuals who are returning officers for the local government elections, in Wales, counting officers will be the same individuals who are returning officers for the National Assembly of Wales election and in Scotland, counting officers will be the same individuals who are returning officers for the Scottish Parliamentary election. The counting officer for the Northern Ireland voting area is the Chief Electoral Officer for Northern Ireland. The paragraph also makes special provision for the City of London and Isles of Scilly.
69. *Paragraph 3* creates the role of Regional Counting Officers specifically for the referendum on the voting system for parliamentary elections. *Paragraph 3(1)* provides that the Chief Counting Officer may appoint a Regional Counting Officer for any region in Great Britain. *Sub-paragraph (2)* specifies that the regions for which Regional Counting Officers may be appointed are those used for the purposes of European Parliamentary Elections in relation to England, Scotland and Wales (specified in section 1 of and Schedule 1 to the European Parliamentary Elections Act 2002).
70. *Paragraph 4(1)(a)* imposes a duty on a local authority within a voting area (as defined in section 7) to place the services of their officers at the disposal of the counting officer. As regards Regional Counting Officers, paragraph 4(1)(b) imposes an equivalent duty on a local authority responsible for a voting area which falls within a region in respect of which a Regional Counting Officer is appointed. *Sub-paragraph (2)* defines what a local authority is in this context.
71. *Paragraph 5* relates to the role, duties and powers of counting officers, Regional Counting Officers and the Chief Counting Officer and applies in addition to the provisions relating to the Chief Counting Officer and counting officers in section 128 of the 2000 Act. *Sub-paragraph (1)* requires the Chief Counting Officer, Regional

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Counting Officers and counting officers to do whatever things are necessary for conducting the referendum in the manner set out in the legislation.

72. *Paragraph 5(2)* sets out the responsibilities of a counting officer with respect to the voting area for which he or she is appointed.
73. *Paragraph 5(3)* provides that responsibility for printing the ballot papers for a voting area may be taken by the Chief Counting Officer or, in the case of a voting area in a region for which a Regional Counting Officer is appointed, the Regional Counting Officer. Responsibility for printing the ballot papers will otherwise rest with counting officers (*paragraph 5(2)(b)*).
74. *Paragraph 5(4)* provides that each Regional Counting Officer is responsible for certifying the total number of ballot papers counted and total votes cast in favour of each answer to the referendum question in respect of the region for which the Regional Counting Officer is appointed. This corresponds to the duties imposed on counting officers and the Chief Counting Officer under section 128(5) and (6) of the 2000 Act.
75. *Paragraph 5(5)* provides that the Chief Counting Officer may issue directions to Regional Counting Officers or counting officers relating to the discharge of their functions in preparation for, or during, the referendum poll, including directions requiring the provision of information. Provision is also made for Regional Counting Officers to issue directions to counting officers for voting areas within their region (*paragraph 5(6)*), but only where this is authorised or required by the Chief Counting Officer (*paragraph 5 (7)*). Under *paragraph 5(8)*, a Regional Counting Officer or counting officer to whom a direction is given is required to comply with it.
76. *Paragraph 6* provides that the Chief Counting Officer, a Regional Counting Officer or counting officer may, in writing, appoint deputies to discharge all or any of the officer's functions (*sub-paragraphs (1) and (2)*). *Sub-paragraph (3)* also enables a Regional Counting Officer to appoint such clerks as may be necessary to assist him or her in his or her functions in relation to the referendum. Provision is made for counting officers to appoint clerks in rule 14 of Schedule 2 to the Act.
77. *Paragraph 7* allows counting officers and Regional Counting Officers to correct errors or omissions that arise during the preparation for and conduct of the referendum. This will apply to errors and omissions that are made by the counting officer or Regional Counting Officer themselves and also errors and omissions made by other persons who have functions in connection with the referendum (including, registration officers, presiding officers, clerks and staff). By way of example, documents, such as official poll cards, printed with incorrect details would be capable of correction under this provision.
78. *Paragraph 8* relates to public notices that are required to be given by the Chief Counting Officer, a Regional Counting Officer or a counting officer under Part 1 of the Act. It provides that the officer must post the notice in a conspicuous place in the area or region for which the officer acts or must publicise it in such other manner as the officer thinks desirable.
79. *Paragraph 9* relates to the role of the Electoral Commission. *Paragraph 9(1)* provides that the Electoral Commission has a duty to promote public awareness of the referendum and how to vote in it. *Paragraph 9(2)* provides that the Electoral Commission may take whatever steps they think appropriate to provide information about each of the two voting systems referred to in the referendum question. *Paragraph 9(3)* imposes a duty on the Electoral Commission to publish the most accurate estimate reasonably possible of the turnout in each of England, Wales, Scotland and Northern Ireland, and specifies that this information must be included in any report on the referendum submitted by the Commission under section 6(1)(b) of the 2000 Act. Section 9(4) defines "turnout" and provides that for these purposes votes counted towards the turnout figure should include votes cast but not counted in accordance with

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rule 42(4)(b), (c) and (d) of the referendum rules set out in Schedule 2 (e.g. spoiled ballot papers).

80. *Paragraph 10* requires the Chief Counting Officer, Regional Counting Officers, counting officers and registration officers to take whatever steps they consider appropriate to encourage participation in the referendum. This is modelled on section 69 of the Electoral Administration Act 2006, which imposes a duty on returning officers and registration officers to encourage participation in elections. In addition, where such steps are taken, the Chief Counting Officer is required to take whatever steps the officer thinks appropriate to facilitate co-operation between those officers.
81. *Paragraph 11* enables a permitted participant to appoint a referendum agent for any voting area. Under rule 18 of the referendum rules in Schedule 2 to the Act, referendum agents are empowered to appoint polling agents to attend polling stations for the purpose of detecting personation and to appoint counting agents to attend at the counting of votes.
82. *Paragraphs 12 and 13* impose requirements in relation to the appointment of referendum agents. These include a requirement for the responsible person for the permitted participant to notify the counting officer of the appointment before noon on the 16th day ahead of the poll (*paragraph 12(2) and (3)*), and for the counting officer to give public notice of the appointment (*paragraph 13(2)*).
83. *Paragraph 14* applies if a permitted participant revokes the appointment of a referendum agent or a referendum agent dies and, before that event, the referendum agent had appointed a polling agent or a counting agent. In this situation, the permitted participant must, as soon as possible, appoint another referendum agent and the responsible person must notify the counting officer of the new appointment (*sub-paragraphs (2) and (3)*).
84. *Paragraph 15* of the Schedule makes provision to ensure that a person cannot be the “responsible person” (within the meaning of Part 7 of the 2000 Act) for more than one permitted participant at the proposed referendum on the voting system.
85. *Sub-paragraph (1)* has the effect that an individual who is already the responsible person for a permitted participant cannot become a permitted participant in his or her own right. *Sub-paragraph (2)* of the paragraph provides that where a registered political party (which is not a minor party) becomes a permitted participant and the treasurer of that party had already registered as a permitted participant in their own right, that treasurer ceases to be regarded as a permitted participant in their own right. *Sub-paragraph (3)* of the paragraph provides that a declaration or notification given under section 106(2)(b) or (4)(b)(ii) of the 2000 Act by a body wishing to become a permitted participant does not comply with the requirement to name a responsible person if the person that it names is already the responsible person in relation to another permitted participant (whether as an individual or for another organisation) or is an individual who would become a responsible person by virtue of a notification given for another body at the same time. *Sub-paragraph (4)* of the paragraph provides that where a registered political party (other than a minor party) becomes a permitted participant and the treasurer of that party was already a responsible person for another permitted participant, that treasurer ceases to be regarded as the responsible person for that other permitted participant and the other permitted participant has a period of 14 days in which to appoint a new responsible person.
86. *Paragraph 16* modifies section 110 of the 2000 Act regarding the payment of grants by the Electoral Commission to designated lead campaign organisations. The effect is that, in relation to the proposed referendum on the alternative vote system, the Electoral Commission will be entitled to pay the grant in instalments, and may withhold instalments if it is satisfied that the designated organisation has breached one of the conditions that the Commission has set when making the grant. The level of the

grant paid to each designated organisation must be of the same amount, unless the Commission has withheld any instalment(s) to any of the designated organisation(s).

87. *Paragraph 17* of the Schedule makes provision on the aggregation of expenses by persons acting in concert at the proposed referendum on the voting system. *Sub-paragraph (1)* of the paragraph sets out the circumstances in which persons will be regarded as having acted in concert. *Sub-paragraph (2)* of the paragraph provides that where expenses are incurred by persons acting in concert, the total value of those expenses is to be regarded as having been incurred by each of the persons in question, and counted against each person's spending limit accordingly. *Sub-paragraph (5)* provides that expenses incurred by or on behalf of a designated organisation are not to be regarded as having been incurred by any other person. *Sub-paragraph (6)* makes clear that the requirement to report common arrangement expenditure applies whether or not, at the time, the separate individuals or bodies concerned are permitted participants.
88. *Paragraph 18* provides that the regulations referred to in *sub-paragraphs (1), (2) and (3)* apply to the display on any site of advertisements relating specifically to the referendum as they do to the display of advertisements relating to pending parliamentary elections. The effect is that local authority consent is not required in respect of the display of an advertisement relating to the referendum.
89. Under *paragraph 19*, the legislative provisions referred to in *sub-paragraphs (1) and (2)* apply in respect of the use of premises for purposes connected with the referendum as they do in respect of the use of premises for purposes connected with parliamentary elections. The effect is that the use of certain premises for the holding of public meetings promoting or procuring a particular outcome in the referendum or for the purpose of taking the poll in the referendum will not, in itself, render those premises liable to rates.
90. *Paragraph 20* makes provision for payments to counting officers and Regional Counting Officers in respect of the referendum. Under *sub-paragraph (1)* counting officers and Regional Counting Officers are entitled to recover their charges in respect of the referendum provided they relate to services necessarily rendered, or expenses necessarily incurred, for the efficient and effective conduct of the referendum and they do not exceed the overall maximum recoverable amount specified in an order ("the charges order") made by the Minister. The charges order may also specify, or make provision for determining, the maximum amount which counting officers or Regional Counting Officers may recover for services or expenses of a specified description (*sub-paragraph (4)*). The Minister is required to obtain the consent of Treasury to the making of the charges order.
91. Under *sub-paragraphs (2) and (3)*, the Electoral Commission has the power to reduce the fee element of charges that are paid to Regional Counting Officers and counting officers for the performance of their duties in the conduct of the referendum. The power to reduce a fee will apply where a Regional Counting Officer or counting officer fails to meet an adequate level of performance when carrying out her or his duties in relation to the conduct of the referendum. The level of reduction (which may reduce the fees to nil) is to be determined by what the Commission thinks is reasonable in all the circumstances. The power does not extend to allow the reduction of any sum payable for an expense which an officer is entitled to make a claim for.
92. The Electoral Commission is required to pay to counting officers and Regional Counting Officers the charges that they are entitled to recover (*sub-paragraph (8)*). However, the Electoral Commission can apply for the account to be taxed under *paragraph 21* before payment. *Sub-paragraph (9)* provides for the Electoral Commission to pay to local authorities any amounts required to reflect an increase in superannuation contributions that result from a fee paid as part of a counting officer's or a Regional Counting Officer's charges.

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93. There is provision in *sub-paragraph (5)* for the Electoral Commission, with the consent of Treasury, to authorise payment of more than the amounts specified in the charges order if the conditions in *sub-paragraph (6)* are satisfied. The Electoral Commission is also empowered in *sub-paragraph (10)* to pay advances to counting officers and Regional Counting Officers upon request.
94. Under *sub-paragraph (7)* there is provision for the Chief Counting Officer, who is the Chair of the Electoral Commission to incur expenses for the effective conduct of the referendum in certain limited circumstances and to make payments in respect of those expenses out of the monies to be provided from the Consolidated Fund where Regional Counting Officers and / or Counting Officers would do so ordinarily but for the Chief Counting Officer to do so centrally provides better value for money.
95. Under *sub-paragraph (11)* the Electoral Commission may make regulations regarding the time when and the manner and form in which accounts are to be rendered to the Commission for the purpose of payment of counting officers', Regional Counting Officers' or the Chief Counting Officer's charges.
96. *Sub-paragraph (13)* provides that any sums required by the Electoral Commission for making payments under *paragraph 20* are to be charged on and paid out of the Consolidated Fund.
97. *Paragraph 20* is modelled on section 29 of the 1983 Act, which provides for payments to returning officers in the context of parliamentary elections. Section 29 currently provides for these payments to be made by the Secretary of State but uncommenced amendments to that section made by paragraph 107 of Schedule 1 to the Electoral Administration Act 2006 transfer this function to the Electoral Commission. In making provision for payments to counting officers to be made by the Electoral Commission, *paragraph 20* is consistent with this aspect of the uncommenced amendments to section 29 as well as with the approach taken in section 10 of the Regional Assemblies (Preparations) Act 2003, which provides for payments to counting officers by the Electoral Commission in the context of referendums held under that Act.
98. *Paragraph 21* makes provision in respect of applications for a counting officer's or Regional Counting Officer's account to be taxed before payment and is based on section 30 of the 1983 Act which provides for the taxation of returning officers' accounts in the context of parliamentary elections. *Sub-paragraph (2)* provides that the court may tax the account as it thinks fit and finally determine the amount payable to the counting officer or Regional Counting Officer.
99. Where an application for taxation of a counting officer's or Regional Counting Officer's account has been made, *sub-paragraph (3)* allows the counting officer or Regional Counting Officer to apply to the court to examine any claim made by a person ("the claimant") against the officer in respect of any charges included in the account. In this situation, the court may allow, disallow or reduce the claim against the counting officer, or Regional Counting Officer but must first give the claimant the opportunity to be heard and to tender evidence (*sub-paragraph (4)*).
100. *Paragraph 22(1)* provides that, if directed to do so by the Treasury, the Electoral Commission must prepare accounts in respect of their expenditure in relation to the referendum. The accounts must be prepared in accordance with any directions given by the Treasury (*sub-paragraph (2)*); those directions might include the matters set out in *sub-paragraph (3)*. The Electoral Commission is required to submit the accounts to the Comptroller and Auditor General and the Speaker's Committee as soon as practicable after it receives a direction under *sub-paragraph (1)* (*sub-paragraph (4)*). The Speaker's Committee is established under section 2 of the 2000 Act and has general oversight of the exercise of the Electoral Commission's functions. Under paragraph 18 of Schedule 1 to the 2000 Act, the Electoral Commission's accounts for any financial year must be submitted to the Speaker's Committee as well as to the Comptroller and Auditor General.

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101. *Paragraph 23* relates to how the formal result of the referendum may be challenged in legal proceedings. It provides that any challenge in respect of the number of ballot papers counted or votes cast as certified by the Chief Counting Officer, a Regional Counting Officer or a counting officer must be brought by way of judicial review (*sub-paragraph (1)(a)*). In addition, the challenge must be commenced within six weeks of the date of the relevant certificate (*sub-paragraphs (1)(b) and (2)*). The six week period is intended to ensure that sufficient time is allowed for challenges to be brought while avoiding prolonged delay in the final result of the referendum being known.