



BRIEFING PAPER

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European Union Referendum Bill 2015-16: Progress of the Bill

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Summary

The *European Union Referendum Bill 2015-16* was introduced on 28 May 2015 and received its Second Reading on 9 June 2015. This Briefing Paper summarises the progress of the Bill; it complements Briefing Paper 07212 [European Referendum Bill 2015-16](#) that was prepared before the Bill's Second Reading debate.

The provisions of the Bill that attracted most debate during Second Reading were those concerning the franchise, the timing of the referendum, and the lifting of the purdah provisions (*Section 125 of the Political Parties, Elections and Referendums Act 2000* (PPERA)).

During Committee stage, amendments were made to ensure that:

- the referendum is not held on 5 May 2016 (the day certain other elections are held across the UK);
- the spending limits for permitted participants and designated organisations are increased (to take account of inflation since PERA was passed in 2000); and
- permitted participants who do not incur any referendum expenses are required to declare this to the Electoral Commission.

At Report stage, the Government brought forward a series of amendments to reinstate the purdah provisions but with certain exemptions to be specified in regulations. The new clause setting out these arrangements was amended to require any regulations to be made four months before the referendum date. The Government was defeated on its amendment that would have applied the purdah provisions but with modifications. An Opposition amendment with the effect of applying the purdah provisions in full was agreed.

The Bill was also amended to change the referendum question to the wording recommended by the Electoral Commission. A number of other Government amendments were made:

- the referendum cannot be held on 4 May 2017;
- Irish citizens resident in Gibraltar will be included in the franchise for the referendum;
- technical amendments that deal primarily with the interaction between UK law and Gibraltar law;
- changes to the referendum campaign rules to allow the lead campaigns to be designated quickly if needed.

The Bill received its Third Reading after a division. On 13 October it received its Second Reading in the House of Lords. A number of amendments were made to the Bill during its committee and report stages and on Third Reading. Most of these were technical, but there were also amendments to:

- extend the franchise to 16 and 17 year olds (Opposition amendment);
- cap donations and loans to political parties;
- define the referendum period as at least 10 weeks;
- require the Secretary of State to publish reports outlining the outcome of the negotiations with the EU, and the Government's view on these; and the rights and obligations arising under EU law, and arrangements non-member countries currently have with the EU;
- enable the Electoral Commission to designate one campaign organisation only;
- extend the scope of the reporting requirements for campaigners.

The Lords' amendments were debated by the House of Commons on 8 December 2015. The Commons agreed to most amendments, but disagreed to the extension of the franchise to 16 and 17 year olds, "Because it would involve a charge on public funds".

The House of Lords will consider this reason on 14 December 2015.

1. Introduction

The European Union Referendum Bill provides for a referendum to be held on the UK's membership of the European Union (EU) before the end of 2017. Two Private Members' Bills had aimed to achieve this during the previous Parliament but neither progressed.

The Bill received its [Second Reading](#) on 9 June 2015 and was committed to a Committee of the Whole House, given its constitutional nature. Committee stage took place in two days, [16](#) and [18 June](#) 2015. [Report stage](#) and [Third Reading](#) took place on 7 September 2015.

The House of Commons Library has published four briefing papers on the Bill: 7212 [European Union Referendum Bill 2015-16](#) scrutinises the provisions in the Bill; while 7213 [EU exit: impact in key UK policy areas](#) and 7214 [Exiting the EU: UK reform proposals, legal impact and alternatives to EU membership](#) consider the likely consequences of a withdrawal from the EU; and 7220 [The UK and the EU: reform, renegotiation, withdrawal? A reading list](#) provides a bibliography of relevant literature. The Bill itself, along with associated papers, is available from the [Bills before Parliament page](#).

2. Second Reading debate

The [Second Reading debate](#) took place on 9 June 2015. The Bill was widely supported. The provisions of the Bill that attracted most debate were those concerning the franchise, the timing of the referendum, and the lifting of the purdah provision for the referendum (in Section 125 of the *Political Parties, Elections, and Referendums Act 2000* (PPERA)).

Foreign Secretary Phillip Hammond opened the debate by referring to the commitment to hold a referendum on EU membership in the Conservative Party's manifesto for the 2015 general election, and mentioning the two Private Members' Bills in the previous Parliament that had previously sought to achieve this. He explained the motivation for such a referendum:

... an entire generation of British voters has been denied the chance to have a say on our relationship with the European Union. Today we are putting that right. ... today we are delivering on our promise to give that generation its say.¹

Phillip Hammond stated the Government's commitment to negotiate reforms to the UK's relationship with the EU prior to the referendum, but declined to give a clear list of demands; the referendum will be held once the negotiation process is completed.

With regards to the franchise, the Foreign Secretary stated:

Some will argue that we should extend the franchise further to 16 and 17-year-olds, perhaps, or even to citizens of other EU countries resident here. We do not agree. This is an issue of national importance about Britain's relationship with the European Union

The referendum is about delivering a pledge to the British people to consult them about the future of their country. It would be a travesty to seek to include EU nationals whose interests might be very different from those of the British people.²

On lifting the purdah provision, he said:

If left unaltered, section 125 would stop the Government from "publishing" material that deals with "any issue raised by" the referendum question... It is unworkable because the restriction is so broad that preventing publication in relation to any issue raised by the referendum could prevent Ministers from conducting the ordinary day-to-day business of the UK's dealings with the European Union...

And he added:

... the Government expect to take a position, ... We will want to make a recommendation on where the national interest lies.³

The Shadow Foreign Secretary, Hilary Benn, speaking for the Opposition, expressed support for the Bill, EU reform, and continued EU membership. When asked about the lifting of Section 125, he said:

¹ HC Deb 9 June 2015 c1048

² HC Deb 9 June 2015 c1053

³ HC Deb 9 June 2015 c1055

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I agree with the Foreign Secretary in this respect: once the Government eventually reach a view, they are entitled to explain it to the British people. ... Therefore, it is reasonable to ensure that the Government are able to do that.⁴

On the franchise, Hilary Benn stated:

... if we are going to extend the franchise to 30, 40, 50, 60, 70, 80 and 90-year-olds in the House of Lords, I think we should also extend it to 16 and 17-year-olds. ... we are in favour of giving these young adults the right to vote in all elections. This is an issue of principle—it is about giving them as citizens the right to participate in our democracy.⁵

He also said that the referendum should not be held on the same day as other elections, and should take place as soon as possible to avoid unnecessary uncertainty.⁶

Alex Salmond, for the SNP, tabled a reasoned amendment to decline the Bill a Second Reading because it did not include 16 and 17 years old in the franchise, did not provide for a double majority threshold to ensure that no nation in the UK can be taken out of the EU against its will, and did not provide that the referendum cannot be held on the same days as elections to the devolved legislatures.⁷ He also argued that a purdah provision should be included in the Bill, and that EU nationals should be included in the franchise.⁸

Objections to the lifting of the purdah provision were raised by a number of MPs, including Owen Paterson (Conservative Party), who noted that many members had thought the 28 day period was not long enough when PPERA was passed, and stated:

... the British public have a real sense of fairness, and if they have a sense that this referendum is rigged, the result will not be legitimate.⁹

Many spoke about the arguments for and against leaving the EU, and the likely future of the UK outside the EU; other issues raised included the phrasing of the question;¹⁰ the tendency for referendums not to settle the issues they concern;¹¹ and the timetable set for debating the Bill.¹²

The Minister for Europe, David Lidington, concluded the debate by clarifying that the European Commission and foreign governments “cannot be permissible donors under our law, so they would not be entitled to contribute to the lead organisations for either campaign, or make donations of any kind.”¹³ With regards to purdah, he said that as the Bill goes forward, there would be scope for debate over how to ensure a balance between the Government exercising restraint in using

⁴ HC Deb 9 June 2015 c1058

⁵ HC Deb 9 June 2015 c1061

⁶ HC Deb 9 June 2015 cc1062-3

⁷ HC Deb 9 June 2015 c1067

⁸ HC Deb 9 June 2015 cc160-72

⁹ HC Deb 9 June 2015 c1065

¹⁰ HC Deb 9 June 2015 c1078, cc1083-4

¹¹ HC Deb 9 June 2015 cc1074-5

¹² HC Deb 9 June 2015 c1117

¹³ HC Deb 9 June 2015 c1151

public money and leaving the main arguments to the campaign organisations, while also being able to set out its own recommendations.

The House voted against the SNP's amendment (Division no. 5: Ayes 59, Noes 338) and in favour of giving the Bill its Second Reading (Division no. 6: Ayes 544, Noes 53).

3. Committee stage

The Committee stage took place on the Floor of the House, because of the constitutional nature of the Bill. The clauses concerning the referendum provisions, and the conduct and administration of the referendum were debated on [16 June 2015](#); the clauses concerning the franchise, Gibraltar, regulations made under the provisions of the Bill and miscellaneous provisions were debated on [18 June 2015](#).¹⁴

No amendments or new clauses were carried against the Government's will, and all the amendments moved by the Government were agreed. In total, three amendments were made, affecting one clause (Clause 1) and one schedule (Schedule 1). A [version of the Bill](#) showing these changes in highlighted text is available online.

3.1 Day 1: Debate on Clause 1

The Committee debated amendments concerning the referendum provisions. Alex Salmond moved an amendment to introduce a double majority requirement for withdrawal from the EU; this would mean that the UK can only leave the EU if all of its four constituent parts voted in favour. The Chair called for discussion of amendments on these topics:

- The timing of the referendum;
- The production of reports on the effects of leaving the EU by several independent bodies and all ministerial departments prior to the referendum;
- The introduction of a purdah period before the referendum, and a consequential enforcement mechanism.

Chris Philp (Conservative Party) objected to the notion of having a double majority requirement by suggesting that on matters of foreign affairs "we speak as a nation with one voice."¹⁵ Alex Salmond argued that the United Kingdom is not a nation, but a "multi-national state" that should respect its component nations.¹⁶

Patrick McFadden (Labour Party) argued that the debate informing the referendum needed to be clearer about what leaving the EU would mean for the UK.¹⁷ Mike Gapes (Labour Party) recommended holding the referendum before the end of 2016 in light of the UK presidency of the Council of Ministers (of the EU) in the second half of 2017; the German elections during the same period; and the French presidential elections in April and May 2017.¹⁸

Alex Salmond emphasised the importance of having purdah provisions prior to the referendum by stating that he would not be willing to "accept a referendum that was in any way biased or rigged by the Government."¹⁹ Liam Fox (Conservative Party) gave three reasons for

¹⁴ HC Deb 9 June 2015, c1161

¹⁵ HC Deb 16 June 2015 c189

¹⁶ HC Deb 16 June 2015 c190

¹⁷ HC Deb 16 June 2015 cc200-4

¹⁸ HC Deb 16 June 2015 cc212-3

¹⁹ HC Deb 16 June 2015 c193

supporting a purdah period: “it is unseemly at best for the Executive to exempt themselves from the legal, electoral, and constitutional arrangements they find inconvenient during any electoral process”; the Government should not use public funds to influence electoral processes; and the result of the referendum must be seen as “fair, reasonable and legitimate if there is to be any chance of the country coming together on the issue once the voters have spoken.”²⁰ Sir William Cash (Conservative Party) did not think the UK’s business with the EU would be affected by Section 125 if it was applied.²¹

Kenneth Clarke (Conservative Party) spoke of the need for balance:

The electorate would react if it was obvious that the Government were resorting to using the machinery of government for campaigning. But the statute is too severe.²²

The Minister for Europe, David Lidington, emphasised that the UK should vote as one member state of the EU, and stated that the “timing of the referendum should, subject to the deadline at the end of 2017, depend on the progress of negotiations at European level.”²³

He reiterated the Government’s reasons for lifting Section 125.²⁴ But he also recognised that “the Government are not a campaign” and hence committed to tabling “amendments on Report to write into the Bill measures that will provide reassurance on that point.” More specifically, he said:

We will ensure that there is a clear mechanism so that in the four weeks before polling day, the Government will not undertake a range of activities that most would regard as the province of the campaign, such as issuing mailshots, running commercial advertising campaigns and emailing voters in one way or another.²⁵

He noted that this could take the form of a code of conduct, or specific provisions in the Bill restricting certain Government publications and forms of communication.²⁶

The Committee agreed to Government amendment 55, providing that the referendum must not be held on 5 May 2016, when a range of other elections will take place across the UK. Clause 1, as amended, was ordered to stand part of the Bill.

3.2 Day 1: Debate on Clause 3 and the Schedules

The Committee debated amendments concerning the conduct and administration of the referendum. The Chair called for discussion of amendments on these topics:

²⁰ HC Deb 16 June 2015 cc195-6

²¹ HC Deb 16 June 2015 c211

²² HC Deb 16 June 2015 c220

²³ HC Deb 16 June 2015 c232

²⁴ HC Deb 16 June 2015 cc233-4

²⁵ HC Deb 16 June 2015 c235

²⁶ HC Deb 16 June 2015 c235

- The elimination of the extension of permitted participants and permissible donors to bodies including charities; and consequential amendments concerning the recording and reporting requirements for these bodies contained in the Schedules;
- The referendum campaign: the duration of the referendum period (during which the campaign is regulated), and the introduction of limits on the number of permitted participants on each side of the campaign, so as to equalise spending;
- The restriction of money originating from the European Union institutions being used towards campaign activities;
- The requirement for permitted participants that do not incur any referendum expenses to produce a declaration within three months of the date of the referendum.

Bernard Jenkin (Conservative Party) had been informed by the Charity Commission that the provisions in the Bill relating to charities and other bodies were in line with the regulations contained in the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014*. He asked the Minister to confirm that the Bill does not alter charity law to empower charities to become donors or participants in the referendum campaign.²⁷ The Minister later confirmed this.²⁸

Sir William Cash argued that the referendum period should last for at least 16 weeks to provide clarity to campaigners and voters about who leads the campaigns.²⁹ He had been advised by the Electoral Commission that controls on foreign sources of funding already exist, but he suggested that these were not sufficient and that the referendum would not be “proper and fair” if EU money was used to fund the yes campaign.³⁰

Jacob Rees-Mogg (Conservative Party) added that the European Union has a budget to fund political activity in the United Kingdom and that this “money is given on the basis that the institutions receiving that money support the objectives of the European Union.”³¹ John Redwood (Conservative Party) called on the Government to confirm that it agrees with the Electoral Commission that the EU should not give money to the campaign, and raised the issue of indirect funding, where companies or organisations that receive funding from the EU make donations to the referendum campaigns.³² The Minister later said that the EU cannot make contributions to the campaigns under current legislation.³³

Sir Edward Leigh (Conservative Party) noted that the official yes campaign could have access to much larger funds than the no campaign, which could affect the outcome of the referendum and lead people to question the fairness of the campaign. Limiting the number of permitted participants would equalise spending between the

²⁷ HC Deb 16 June 2015 c243

²⁸ HC Deb 16 June 2015 c276

²⁹ HC Deb 16 June 2015 c248

³⁰ HC Deb 16 June 2015 cc249-52, see also c257

³¹ HC Deb 16 June 2015 c259

³² HC Deb 16 June 2015 cc267-9

³³ HC Deb 16 June 2015 c274

campaigns.³⁴ John Redwood emphasised the “sense of fairness” of those in the yes campaign, who would prefer to win on the basis of their arguments, not their funds.

Peter Grant (SNP) objected to limiting the number of participants, as this would obstruct the “celebration of grassroots democracy” of small organisations participating in the referendum campaigns, and could prevent charities from standing up for immigrant communities that could “begin to feel unwelcome... by some of the propaganda”.³⁵

Conservative and SNP MPs made further objections to the provisions in the Bill that exempt this referendum from the purdah rules contained in Section 125 of PPERA from.³⁶

The Parliamentary Secretary, Cabinet Office, John Penrose explained that the two amendments tabled by the Government would increase the spending limits for permitted participants and designated organisations to take account of inflation since PPERA was passed in 2000; and would require permitted participants who do not incur any referendum expenses to declare this to the Electoral Commission.

He argued that the designation of lead campaign organisations could occur quickly so that an extension of the referendum period to 16 weeks would not be necessary. He also agreed to “produce a schedule that indicates how the process” from negotiations to the referendum “could and should look”.³⁷ The Minister further stated that PPERA prevents the EU from directly funding or participating in the referendum campaign, but that it would be going too far to exclude anyone who has ever received money from the EU from doing so. He also objected to restricting the number of permitted participants; and confirmed that “nothing in this Bill will change anything to do with charity law.”³⁸

Clause 3 was ordered to stand part of the Bill. The Government amendments were made. One amendment (11) and one new clause (3) that would have introduced purdah provisions were negatived on division (Division no. 15: Ayes 97, Noes 288; Division no. 16: Ayes 75, Noes 313). The Labour Party abstained from these divisions. Schedule 1, as amended, and Schedules 2 and 3 were agreed to.

3.3 Day 2: Debate on Clauses 2 and 5

The Committee debated amendments concerning the franchise, and the provision relating to Gibraltar. Stephen Gethins (SNP) moved an amendment to change the entitlement to vote from the parliamentary franchise to the local elections franchise (which includes EU citizens from other countries resident in the UK). The Chair called for discussion of amendments changing the franchise to:

- include non-national EU citizens resident in the UK;
- include 16 and 17 year olds;

³⁴ HC Deb 16 June 2015 c238

³⁵ HC Deb 16 June 2015 cc252-3

³⁶ HC Deb 16 June 2015 cc242-7, 262-4, 266-70

³⁷ HC Deb 16 June 2015 c271-3

³⁸ HC Deb 16 June 2015 c276

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- include British citizens living abroad for more than 15 years;
- exclude citizens of countries no longer in, or suspended from, the Commonwealth.

Barry Sheerman (Labour Party) opposed the proposed reduction of the voting age for the referendum, saying that the measure would “shrink childhood.”³⁹ Stephen Gethins disagreed and argued that it would be a good way to “get more young people engaged in politics”, referring to high turnout levels among 16 and 17 year olds in the referendum on Scottish independence.⁴⁰ Others said young people should be able to vote as their futures would be directly affected by the outcome of the referendum.⁴¹

Both supporters and opponents of lowering the voting age for the referendum appealed to lists of rights, duties and expectations that come in at 16, 17, 18 and beyond (such as taxation at 16 and buying alcohol at 18 years old).⁴² Some argued that the issue of extending the franchise should be debated separately from this Bill.⁴³

Stephen Phillips (Conservative Party) said that consistency required that Irish citizens resident in Gibraltar should be included in the franchise, and asked for clarification of whether citizens from countries that have now withdrawn or been suspended from the Commonwealth can vote. The Minister later clarified that former Commonwealth citizens from Zimbabwe can vote.⁴⁴

Patrick McFadden objected to extending the vote to non-national EU citizens, as other EU countries have not included non-nationals in referendums.⁴⁵ Mike Gapes pointed to the inconsistency of allowing only some, but not all, non-national EU citizens to vote (Maltese and Cypriot citizens, who are entitled to vote as Commonwealth citizens, and Irish citizens). He said non-national EU citizens contribute to British society and their future, like that of British citizens living abroad for over 15 years, is directly affected by the referendum outcome; so that these two groups should be allowed to vote in the referendum.⁴⁶

There was debate over the principle that should determine the franchise for the referendum: residency or citizenship. Tommy Sheppard (SNP) argued that the franchise “is not a question of identity or genetics: it is a question of residence.”⁴⁷ Keith Vaz (Labour Party) stated that “those who come to this country and pay their taxes” should be able to vote.⁴⁸ This reasoning was questioned by others.⁴⁹

Anne Main (Conservative Party) argued that the franchise should reflect that “this is about the self-determination of our country and how we

³⁹ HC Deb 18 June 2015 c496

⁴⁰ HC Deb 18 June 2015 c496, see also cc527, 534

⁴¹ HC Deb 18 June 2015 c504-5, see also cc523-4

⁴² HC Deb 18 June 2015 cc502, 504, 511, 520, 533, 537

⁴³ HC Deb 18 June 2015 cc505, 508, 523, 529-2, 544,550

⁴⁴ HC Deb 18 June 2015 c557

⁴⁵ HC Deb 18 June 2015 c506

⁴⁶ HC Deb 18 June 2015 cc513, 515, see also cc525-6, 535

⁴⁷ HC Deb 18 June 2015 c537, see also cc542-3

⁴⁸ HC Deb 18 June 2015 c514

⁴⁹ HC Deb 18 June 2015 cc514, 534, 550

see our place within Europe.”⁵⁰ Antoinette Sandbach (Conservative Party) said non-national residents could choose to become British citizens if they wish to vote.⁵¹

Some MPs suggested that changing the franchise to include EU migrants could appear as trying to fix the outcome of the referendum.⁵²

The Parliamentary Secretary, Cabinet Office, John Penrose, reiterated the Government’s reasons for the choice of franchise and said “it would be neither principled nor right to change the franchise to try to get a certain result”.⁵³ He said that there would be opportunity to debate lowering the voting age “during the course of this Parliament”, and that the Bill to introduce “votes for life” for British nationals living abroad will be introduced “in this Session of Parliament.”⁵⁴ He stated that it would be difficult to identify Irish citizens in Gibraltar, but that the matter was being discussed with the Government of Gibraltar; and he clarified that former Commonwealth citizens from The Gambia cannot vote in the referendum, whereas former Commonwealth citizens from Zimbabwe can.

Amendment 18 to use the local elections franchise, and amendment 1 to extend the vote to 16 and 17 year olds, were negated on division (Division no. 19: Ayes 71, Noes 514; Division no. 20: Ayes 265, Noes 310). Clause 2 and 5 were ordered to stand part of the Bill.

3.4 Day 2: Debate on Clause 4 and 6 to 11, and any remaining issues

The Committee debated amendments concerning the regulations provided for in the Bill, and miscellaneous clauses. John McDonnell (Labour Party) moved an amendment to provide for electronic voting in the referendum. The Chair called for discussion of amendments to prevent the referendum from being held on the same day as certain other elections in the UK and Gibraltar; and to ensure that the legislative framework for the referendum is in place at least six months prior to the referendum period.

John McDonnell said that pilots had indicated that electronic voting could help to address the problem of declining turnout. He called on the Government to look into the security of online voting, which currently blocks its introduction.⁵⁵ Others questioned whether new methods of voting would improve turnout.⁵⁶

Patrick McFadden argued that the date of the referendum should not coincide with other elections because it concerns an important constitutional issue; and because it will be subject to purdah rules that are likely to differ from the purdah rules that apply to local elections,

⁵⁰ HC Deb 18 June 2015 c521

⁵¹ HC Deb 18 June 2015 c514, see also c540

⁵² HC Deb 18 June 2015 cc525, 546, 542, 553

⁵³ HC Deb 18 June 2015 c554

⁵⁴ HC Deb 18 June 2015 cc554-557

⁵⁵ HC Deb 18 June 2015 c569

⁵⁶ HC Deb 18 June 2015 c569

which could cause confusion.⁵⁷ Peter Grant noted that the broadcasters should be perceived as impartial for the referendum to appear fair.⁵⁸

The Minister for Europe, David Lidington, said that the timing of the referendum should be determined by the negotiations with the EU, and that there is a “qualitative difference” between elections for constituent nations (held in May 2016) and local elections. He said that once the Minister proposes a date, it will be for both Houses of Parliament to decide whether to approve it or not.⁵⁹

The Minister stated that e-voting is currently not secure enough and is not a priority for the Government. He said that the rules governing the referendum will be based on previous referendums and elections, and will be announced in the autumn – in time for those involved in the administration of the referendum to become aware of them before the referendum period. These detailed rules are expected to cover:⁶⁰

... the referendum timetable and the key stages within that; the provision of polling stations; the appointment of polling and counting agents; the procedure for the issue of ballot papers and for voting at polling stations; the arrangements for the counting of votes and declaration of results; the disposal of ballot papers and other referendum documents; arrangements for absent voters and postal and proxy votes and so on.

John McDonnell withdrew his amendment relating to electronic voting. Amendment 3, preventing the referendum from coinciding with other elections, was negatived on division (Division no. 21: Ayes 267, Noes 308). Clauses 4, and 6 to 11 were ordered to stand part of the Bill.

Having progressed through Committee stage, the Bill will now proceed to Report stage. The Minister for Europe, David Lidington, has stated that the Government “will not programme the Report stage until the autumn.”⁶¹

⁵⁷ HC Deb 18 June 2015 cc570-2

⁵⁸ HC Deb 18 June 2015 c572

⁵⁹ HC Deb 18 June 2015 cc572-574

⁶⁰ HC Deb 18 June 2015 cc575-7

⁶¹ HC Deb 16 June 2015 c235

4. The referendum question

On 1 September 2015 the Electoral Commission recommended that the referendum question should be changed. The Commission gave further details in a press release:

The question currently in the Bill and that was tested by the Commission was:

"Should the United Kingdom remain a member of the European Union?"

The responses would be 'Yes' / 'No'

Following its assessment process, the Commission has recommended that the question should be amended to:

'Should the United Kingdom remain a member of the European Union or leave the European Union?'

The responses would be 'Remain a member of the European Union' / 'Leave the European Union'.⁶²

The question that had originally been in the Bill was tested with members of the public and the Electoral Commission also sought views from other individuals and groups to make sure the question was "clear, unambiguous and to the point".⁶³ The Commission's research showed that the consultation respondents viewed the question as biased:

...it only sets out the 'remain' option in the question, and the 'yes' response is for the status quo. Consequently, while the question is not significantly leading, we have concerns about the perception that this question will encourage voters to consider one response more favourably than another. These views raise concerns about the potential legitimacy, in the eyes of those campaigning to leave and some members of the public, of the referendum result – particularly if there was a vote to remain a member of the European Union. The views of campaigners in particular provided an extra dimension that had not been available in our previous assessment.

The Commission tested alternative questions and its assessment suggests that it is possible to ask a question which would not cause comparable concerns about neutrality, whilst also being easily understood. The Commission's research indicates that the alternative question it has proposed addresses the concerns about potential bias that were expressed.⁶⁴

At Report stage on 7 September 2015, the Government amendment which changed the English and Welsh versions of the referendum question in line with the advice of the Electoral Commission, was agreed without a division.⁶⁵

⁶² [Electoral Commission recommends change to EU Referendum question](#), Electoral Commission press release, 1 September 2015

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ [HC Deb 7 September 2015 c171](#)

5. Report stage and third reading

The report stage and third reading of the *European Referendum Bill 2015-16* in the House of Commons was on 7 September 2015.⁶⁶ A Programme Motion on the Bill was agreed to on division.⁶⁷

A summary of the amendments considered is given below.

5.1 Purdah

A **new clause**, moved by the Government, would enable the Minister to make regulations to modify Section 125 of PPERA to exclude material published in a way, or by a kind of communication, specified in the regulations, subject to any conditions in those regulations. Any regulations would be subject to the affirmative resolution procedure.

The Minister for Europe, David Lidington, explained why the Government had decided that to apply Section 125 of PPERA without modifications would “create legal risk and uncertainty in ... ongoing EU business in the final weeks before the referendum.”⁶⁸ He continued:

Unlike the recent cases of the Scottish or alternative vote referendums, the subject matter of the EU referendum cannot simply be avoided in Government communications during the last 28 days. The subject of EU membership is broad. A Government statement in Brussels on an EU issue under negotiation could be said to be dealing with an issue raised by the question of our membership, and therefore be caught by the restrictions in section 125. Let me provide an example.

There are ongoing negotiations between the EU and the United States on the Transatlantic Trade and Investment Partnership. It is perfectly conceivable that, at some stage during the last month of our referendum campaign, those negotiations could reach a stage at which there would be a discussion between the institutions of the EU and member states of the EU. The British Government would have a view on the right outcome and might want to circulate papers to lobby, using the sort of materials that would be captured by the section 125 definition of publication. If the section remains unamended, my concern is that there is a risk that that will be challenged in court, because it could be said to be raised by the referendum campaign. It is certainly conceivable that one or other or both of the campaign organisations could pray in aid that particular issue as indicating why we should or should not remain a member of the EU. Once that happened, it would certainly be classed as raised by the referendum campaign.⁶⁹

The new clause was amended by a manuscript amendment moved by Bernard Jenkin (Conservative) and was added to the Bill. The Jenkin amendment made provision for the regulations to modify the “purdah” arrangements to be made at least four months before the date of the referendum. David Lidington said that he had concluded that the

⁶⁶ [HC Deb 7 September 2015 c76-192](#)

⁶⁷ [HC Deb 7 September 2015 c71](#)

⁶⁸ [HC Deb 7 September 2015 c83](#)

⁶⁹ [HC Deb 7 September 2015 c84](#)

Government should accept the amendment “largely in the interests of trying to secure as great a consensus as possible”.⁷⁰

An SNP amendment, which would allow the referendum provisions of the Bill to come into force only after the arrangements for “purdah” had been approved by both Houses of Parliament, was defeated on division.⁷¹

A Government amendment which replaced paragraph 26 of Schedule 1 was **defeated** on a division.⁷² Schedule 1 sets out the campaigning and financial controls for the referendum. Paragraph 26 had disapplied Section 125 of PPERA. PPERA sets out the generic rules for the conduct of referendums and Section 125 makes provision for the restriction on publication etc. of promotional material by central and local government before a referendum.

New paragraph 26 would have applied Section 125 of PPERA with modifications which clarified that the prohibition on publications by the Government and local government relates to material which is directly relevant to the referendum. The new paragraph also applied Section 125 to Gibraltar and added an express reference to the Electoral Commission as a body to which the section does not apply.

After the defeat of the Government amendment, an Opposition amendment which made provision to omit paragraph 26 from Schedule, was agreed without division.

5.2 Franchise

An amendment moved by Mike Gapes (Labour) to allow citizens of any EU country who are resident in the UK to vote in the referendum was withdrawn. An SNP amendment to allow EU nationals who would be eligible to vote in European Parliamentary elections in the UK to vote in the referendum was defeated on a division.⁷³ Amendments which would have allowed 16 and 17 year-olds to vote in the referendum were also debated but the Opposition amendment which would have reduced the voting age to 16 for the referendum was defeated on a division.⁷⁴

5.3 Gibraltar

A Government amendment was agreed which extends the franchise for the referendum in Gibraltar to all those who would be entitled to vote in European Parliamentary elections there; this includes Commonwealth citizens and citizens of the Irish Republic who are resident in Gibraltar.⁷⁵

Technical amendments clarifying the relationship between the UK law on the referendum and Gibraltar law were also made.⁷⁶

⁷⁰ [HC Deb 7 September 2015 c92](#)

⁷¹ [HC Deb 7 September 2015 c118](#)

⁷² [HC Deb 7 September 2015 c123](#)

⁷³ [HC Deb 7 September 2015 c164](#)

⁷⁴ [HC Deb 7 September 2015 c159](#)

⁷⁵ [HC Deb 7 September 2015 c164](#)

⁷⁶ [HC Deb 7 September 2015 c176](#)

5.4 Date of the referendum

An amendment was moved by Stephen Gethins (SNP) to ensure that the referendum would not be held within three months of the Scottish Parliament, Welsh Assembly or Northern Ireland Assembly elections. The amendment was defeated on a division.⁷⁷

A Government amendment which prohibits the holding of the referendum on 4 May 2017 was agreed without a division.⁷⁸

5.5 Other amendments

An Opposition amendment which would have required the Government to publish a White Paper outlining the terms of any renegotiation between the UK and the EU at least 10 weeks before the referendum was defeated on a division.⁷⁹

A number of Government amendments were made to the Schedules of the Bill. The Minister, John Penrose, had summarised their provisions in his final speech covering the Government's changes to the Bill:

First, there are amendments dealing with changes to the campaign rules. They broadly have the support of the Electoral Commission and will ensure that the Bill and PPERA operate together and that campaigning is fair and transparent. They include changes to allow the lead campaigns to be designated quickly if needed, so that they do not cut into the short 10-week campaign period, and to allow the Electoral Commission to reject applications from campaigners with offensive or obscene names. Second are the amendments dealing with changes to the administration rules. They are all technical and deal primarily with the interaction between UK law and Gibraltar law. Third are amendments responding to concerns raised by Members in previous debates to rule out holding the referendum on 4 May 2017 and to add Irish citizens resident in Gibraltar to the franchise.⁸⁰

The Bill received its Third Reading after a division.⁸¹ On 8 September it was read a first time in the House of Lords.⁸²

The campaign period

A Government amendment in the House of Lords defined the referendum period as at least 10 weeks until the date of the poll. Amendments affecting the duration of this period had previously been made in the House of Commons.

The Electoral Commission briefing prepared for the Second Reading debate of the *European Union Referendum Bill 2015-16* stated that the PPERA "provides for a 10 week campaign period".⁸³ Reference to a 10 week campaign period was made during the Committee and Report

⁷⁷ [HC Deb 7 September 2015 c168](#)

⁷⁸ [HC Deb 7 September 2015 c171](#)

⁷⁹ [HC Deb 7 September 2015 c172](#)

⁸⁰ [HC Deb 7 September 2015 c156](#)

⁸¹ [HC Deb 7 September 2015 c192](#)

⁸² [HL Deb 8 September 2015 c1317](#)

⁸³ Electoral Commission, [European Union Referendum Bill 2015, House of Commons Second Reading briefing](#), 9 June 2015

stage debates of the Bill. Government amendments that were made to the Bill during Report stage affect this period.

The 10 week campaign period is not defined directly in PPERA. The Act states that the referendum period (during which campaigns are regulated) is defined in the Bill bringing forward a referendum. The *European Union Referendum Bill 2015-16* provides that the Minister may define the referendum period by regulations.

But the provisions in PPERA relating to the designation of lead campaign organisations (which are eligible to receive public funds) effectively result in a prescribed 10 week minimum campaign or referendum period. Section 109 specifies that permitted participants may apply to be designated as a lead campaign organisation “within the period of 28 days beginning with the first day of the referendum period” (2)(b). It goes on to state that

(3)Where an application for designation has been made to the Commission in accordance with this section, the application must be determined by the Commission within the period of 14 days beginning with the day after the end of the period of 28 days mentioned in subsection (2)(b).

That means the period of application and designation can take between four and six weeks. Moreover, Section 103 provides that:

103 Date of poll.

(1)Where the date of the poll in the case of any referendum to which this Part applies falls to be fixed under any provision made by or under any Act, the date so fixed shall not be earlier than 28 days after the end of the period of 14 days mentioned in section 109(3).

This brings the total time between the beginning of the referendum period and the poll date up to a prescribed minimum of ten weeks.

However, Section 103 goes on to state that:

(2)If an order under section 109(6) applies to the referendum, subsection (1) shall be read as referring to the period which by virtue of the order is to apply instead of that period of 14 days.

Section 109 (6) reads:

(6)The Secretary of State may, in the case of any referendum to which this Part applies, by order provide for this section to have effect as if each, or either, of the periods of 28 and 14 days referred to in subsections (2) and (3) was instead such shorter or longer period as is specified in the order.

The Government amended the *European Union Referendum Bill 2015-16* during its report stage (amendment 34) to the effect that Schedule 1 (paragraph 9) of this Bill now reads:

Subsections (2), (3) and (6) of section 109 of the 2000 Act (application by organisation for designation) have effect for the purposes of the referendum as if the reference in subsection (2)(b) of that section to the first day of the referendum period were a reference to the day prescribed under this paragraph by regulations made by the Minister.

Following another amendment (amendment 27), these regulations prescribing the start date of the application period are subject to the negative resolution procedure.

The effect of these amendments is that the six week process for the designation of lead campaign organisations is uncoupled from the referendum period, and can be completed before the start of the referendum period. This means campaigners would know their spending limits before the financial controls operative during the referendum period come into force (lead campaign organisations have higher spending limits than other campaigners), and the lead campaign organisations could access the public funds they are entitled to from the start of the referendum period.

The amendments also have the effect that no provisions now apply to prescribe the minimum length of the referendum period. PPERA still provides that the date of the poll must be no earlier than 28 days after the designation of the lead campaign organisations, but technically, this is a point about the date of the poll and not about the referendum period. The referendum period will be defined by regulations subject to the affirmative procedure.

When debating these amendments, the Minister for Constitutional Reform John Penrose has indicated that he intends to retain a minimum 10 week campaign period. He proposed to simultaneously bring forward two regulations 16 weeks before the date of the referendum:

- A statutory instrument to set the date of the referendum, subject to the affirmative procedure. The Minister said such SIs usually take six weeks to go through Parliament.
- A statutory instrument to begin the process of designating lead campaign organisations, subject to the negative procedure. The Minister intends for this SI to take effect as soon as possible after it was laid, so that the Electoral Commission can complete the designation process while the SI setting the date of the referendum passes through Parliament (usually, at least 21 days elapse between the laying, and coming into force, of SIs subject to the negative procedure (the 21 day rule)).

The Minister said that after these six weeks, there will be a minimum of 10 weeks to campaign.⁸⁴

6. House of Lords amendments

The Bill was read a first time in the House of Lords on 8 September and received its [Second Reading](#) on 13 October. It was committed to a Committee of the Whole House and considered on 28 October, 2 November and 4 November. Report stage took place on 18 and 23 November and the Bill received its Third Reading on 1 December.

A number of amendments were made to the Bill. A list of these is available on the [Bills before Parliament page](#).

6.1 Committee stage

No amendments were made to the Bill on 28 October and 2 November.⁸⁵

On 4 November, a number of Government amendments were made.⁸⁶ No other amendments were made, and the Government was not defeated on any amendments. The [marshalled list of amendments](#) includes information about the amendments that were debated. The consequences of the amendments that were made are described below.

Amendment number	What it does
33, 47 & 62	Apply the same definition of the referendum period to the entire Bill
35 & 46	Define expenses payable out of Gibraltar public funds
36	Excludes Gibraltar public spending on property, services or facilities from 'referendum expenditure' for the purpose of the referendum (as is the case for UK public spending)
41	Provides that donations in the form of bequests by Gibraltar electors are only permissible if they come from an individual who was a Gibraltar elector at any time within the period of 5 years before their death (as is the case for UK electors leaving bequests)
42	Provides that political parties (other than minor parties) may only accept donations and loans up to the value of their spending limit for the referendum
43	Excludes grants paid from Gibraltar public funds from being regarded as 'donations' for the purpose of the referendum (as is the case for grants paid from UK public funds)
44	Corrects certain cross-references (no effect)

⁸⁵ [HL Deb 28 October 2015](#), cc1178-1272; [HL Deb 2 November 2015](#), cc1407-1477, 1491-1514

⁸⁶ [HL Deb 4 November 2015](#), cc1666-1716, 1731-1756

45	Applies the restrictions on the publication of information specified in Section 125 of PPERA to Gibraltar public bodies, and exempts the Gibraltar Broadcasting Corporation
48	Clarifies that political parties (other than minor parties) may enter into loans and other financial transactions with the extended category of permissible donors defined in Schedule 1, paragraph 23(3) of the Bill, and sets out which details of these 'authorised participants' need to be provided in quarterly reports. It also specifies that political parties may not enter into regulated transactions under variable terms (which could effectively enable them to borrow more after the referendum)
49	Clarifies how campaigners may use the electoral register
51	Clarifies that the Minister may also modify purdah rules applying to Gibraltar

6.2 Report stage

The Bill had its report stage on 18 November and 23 November.⁸⁷ On the first day, the House of Lords agreed an Opposition amendment to extend the franchise for the referendum to 16 and 17 year olds (Contents 293; Not-Contents 211).

Several Government amendments were also made on 18 November (information about amendments debated this day is included in the [revised marshalled list of amendments](#)). Two further Government amendments were made on 23 November (information about amendments debated this day is included in the [second marshalled list of amendments](#)). No Government amendments were negatived. The effect of the Government amendments made at report stage is described below.

Amendment number	What it does
9 (18 November)	Specifies that the referendum period must run for at least 10 weeks until the date of the poll
15 (18 November)	Provides that regulations made under this clause may modify other legislation, but not this Bill
16 & 17 (18 November)	Provide that regulations by the Minister to combine the referendum with another election or referendum may modify other legislation, but only certain parts of this Bill

⁸⁷ [HL Deb 18 November 2015](#), cc139-183, 187-209, 225-254; [HL Deb 23 November 2015](#), cc471-502, 521-551

23 & 24 (18 November)	Provide that regulations determining the start date and duration of the period during which organisations can apply to be, and be appointed as, designated campaign organisations are subject to the affirmative procedure (previously they had been subject to the negative procedure)
24A (23 November)	Adds a new clause creating a duty for the Secretary of State to publish and lay before Parliament a report outlining the outcome of the Government's reform negotiations with the EU, and the Government's opinion on this outcome. The report must be published at least 10 weeks before the date of the poll
24B (23 November)	Adds a new clause creating a duty for the Secretary of State to publish and lay before Parliament a report about the rights and obligations arising under EU law, and examples of the arrangements other non-member countries have with the EU. The report must be published at least 10 weeks before the date of the poll

6.3 Third Reading

The Bill received its Third Reading on 1 December 2015.⁸⁸ A number of Government amendments were made. No other amendments were made, and the Government was not defeated on any amendments. The [marshalled list of amendments](#) includes information about the amendments that were debated. The consequences of the amendments that were made are described below.

Amendment number	What it does
1	Provides that the Electoral Commission may designate one campaign organisation only, in the event that no permitted participants, or no adequately representative permitted participants, apply to represent one side of the campaign. If only one campaign organisation is designated, the organisation will be entitled to free referendum addresses and the use of public rooms, but not to referendum broadcasts and public funding
4, 16, 17 & 18	Clarify the commencement of different paragraphs in the Schedule
5, 6, 7 & 8	Clarify that campaigners acting in concert do not have to account for expenditure by other participants in the common plan which have been incurred independently of the arrangement

⁸⁸ [HL Deb 1 December 2015](#), cc1036-1050

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9 & 15	Ensure that there is no conflict between two provisions in the Bill about the reporting of donations and loans that apply and modify PPERA for different purposes
10, 11, 13, 19, 21 & 23	Introduce pre-poll reporting requirements in relation to loans and donations and establish that the first pre-poll reporting period for donations and loans will begin on commencement of the relevant provisions and end after the first week of the referendum period
12 & 22	Provide that all donations and loans towards referendum expenses need to be reported (not only those received during the referendum period)
14	Corrects a cross-reference (no effect)
20	Clarifies how existing reporting requirements under PPERA will function when applied to this referendum
24	Includes a reference to the definition of 'qualifying person' (campaigners can only enter into financial transactions with qualifying persons) in the Schedule treated as inserted by paragraph 1 of Schedule 2 to the Bill
25	Clarifies that the pre-poll loan reports must cover third-party security arrangements, referred to in the Bill as connected transactions, as well as loans and other regulated transactions to which the committed participant is a party

The Bill was passed and returned to the House of Commons on 1 December 2015. Consideration of Lords Amendments was scheduled to take place on 8 December 2015.

7. Consideration of Lords amendments

The House of Commons considered the amendments the House of Lords had made to the Bill on 8 December. The Commons disagreed with the amendment enabling 16 and 17 year olds to vote in the referendum. The reason provided for the disagreement was:

The Commons disagree to Lords Amendment 1 for the following Reason:-

Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.⁸⁹

All other amendments were agreed to without divisions.

The House of Lords will consider the Commons Reason for disagreeing to Lords Amendment 1 on 14 December 2015.

⁸⁹ House of Commons Votes and Proceedings 8 December 2015; for background on the use of this reason, see Meg Russell and Daniel Gover, [*Demystifying financial privilege: does the Commons' claim of financial primacy on Lords amendments need reform?*](#) The Constitution Unit, March 2014

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