



European Union (Referendum) Bill

Bill 15 of 2014-15

RESEARCH PAPER 14/55 15 October 2014

This Private Member's Bill was introduced to the Commons on 2 July 2014 and requires the holding of a referendum on the UK's continued membership of the European Union (EU) before the end of 2017. This Paper has been prepared as a guide in advance of the second reading on Friday 17 October.

This Bill has been re-introduced following an identical Private Member's Bill failing to complete all stages in the House of Lords in the last session after being sent from the House of Commons. This paper provides detail on the progress of the Bill in the last session as well as on how the provisions of the Parliament Acts could come into use.

Research Paper 13/42 [Leaving the EU](#) provides background information on the wider debate. For background information on the EU debate prior to this, including other attempts to introduce a referendum Bill in the current Parliament see Research Paper 13/41 [European Union \(Referendum\) Bill](#). Key economic statistics on the UK's relationship with the EU are available in the Library briefing: [UK-EU economic relations](#).

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Summary

The question of the UK's relationship with the European Union (EU) has been a matter of political contention for a generation. Since 2010 there have been a number of Private Members' Bills on the subject of a referendum on the continued UK membership of the European Union, which have made no progress. The Prime Minister, David Cameron, announced on 23 January 2013 that if his party is elected to power following the next election expected in 2015, it would hold a referendum in the UK on EU membership in the next Parliament, framed on an in/out question. As the Conservative Party is currently in a coalition with the Liberal Democrats, this was not an official Government commitment.

The Conservative Party published a draft *European Union (Referendum) Bill* on 14 May 2013. This provided for a referendum to be held by the end of 2017, with the detail of the date and the conduct of the election to be contained in orders to be laid before both Houses.

In the 2013-14 session, James Wharton, Conservative MP for Stockton South came first in the Private Member's Bill ballot and announced that he would introduce a version of the Bill. The Bill passed the House of Commons but failed to complete its passage through the House of Lords.

Bob Neill, MP for Bromley and Chislehurst, came third in the Private Member's Bill ballot for the 2014-15 session and introduced the Bill on 2 July 2014. It is identical to the Bill that passed the Commons in 2013.

During the debate on the Queen's Speech at the beginning of the 2014-15 Session, David Cameron confirmed that he would support a bill to provide for an in/out referendum, if it were introduced in the current Session. Subject to certain conditions, such a bill, being identical to the one that previously failed in the Commons, could be presented for Royal Assent in accordance with the provisions of the Parliament Acts 1911 and 1949. The Parliament Acts 1911 and 1949 allow public bills (this includes Private Member's Bills) other than money bills rejected by the House of Lords in one parliamentary session to be presented for Royal Assent in the following session if they are passed by the House of Commons and rejected again by the House of Lords.

The Bill simply provides for a referendum on continued EU membership by the end of December 2017 and does not specify the timing, other than requiring the Secretary of State to bring forward orders by the end of 2016. These orders would need both Houses to agree to the detailed rules for the poll and the date. If no party obtains a majority at the next general election due in 2015, there might be some uncertainty about the passage of the orders in the next Parliament. Unless the orders are passed, it would not appear possible to hold the referendum, since the day of, and the rules concerning the conduct of the poll, would not have received parliamentary assent.

There are six clauses in the Bill which deal with the question, the franchise and the conduct of the referendum. The Electoral Commission is given power to recommend to the Secretary of State appropriate regulation of the poll, in accordance with relevant electoral provisions, presumably including the *Political Parties Elections and Referendums Act 2000*.

This paper can be read in conjunction with Research Paper 13/42 *Leaving the EU*, which looks at the mechanics of a UK withdrawal from the EU, legal issues, possible alternatives to EU membership, and the potential impact of an EU-exit in a range of policy areas.

1 Introduction

The Prime Minister, David Cameron, announced on 23 January 2013 that if his party is elected to power following the next election expected in 2015, it would hold a referendum in the UK on European Union (EU) membership in the next Parliament, framed on an in/out question. The wording of the question was not specified.

The Conservative Party published a draft *European Union (Referendum) Bill* on 14 May 2013. This provided for a referendum to be held by the end of 2017, with the detail of the date and the conduct of the election to be contained in orders to be laid before both Houses. Subsequently, in the ballot for Private Members' Bills on 16 May 2013, James Wharton, Conservative MP for Stockton South, came first and announced that he would introduce a version of the Bill. The Bill passed the Commons with one amendment (to extend the franchise to Gibraltar), but failed to complete its passage through the House of Lords. It has been re-introduced in the current session by Bob Neill unchanged from the Bill that left the Commons in the last session. In a recent article in the *Daily Telegraph* he argued that the Bill was important as it would give, following a renegotiation process, "...a fresh public endorsement [of the EU] - or indeed, a rejection if what is on offer is not satisfactory".¹

The issue of the EU and a referendum is of increasing importance in the current political climate with UKIP securing their first elected MP on 9 October 2014. Polling data from *YouGov* in June 2014 showed that 44% of people supported staying in the EU while 36% were in favour of leaving; however previous polls have often shown a higher proportion in favour of leaving than in favour of remaining.²

The Conservative Party supported the Bill in the last session and is committed to holding a referendum in the next Parliament following Treaty reform and a renegotiation of terms of membership.³ The Labour Party's policy on the EU is that they would "legislate for a lock that guarantees that there cannot be any transfer of powers from Britain to the European Union without an in/out referendum."⁴ Liberal Democrat policy is also to have a referendum following any "large new treaty being proposed".⁵

The Bill was introduced on 2 July 2014 [Bill 15 of 2014-15] and is due for a second reading on 17 October 2014. It extends to the United Kingdom and Gibraltar. It is similar but not identical to the Conservative Party draft bill. The main changes are that this Bill requires the Secretary of State to lay the necessary orders for the poll before December 2016, and that the Electoral Commission has a role in recommending appropriate rules for the ballot. Further details are given below.

2 The Bill's provisions on the EU referendum

This is a short bill with only six clauses. **Clause one** sets out the requirement to hold a referendum before 31 December 2017. The Secretary of State must lay the appropriate orders before both Houses for affirmative resolution before 31 December 2016. The question to be asked is also set out:

Do you think that the United Kingdom should be a member of the European Union?

The question is also to be translated into Welsh for use in Wales.

¹ "Time to 'put up or shut up' over an EU referendum, says Bob Neill", *The Daily Telegraph*, 12 October 2014

² "EU Referendum: Record lead for staying in Europe", *YouGov*, 17 June 2014

³ <http://www.letbritaindecide.com/> accessed on 13 October 2014

⁴ <http://www.labour.org.uk/pages/business-relations> accessed on 13 October 2014

⁵ http://www.libdems.org.uk/europe_referendum_reform accessed on 13 October 2014

Clause two sets out the franchise. This is the parliamentary franchise, which consists of British and Commonwealth citizens who meet the residency requirement for registration as an elector and British citizens who are overseas voters. Service voters are also eligible. Members of the House of Lords do not vote in the elections for the Commons, but in referendums are specifically given the vote. Some referendums have been held under the local government franchise, which would include EU citizens resident in the UK. Further detail about the difference is given in section 6. Part (c) of this clause was added at report stage when this Bill was considered by the Commons in 2013. It allows for Commonwealth citizens in Gibraltar to take part in the referendum.

Clause three requires the Electoral Commission to publish a report setting out recommendations for the rules under which to hold the referendum, to be considered by the Secretary of State. Having regard to the report, the Secretary of State may provide for rules for the conduct of the poll, to be prescribed in orders, subject to affirmative resolution in both Houses.

Clause four was added at report stage when this Bill was considered by the Commons in 2013. It deals with the extension of the vote to Gibraltar (see comments in section 3.5).

Clauses five and six provide for relevant expenditure to be authorised, and for the short title.

As a Private Member's Bill, implementation is dependent both on the Secretary of State bringing forward the appropriate orders and there being a majority in both Houses to assent to them.

The Bill takes account of the role of the Electoral Commission in oversight of referendums but makes no reference to the *Political Parties, Electoral and Referendums Act 2000* (PPERA). [Section 101](#) of PPERA states that the legislation applies to any UK referendum held under a UK Act of Parliament. Presumably, the Electoral Commission recommendations provided for in clause three would take account of the overall PPERA framework. Part VII deals with referendums.

3 Progress of the previous Bill

3.1 Second reading 5 July 2013

The [second reading](#) took place in the House of Commons on Friday 5 July. Mr Wharton introduced his Bill. He noted that there were two main reasons for the Bill; firstly that the last time that the people had had a chance to voice their opinion on membership was in the 1975 referendum and secondly that the EU had changed markedly since then.

The Shadow Foreign Secretary, Douglas Alexander, said that the Labour Party did not believe that "an in-out referendum in 2017, as anticipated in the hon. Gentleman's bill, is in the national interest".⁶ William Hague, the then Foreign Secretary, drew attention to the decision of the Labour Party to abstain in the vote on the Bill⁷ and noted that no institution could survive without the people's support. He also commented on the position of the Liberal Democrats, citing their commitment to an in-out referendum in their 2010 manifesto.⁸ Keith Vaz queried whether David Cameron would be able to negotiate fundamental reforms, to be agreed by EU members between 2015 and 2017 when the referendum would be held under the terms of the Bill. John Denham pointed out that the Bill as drafted would allow for a

⁶ [HC Deb 5 July 2013 c 1181](#)

⁷ [Ibid c1188](#)

⁸ [Ibid c1191](#)

referendum straight away, although this was not the preferred position of the Prime Minister.⁹ Zac Goldsmith noted that a number of trade unions were actively campaigning for a referendum, under the banner of the [People's Pledge](#).¹⁰ Nigel Dodds stated the support of the DUP for the Bill.¹¹

The Liberal Democrat Martin Horwood referred to the passage of the *European Union Act 2011*, as relevant to the Liberal Democrat manifesto. He said that the consistent position of his party was in favour of an in/out referendum either at a time of major fundamental treaty change, or at a time of transfer of power.¹² The Conservative backbencher, Sir Edward Leigh, warned that the Bill would likely be talked out in the Lords and that the Conservatives would have to come back to the Prime Minister and ask for a Government bill.¹³ A number of Labour backbenchers including Jim Dowd, said that they hoped to persuade their front bench to support a referendum at some point, given that the only referendum so far had been at the instigation of a Labour Government.¹⁴ Sir George Young, the then Conservative Chief Whip, then moved the closure, which was won by 305 votes to 30, and the Bill received a second reading by 304 votes to nil.¹⁵

The Electoral Commission produced a [second reading briefing](#) on the Bill. The briefing noted the need to carry out a formal consultation on the question, which for a Private Member's Bill should take place after second reading, and the importance of at least a six month gap between the holding of the poll and the final passage of the legislation underpinning the referendum.¹⁶

3.2 Money Resolution Debate 16 July 2013

The Minister for Europe, David Lidington, explained the need for a Money Resolution on a Private Member's Bill:

It is standard Government procedure to introduce a money resolution for any private Member's Bill to which the House has given a Second Reading to enable the Bill to be fully debated in Committee. It is inevitable that costs would be incurred in holding a referendum on the UK's membership of the European Union, and a money resolution is required to enable those costs to be paid.¹⁷

Mr Lidington said that there had not been a detailed estimate of the cost of the referendum but the precedent was the £75.3m cost of the Alternative Vote referendum in 2011. Exact costs would be dependent on whether the poll was combined with other elections.¹⁸

Emma Reynolds, for the Opposition, said that they would not oppose the Money Resolution, but there were still questions to answer about the expenditure implications of the Bill.¹⁹ The Labour backbencher Mike Gapes addressed the question of the timing of the referendum, suggesting that it could be combined with a general election. Other points raised were the

⁹ Ibid c1197

¹⁰ Ibid c1205

¹¹ Ibid c1212

¹² Ibid c1225

¹³ Ibid c1240

¹⁴ Ibid c1244

¹⁵ Ibid c1247

¹⁶ [Electoral Commission Second Reading Briefing European Union \(Referendum\) Bill](#) 5 July 2013

¹⁷ [HC Deb 16 July 2013 c1019](#)

¹⁸ Ibid c1019

¹⁹ Ibid c1020

possible inclusion of Gibraltarians and 16 to 17 year old voters.²⁰ The Resolution was agreed without a division.

3.3 Committee stage

The Bill moved to Public Bill Committee on 17 July 2014. The 16 Public Bill Committee members were:

Bain, Mr William (*Glasgow North East*)(Lab)
 Burley, Mr Aidan (*Cannock Chase*)(Con)
 Campbell, Mr Gregory (*East Londonderry*)(DUP)
 Dowd, Jim (*Lewisham West and Penge*)(Lab)
 Ellwood, Mr Tobias (*Bournemouth East*)(Con)
 Hart, Simon (*Carmarthen West and South Pembrokeshire*)(Con)
 Hopkins, Kelvin (*Luton North*)(Lab)
 Horwood, Martin (*Cheltenham*)(LD)
 Latham, Pauline (*Mid Derbyshire*) (Con)
 Lidington, Mr David (*Minister for Europe*)
 Reynolds, Emma (*Wolverhampton North East*)(Lab)
 Sheerman, Mr Barry (*Huddersfield*)(Lab/Co-op)
 Smith, Miss Chloe (*the then Parliamentary Secretary, Cabinet Office*)
 Vaz, Keith (*Leicester East*)(Lab)
 Wharton, James (*Stockton South*)(Con)
 Williamson, Gavin (*South Staffordshire*)(Con)

An extensive series of amendments were tabled for debate, all from Labour Members.²¹ The Bill's sponsor, James Wharton, blogged that there had been filibustering by both Liberal Democrat and Labour MPs until nearly 1am on the first day of committee on 17 July.²² BBC Parliament's Mark D'Arcy also recorded the slow progress and the visit of the Prime Minister to listen to the debate.²³

The committee first dealt with the sittings motion, taking three hours to divide on it.²⁴

The first group of amendments discussed was on whether the referendum should be mandatory. Emma Reynolds, the then Shadow Europe Minister, expressed concern that holding a referendum up to four years in the future was creating uncertainty about the UK's relationship with the EU. The Minister for Europe, David Lidington, confirmed that the

²⁰ Ibid c1024

²¹ [European Union Referendum Bill Public Bill Amendments as at 17 July 2013](#)

²² [Conservative Home](#) "James Wharton MP How Labour and the LibDems filibustered my EU referendum bill last night" 18 July 2013

²³ "Swabians, Chairs and Clerks" Mark D'Arcy blog 18 July 2013

²⁴ SC Deb 17 July 2013 c43

Electoral Commission would carry out its usual practice of consulting on the question to be posed in the referendum.²⁵ He made clear that he was speaking as a Conservative Minister:

I should make it clear before I sit down that I have spoken this evening as a Conservative Minister and not on behalf of the coalition on as a whole. The two parties, which are committed to keeping the coalition going, have agreed to differ on the legislation.²⁶

Mr Lidington set out the Conservative position when amendments were debated, undertaking, in effect, a wind-up speech. The Committee was adjourned at 12.18am.

The second sitting on [3 September 2013](#) concentrated on clause 1. Issues discussed included the length of the campaign period before the referendum, the wording of the question, interaction with the *Political Parties Elections and Referendum Act 2000* and use of and the super-affirmative resolution procedure. On [4 September](#) debate on clause 1 concluded with discussion on amendments to require informed policy discussion before a referendum.²⁷ At the fourth sitting on the afternoon of [4 September](#) attention turned to the franchise, including eligibility at 16 years of age and the position of EU citizens, including Gibraltarans. Contrasts were made with the position for the referendum on independence for Scotland. In response the minister David Lidington said:

I understand the case that my hon. Friend and others have made for using the local election franchise and extending the vote to citizens of other EU countries, but British citizens would find that hard to swallow. We have large numbers of people from other EU countries here, and London is something like the seventh-largest French city, which is why French presidential candidates come over here during their election campaigns. However, the decision should be primarily for British citizens.²⁸

Mr Lidington reaffirmed his support for the right to vote for Irish and Commonwealth citizens. He promised to reflect further on the question of Gibraltar, in his capacity as Conservative Minister.²⁹

At the fifth sitting on [10 September 2013](#) the question of a threshold for the referendum, the day of the poll, the possible combination of the poll with other elections, the super affirmative resolution procedure and the position of Gibraltar were debated. In response, Chloe Smith pointed out that the Secretary of State was already given a power under clause 1(3) to make regulations allowing combination of polls.³⁰ The sixth sitting on [11 September](#) considered clauses 4 and 5 and new clauses, without any amendments. David Lidington responded to a question on costs by reminding the committee that the Electoral Commission had indicated that the proposed cost would be in the order of £75.3m.³¹ A new clause on public information campaigns, drew the response from Mr Lidington that the existing PPERA provisions should be sufficient for the issues to be aired.³²

The Electoral Commission produced a [briefing for Committee stage](#) in September 2013.

²⁵ Ibid c97

²⁶ [SC Deb 17 July 2013](#) c99

²⁷ [PBC 4 September 2013](#) c150-165

²⁸ Ibid c201

²⁹ Ibid c204

³⁰ [PBC Deb 10 September 2013](#) c223

³¹ [PBC Deb 11 September 2013](#) c231

³² Ibid c245

3.4 Electoral Commission report on the referendum question

The Commission launched its formal consultation on the question on 10 July 2013 and made its report on 29 October 2013. There was a written statement to Parliament, made on the Commission's behalf by the Speaker's Committee on the Electoral Commission.

The Commission concluded that the question could be improved, in particular to reduce the risk of misunderstanding or ambiguity about the current membership status of the UK within the EU. The written statement suggested that Parliament could consider a move away from simple Yes or No answers:

The Commission's consultation, analysis and research with the public has not, however, identified a single preferred wording for the question. Because of the complexity of the issues covered by this referendum question, their research suggests that currently, in the context of a referendum on the UK's membership of the EU, a question using 'Yes' and 'No' as response options would not be able to fully resolve those issues. The Commission's recommendations therefore highlight an important decision for Parliament, as to whether to retain or move away from the UK's recent experience of referendum questions using 'Yes' and 'No' responses.

If Parliament wishes to retain the use of 'Yes' and 'No' as response options, then the Commission recommends that the referendum question should be amended to: 'Should the United Kingdom remain a member of the European Union?'

However, the Commission's research suggests that some people will perceive either positive or negative associations with the phrase 'remain a member of the European Union', although there was no evidence that this wording resulted in research participants changing their voting preference in any way. If Parliament decides not to retain a referendum question which uses 'Yes' and 'No' as response options, having taken into account the risk of a perception of bias which might be associated with that approach, then the Commission recommends amending the question to: 'Should the United Kingdom remain a member of the European Union or leave the European Union?' with 'Remain a member of the European Union' and 'Leave the European Union' as response options.³³

The Electoral Commission noted that if Parliament amended the Bill in this way, the Commission would need to undertake a further assessment of the intelligibility of the proposed wording, which it would do as quickly as possible. It also tested the proposed question in Welsh. The full report is available from the Electoral Commission website.³⁴

Debate continued among commentators about whether the question was formulated correctly.³⁵

3.5 Report and Third Reading 8, 22 and 29 November 2013

A new clause was added on the Bill's first day on report on 8 November 2013 to allow those Commonwealth citizens in Gibraltar eligible to vote in European Parliamentary elections there to vote in the referendum.³⁶ The amendment was moved by Andrew Rosindell and

³³ [HC Deb 29 October 2013 c35WS](#)

³⁴ Electoral Commission, [Referendum on the United Kingdom's membership of the European Union: Advice of the Electoral Commission on the referendum question included in the European Union \(Referendum\) Bill, October 2013](#)

³⁵ "The EU question formulated in the Conservative private members' bill is both highly biased and vague; it would actively misinform UK voters" 11 July 2013 Patrick Dunleavy LSE blog

³⁶ [HC Deb 8 November 2013 c539](#)

supported by James Wharton and was unopposed. The Foreign Office minister, David Lidington explained that discussions had taken place with Gibraltar since committee stage:

I have consulted the Chief Minister of Gibraltar about his Government's wishes, and he has advised me that they wish the franchise for this proposed referendum to be extended to the citizens of Gibraltar. Having taken advice, I am confident that the wording of my hon. Friend's new clause would give proper effect to that wish by enfranchising Gibraltarians.

Hon. Members have asked about subsections (2) and (3) of new clause 1. To some extent, my hon. Friend the Member for Cheltenham answered this point by saying that they were designed to make it clear that the underlying constitutional order, expressed in the 2006 Gibraltar constitution, remained untouched. Under current arrangements, the franchise for European parliamentary elections in Gibraltar is determined by an Act of the Gibraltarian Parliament and Government, rather than by this House. In this case, however, the new clause proposes that the UK Parliament set the terms of a franchise that, for the purposes of this referendum, would include Gibraltar. For that reason, subsections (2) and (3) make it clear that despite this particular instance, that underlying constitutional relationship—the 2006 constitution gives far-reaching internal powers of self-government to the elected Administration in Gibraltar—remains undisturbed.³⁷

Other amendments on the franchise gave rise to a debate on the use of the parliamentary franchise, which excluded EU citizens living in the UK and British citizens resident in Europe for over 15 years, as well as other British Overseas Territories residents. The question of giving 16 and 17 year olds the vote was also raised. None of these amendments were accepted. The Electoral Commission produced a [briefing](#) on report stage but did not consider the individual amendments.³⁸

The Conservative backbencher Adam Afriyie spoke to an amendment to ensure that the referendum was held in October 2014.³⁹ The amendment was grouped with others on the need to consult before the referendum is held. The debate was adjourned at 2.30pm on 8 November and resumed on 22 November. Then, David Lidington argued against 2014 as difficult in the context both of the Scottish referendum on independence, the European Parliament elections also in 2014 and because EU reform negotiations would not have concluded.⁴⁰ The debate was ended by a closure motion⁴¹ and the Afriyie amendment was lost by 15 votes to 249.⁴²

Debate then moved on to the wording of the question, in the context of the opinion of the Electoral Commission. David Lidington provoked some disagreement when summarising the Commission position:

Mr Lidington: Finally, there is the important category of amendments on the wording of the question, which draw upon the Electoral Commission's recent report. It is important to bear in mind how the commission went about its work and the tone with which it presented its report. It carried out 103 interviews with individuals and received representations from 19 individuals and organisations. On the basis of those consultations and its own analysis, it concluded that the Bill met most of the tests that it would normally expect any referendum question to meet. It did not put forward an

³⁷ [HC Deb 8 November 2013 c558](#)

³⁸ Electoral Commission, *European Union Referendum Bill Report Stage*, 8 November 2013

³⁹ [HC Deb 8 November 2013 c591](#)

⁴⁰ [HC Deb 22 November 2013 c1483](#)

⁴¹ *Ibid* c1508

⁴² *Ibid* c1513

alternative wording but, rather usually, suggested—I use the term deliberately—two possible alternative wordings. There was no suggestion anywhere in its findings that the question drafted by my hon. Friend the Member for Stockton South was misleading or in any way designed to be unfair, but it suggested that Parliament might like to consider some alternative forms of words.

Mr Thomas: With all due respect to the Minister, the Electoral Commission's view is crystal clear. It stated:

“We recommend that the wording of the proposed referendum question included in the European Union (Referendum) Bill should be amended to make it more direct and to the point, and to improve clarity and understanding.”

Surely he read that sentence.

Mr Lidington: If the hon. Gentleman goes back to the report, he will see that the commission stated very clearly that it believed that the question drafted by my hon. Friend met pretty much all the tests it would expect. There was a debate on the degree of clarity, and the commission drew attention to the fact that there were different views among the people they consulted and from whom they received representations about both my hon. Friend's wording and the various options that the commission invited Parliament to consider.⁴³

No amendments to the wording of the question were made.

On the third day (29 November) a series of amendments were debated, but none were passed. These included a threshold provision for the referendum,⁴⁴ compulsory voting,⁴⁵ advertisements in newspapers⁴⁶ and other measures on the conduct of the referendum. The Bill then passed its third reading without a division.⁴⁷

3.6 Lords stages

The Lords Constitution Committee published a [report](#) on the Bill on February 2014. The Committee was concerned about the approach of the Bill towards the wording of the question and about the use of secondary legislation for detailed rules on the conduct of the referendum:

14. In our most recent report on the Scottish independence referendum we expressed our view that the "any departure from the Electoral Commission's recommendations on the wording of the referendum question [should] be robustly scrutinised" and that, ideally, there should be "no such departure".^[9] Taking account of the circumstances described in paragraphs 6-8, the House will wish to consider the case for following or rejecting the advice offered by the Electoral Commission on the referendum question proposed in the bill.

Regulation of the referendum

15. Clause 3(1) provides that the Electoral Commission shall publish a report setting out its recommendations for the rules under which the referendum is to be conducted. Under clause 3(2) the rules themselves are to be made by the Secretary of State, who

⁴³ [HC Deb 22 November 2013 c1528](#)

⁴⁴ [HC Deb 29 November 2013 c542](#)

⁴⁵ [HC Deb 29 November 2013 c549](#)

⁴⁶ [Ibid c545](#)

⁴⁷ [Ibid c584](#)

must have regard to the Electoral Commission's recommendations. The making of the rules will be subject to the affirmative resolution procedure (clause 3(4)).

16. The legislation which authorised the Alternative Vote referendum in 2011 and that which authorises the Scottish independence referendum in 2014, by contrast, does not delegate the power to set rules on the conduct of those referendums. The Parliamentary Voting System and Constituencies Act 2011 set out in detail (in a 50-page Schedule to the Act) the rules for the conduct of the AV referendum. Likewise, the Scottish Independence Referendum Bill (which, at the time of writing, has been passed by the Scottish Parliament but has yet to receive Royal Assent) sets out in a series of Schedules the detailed rules that will govern the referendum campaign and the conduct of the referendum itself (including rules as to voting, counting, etc.). That legislation runs to 165 printed pages. By contrast the European Union (Referendum) Bill is three pages long, though it is common for private members' bills to be short and not to contain detailed Schedules.

17. If power is delegated to the Secretary of State to make the rules on the conduct of the referendum, those rules could be subject to challenge in the courts in the way that primary legislation could not be. Taking account of the circumstances described in paragraphs 6-8, the House may wish to consider whether the conduct of the referendum is a matter which should be decided by a process that is set out in full in the Act of Parliament which authorises the referendum. Alternatively, the House may wish to seek clear undertakings whilst the bill is before it as to how the Secretary of State would intend to fulfil the duty imposed by clause 3(2) to have regard to the Electoral Commission's recommendations for the rules under which the referendum is to be conducted.⁴⁸

The report also noted the limited time available for the Lords to consider the Bill and for any amendments to be considered in the Commons:

Three further private members' Fridays are scheduled in the House of Commons this session: on Fridays 17 January, 24 January and 28 February 2014. So if the Lords were to pass any amendments to the bill, in order for it to become law in this session it would have to return to the Commons in time for the Lords amendments to be considered on Friday 28 February 2014. The requirement in the House of Lords for minimum intervals between stages of a bill may make it unlikely that the bill would finish the Lords in time for any amendments passed by the Lords to be considered by the Commons on Friday 28 February 2014.

The House of Lords Delegated Powers and Regulatory Reform Committee expressed concern about the use of secondary legislation for the conduct of the referendum:

21. We were concerned that the rules governing the conduct of the referendum are delegated to subordinate legislation, rather than being set out in the Bill itself, and we have considered whether a delegation of this kind is appropriate in principle. Because this is a Private Member's Bill, we have not had the benefit of a memorandum explaining the reasons why such an approach has been adopted.⁴⁹

The Committee rehearsed previous practice in other referendum legislation, concluding:

26. We have therefore concluded that the powers conferred by clause 3(2) and (3), whereby provision governing the conduct of the election and associated provision is delegated to orders to be made by the Secretary of State, are inappropriate.

⁴⁸ Lords Constitution Committee [European Union \(Referendum\) Bill](#) HL 109 2013-14

⁴⁹ House of Lords, [Delegated Powers and Regulatory Reform Committee](#) 17th report of 2013-14

3.7 Second reading 10 January 2014

Lord Dobbs introduced the Bill, stressing its passage through the Commons with large majorities in favour. Other peers argued that it was the role of the House of Lords to undertake appropriate legislative scrutiny.⁵⁰ There were also a range of views as to the nature of the Bill, given that it was being supported by the Conservative Party, but was not a Coalition Government Bill. The then Minister of State, Department for Communities and Local Government and Foreign and Commonwealth Office, Baroness Warsi, spoke on behalf of the Conservative Party:

In deference to my noble friends in the Liberal Democrats, I must say that I am not speaking for the whole coalition. As will be obvious to the House, I am speaking on behalf of the Conservative Party.⁵¹

The Bill was given a second reading without a division.

3.8 Committee stage 24 January and 31 January 2014

The crossbencher and former Cabinet Secretary Lord Armstrong of Ilminster moved an amendment to change the question on the first day of committee, in accordance with the recommendations of the Electoral Commission. This amendment was passed by 245 votes to 158.⁵² The amended question is as follows:

A referendum is to be held with the question—

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

A further amendment which made the referendum contingent on the production of impact assessments was also passed by 183 votes to 157.⁵³ Amendments on removing the 2017 date and on commissioning an independent report on EU membership were withdrawn, as was an amendment requiring a 25 per cent threshold for voting on the referendum. Baroness Warsi argued against a threshold.⁵⁴

On the second day, [31 January](#), the Labour peer Lord Foulkes and others continued to debate the question of using secondary legislation to set the conduct of the referendum. This amendment was withdrawn, but Lord Turnbull successfully moved an amendment which would require the Secretary of State to publish an assessment of the UK’s intended relationship with the EU in the event of withdrawal. The amendment was passed by 198 votes to 134.⁵⁵ Further probing amendments were then debated on issues such as the administration of the count and the role of devolved administrations, but were not moved. At 3pm the Labour backbencher Lord Lipsey moved that the House resume (in effect adjourn debate). In response, the Government Chief Whip Baroness Anelay of St Johns noted:

The noble Lord has moved that the House be now resumed. That would mean that we would now abandon the Committee stage, if that is what the House wishes to do. The noble Lord has done the House a service because he has enabled every single Member present today to put on record whether or not they wish the Bill to pass.

Noble Lords: No!

⁵⁰ See comments by [Lord Mackay of Clashfern on 10 January 2014 c869](#)

⁵¹ [HL Deb 10 January 2014 c1832](#)

⁵² [HL Deb 24 January 2014 c853](#)

⁵³ Ibid c910

⁵⁴ Ibid c959-60

⁵⁵ [HL Deb 31 January 2014 c1512](#)

Baroness Anelay of St Johns: My Lords, if the Motion is agreed, I will not be able to offer my noble friend Lord Dobbs more time for the Bill because the House itself will have collectively indicated that it no longer wishes to consider the Committee stage. If the House disagrees the Motion, I will take that as a desirable, clear indication that we should complete the remainder of the Committee stage today.⁵⁶

The House voted to resume by 180 votes to 130 and no further progress on the Bill was made in the session.

There has been considerable commentary on the failure of the Bill to make progress.⁵⁷

4 The Parliament Acts and a potential use

Following the decision of the House of Lords to bring Committee stage of the Bill to an end without concluding the debate on 31 January 2014 (see section 3.8), it was reported that David Cameron said that:

We are going to try to re-introduce the same Bill in the next session of parliament and, if necessary, rely on the provisions in the Parliament Act to stop Labour and Liberal Democrat peers killing the Bill once again.⁵⁸

And at Prime Minister's Questions on 5 February 2014, he said that he hoped the Bill could "be resuscitated if one of my colleagues is fortunate enough to win the private Member's Bill ballot".⁵⁹

During the debate on the Queen's Speech at the beginning of the 2014-15 Session, David Cameron confirmed that he would support a bill to provide for an in/out referendum, if it were introduced in the current Session:

James Wharton (Stockton South) (Con): Should a Member introduce a private Member's Bill to legislate for an in/out referendum on our membership of the European Union in the coming Session, will the Prime Minister give that Member the same wholehearted support that he has shown to me during the past year?

The Prime Minister: I can certainly give my hon. Friend the undertaking for which he asks. He did a brilliant job in presenting his Bill to the House of Commons. The Leader of the Opposition mentioned some of the issues that turn people away from politics. I think that one of the ways in which we can turn people back on to politics is to make clear that, when it comes to the vital issue of whether or not Britain should be a member of a reformed European Union, it is the British people who should have their say.⁶⁰

4.1 Conditions of the Parliament Acts procedure

The Parliament Acts 1911 and 1949 allow public bills other than money bills rejected by the House of Lords in one parliamentary session to be presented for Royal Assent in the following session if they are passed by the House of Commons and rejected again by the House of Lords.

The *Parliament Acts* require a number of other conditions to be met before a bill that has been rejected by the House of Lords can be presented for Royal Assent, section 2(1) states:

⁵⁶ Ibid c1545

⁵⁷ For example, "[Cameron says Tories will bring back failed EU bill](#)", BBC News, 31 January 2014

⁵⁸ "Tories to force through EU referendum bill", *Independent*, 1 February 2014

⁵⁹ [HC Deb 5 February 2014 c272](#)

⁶⁰ [HC Deb 4 June 2014 c24](#)

2 Restriction of the powers of the House of Lords as to Bills other than Money Bills

(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in two successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the second time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless one year has elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the second of these sessions.⁶¹

Section 2(3) of the 1911 Act states that for this purpose a bill is deemed to be rejected by the House of Lords "if it is not passed by that House either without amendment or with such amendments only as may be agreed to by both Houses". Section 2(4) of the Parliament Acts sets out how amendments are dealt with:⁶²

A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the second session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

Erskine May provides a summary of the conditions under which bills other than money bills may be presented for Royal Assent under the Parliament Acts 1911 and 1949:

Under the Parliament Acts 1911 and 1949 certain public bills may be presented for Royal Assent without the consent of the Lords. The Acts do not apply to bills originating in the Lords, bills to extend the life of a Parliament beyond five years, provisional order confirmation bills, private bills or delegated legislation. The conditions which must be fulfilled before a bill can be presented for Royal Assent under the Acts vary according to whether or not the bill is certified by the Speaker as a 'money bill' as defined in s 1(2) of the 1911 Act.⁶³

⁶¹ *Parliament Act 1911*, section 2(1), as amended

⁶² *Parliament Act 1911*, section 2(4), as amended

⁶³ Erskine May, *Parliamentary Practice*, 24th edition, 2011, p648

The Library Standard Note [The Parliament Acts](#) (SN/PC/675) gives details of the procedures governing the use of the Parliament Acts of 1911 and 1949 and of bills that have been presented for Royal Assent under those procedures.

4.2 Application to the European Union (Referendum) Bill

In the case of a *European Union (Referendum) Bill*, the following conditions would have to be satisfied:

(a) Bill in the first session

- **The Bill must be sent to the Lords at least one month before the end of Session 2013-14.** The Bill was sent to the Lords on 29 November 2013, the session ended on 13 May 2014.
- **The Bill must be rejected by the House of Lords in Session 2013-14.** “Rejected” has a wide meaning. As the Bill failed to pass through all of its stages in the Lords, it was deemed to have been rejected.

(b) Bill in the second session

- The Bill must be sent from the Commons to the Lords in the next Session of Parliament (2014-15). **One year has to elapse between the date of Second Reading in the Commons in Session 2013-14, and the date on which it is sent to the Lords in Session 2014-15.** The date of Second Reading in the Commons in Session 2013-14 was 5 July 2013.
- It must be **essentially identical** to the Bill **sent from the Commons** in Session 2013-14. Amendments which are necessary owing to the passage of time or represent amendments made in the Lords in 2013-14 are permissible. In addition, the Commons can suggest amendments to the Bill, which may or may not be agreed to by the Lords.⁶⁴
- It must be sent from the Commons to the Lords **at least one month before the end of Session 2014-15.** Under the *Fixed-term Parliaments Act 2011* and the *Electoral Registration and Administration Act 2013*, Parliament will be dissolved on 30 March 2015. However, Parliament could be prorogued before this.
- **And it must be rejected by the Lords in Session 2014-15.** “Rejected” has the same wide meaning as in Session 2013-14.
- Finally, before the Bill can receive Royal Assent, **the Speaker of the House of Commons has to certify that the conditions set out in section 2 of the Parliament Act 1911** (the points highlighted in bold text above) **have been complied with.**

The *European Union (Referendum) Bill 2013-14* met the first two criteria, so if the reintroduced Bill is passed by the Commons in 2014-15, is certified by the Speaker as being identical with the Bill as sent to the Lords in 2013-14 and/or as containing only amendments made necessary by the passage of time or representing amendments made by the Lords in

⁶⁴ *Parliament Act 1911*, section 2(4), as amended

2013-14 and is then rejected by the Lords for a second time, the *Parliament Acts* would be applied.⁶⁵

5 Generic rules for the conduct of a UK referendum

Referendums have become a more common constitutional device in the UK since 1997, but only two referendums have been held nationwide. The first was the referendum on the continuing membership of the Common Market in 1975 and the second was on proposals to introduce the Alternative Vote (AV) for Parliamentary elections in May 2011.

The *Political Parties, Elections and Referendums Act 2000* (PPERA) sets out a scheme to regulate expenditure by political parties and campaigning groups in both elections and referendums, following recommendations from the (Neill) Committee on Standards in Public Life.⁶⁶ Each referendum held subsequently still required primary legislation to set the terms of the question and the franchise to be used, amongst other provisions.

There have been three referendums on the following questions since PERA came into effect:

- Assembly for the North East and local government reorganisation, held on 4 November 2004 as an all-postal ballot;⁶⁷
- Greater devolved powers for the National Assembly for Wales, held in March 2011;⁶⁸
- Whether to move to the AV system of election of MPs to the Commons, held on 5 May 2011.⁶⁹

In each case, there was separate legislation setting out the question, the franchise and any relevant modifications to PERA, such as a role for the Electoral Commission in providing public information.

Rules for a fourth referendum, on Scottish Independence, were set out in the enabling Scottish Parliament legislation rather than relying on PERA.⁷⁰

Part 7 of Research Paper 12/43 *UK Election Statistics: 1918-2012* sets out the text of the question and the result for each referendum between 1979 and 2012. Research Paper 14/50 provides details of the *Scottish Independence Referendum 2014*.

Just before the 2010 general election, the House of Lords Constitution Committee published a report *Referendums in the United Kingdom*. This made some general observations on the appropriate use of referendums for constitutional questions:

94. Notwithstanding our view that there are significant drawbacks to the use of referendums, we acknowledge arguments that, if referendums are to be used, they are most appropriately used in relation to fundamental constitutional issues. We do not

⁶⁵ Also see [a recent blog](#) from Lord Norton on use of the Act

⁶⁶ Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, 1998, Cm 4057

⁶⁷ Electoral Commission, *The 2004 North East regional assembly and local government referendums*, November 2005

⁶⁸ Under powers in the *National Assembly for Wales Act 2006*. The National Assembly Members' Research Service Paper 11/007 *The National Assembly for Wales Referendum 2011* sets out the question and preceding statement and the result

⁶⁹ See Library Research Paper 11/44 *Alternative Vote Referendum 2011* for question and results

⁷⁰ See [Scottish Independence Referendum Act 2013](#)

believe that it is possible to provide a precise definition of what constitutes a "fundamental constitutional issue". Nonetheless, we would consider to fall within this definition any proposals:

- To abolish the Monarchy;
- To leave the European Union;
- For any of the nations of the UK to secede from the Union;
- To abolish either House of Parliament;
- To change the electoral system for the House of Commons;
- To adopt a written constitution; and
- To change the UK's system of currency.

This is not a definitive list of fundamental constitutional issues, nor is it intended to be.⁷¹

5.1 Types of referendum

This Private Member's Bill requires a referendum to be held on the question of the UK's continued membership of the European Union (EU) before the end of 2017. It does not contain any requirement for the UK Government to implement the results of the referendum, nor set a time limit by which a vote to leave the EU should be implemented. Instead, this is a type of referendum known as pre-legislative or consultative, which enables the electorate to voice an opinion which then influences the Government in its policy decisions. The referendums held in Scotland, Wales and Northern Ireland in 1978 and 1979 are examples of this type, where opinion was tested before legislation was introduced. The UK does not have a written codified constitution which would require the results of a referendum to be implemented, unlike, for example, the Republic of Ireland, where the circumstances in which a binding referendum should be held is set out in its constitution.

In contrast, the legislation which provided for the referendum held on AV in May 2011 would have implemented the new system of voting without further legislation, provided that the boundary changes also provided for in the *Parliamentary Voting System and Constituency Act 2011* were also implemented. In the event, there was a substantial majority against any change. The 1975 referendum was held after the re-negotiated terms of the UK's EC membership had been agreed by all EC Member States and the terms set out in a command paper and agreed by both Houses.⁷²

Any legislation passed in the 2010 Parliament will not bind any future parliament. The question of whether a parliament can bind its successors is discussed in much more detail in constitutional and administrative law textbooks. For example, AW Bradley and KD Ewing discuss the question in a chapter on parliamentary supremacy.⁷³ In this sense, the Bill is simply indicating an intention to hold a referendum at a future date. The Parliament due to be elected in 2015 under the *Fixed-term Parliaments Act 2011* may decide to repeal the legislation. However, the passage of such an Act has political and statutory force, since the referendum will be held unless there is amending legislation. Indeed there are other examples of Acts passed in one Parliament including targets to be met in the future. For

⁷¹ House of Lords Constitution Committee, *Referendums in the United Kingdom*, HL 99 2009-10

⁷² For details see Commons Library briefing *Regulation of Referendums* 29 January 2013.

⁷³ AW Bradley and KD Ewing, *Constitutional and Administrative Law*, 15th edition, 2011, pp49-77, see particularly pp60-63

example, section 1 of the *Climate Change Act 2008* imposes a target on the Secretary of State to be met by 2050.

5.2 Franchise

The Bill provides for the parliamentary franchise to be used for the poll plus Commonwealth citizens entitled to vote in Gibraltar. This consists of British, Irish and Commonwealth citizens who meet the residency requirement for registration as an elector and British citizens who are overseas voters. Members of the House of Lords do not vote in the elections for the Commons, but in referendums are specifically given the vote. British citizens may register as overseas voters for up to 15 years after leaving the UK. The choice of franchise excludes citizens of other EU countries resident in the UK who are eligible to vote in local government and European Parliament elections. It is worth noting that only EU citizens from Cyprus and Malta would qualify as Commonwealth citizens, and Irish citizens resident in the UK would also be included in the parliamentary franchise.⁷⁴

The devolution referendums were held under the local government franchise, but the AV referendum and the 1975 referendum on the EEC were held under the parliamentary franchise. The Scottish independence referendum was held under the local government franchise, with the inclusion of 16 and 17 year olds.

The *European Parliament (Representation) Act 2003* provided for Gibraltar to be enfranchised for elections to the European Parliament. This followed a ruling in the European Court of Human Rights which found the UK to be in breach of the European Convention on Human Rights (ECHR) for failing to allow Gibraltarians to vote or stand in the elections to the European Parliament in 1994. The 2003 Act required the Electoral Commission to propose a region in England and Wales with which the citizens of Gibraltar could participate in EP elections. The region chosen was the South West. The Bill makes provision for citizens of Commonwealth countries entitled to vote in Gibraltar to be included in the franchise.

The number of overseas electors (British citizens living abroad) tends to peak in the years when there is a general election before falling in the following years. For example, in December 2012 there were 19,120 registered UK overseas voters, compared with 32,739 in December 2010.⁷⁵

5.3 The question

Under PPERA, the Electoral Commission has a duty to assess the intelligibility of a referendum question. It has published guidance on the criteria to be used for assessment.⁷⁶ The Commission tests intelligibility by using focus groups and similar techniques to ensure the electorate understands the question. It made an assessment of the question during the progress of the Bill in the last session (see section 3.4). An amendment was agreed in the House of Lords to adopt the Electoral Commission version in January 2014 (see section 3.8) but this is not in the Bill as presented.

The *Referendum Act 1975* set out the question for the 1975 referendum as follows:

Do you think that the United Kingdom should stay in the European Community
(Common Market)?

⁷⁴ *Representation of the People Act 1983*, section 1

⁷⁵ ONS *Electoral Statistics*, General Register for Scotland *Electoral Statistics*, Electoral Office for Northern Ireland personal communication

⁷⁶ Electoral Commission, *Our approach to assessing the intelligibility of the question*, November 2009

The Bill does not propose a threshold for the referendum. The only referendums held in the UK where a threshold has operated were the polls in Scotland and Wales in 1978 on the question of devolution.⁷⁷

5.4 Timing of the referendum

The Bill simply provides for a referendum by the end of December 2017 and does not specify the timing, other than requiring the Secretary of State to bring forward orders by the end of 2016. These orders would need both Houses to agree to the detailed rules for the poll and the date. If no party obtained a majority at the next general election due in 2015, there might be some uncertainty about the passage of the orders in the next Parliament. Unless the orders are passed, it would not appear possible to hold the referendum, since the day and the conduct of the poll would not have received parliamentary assent.

Technically, the Bill would not preclude a referendum on the same day as a general election in 2015. This would require the orders setting the date of the referendum to pass both Houses before dissolution of Parliament in 2015. There is nothing in statute at present which would prevent such a combined poll, but the orders would need to confirm the date. There are arguments for and against holding polls on the same day as a general election.⁷⁸ The specific issue of the poll may be overshadowed by the competition between political parties to form a government, but referendums held at the same time as a general election may improve turnout and are likely to reduce overall costs. The Lords Constitution Committee recommended against holding referendums on the same day as the general election in its 2010 report⁷⁹ and the Electoral Commission evidence to the Committee thought that each case should be considered on its merits.⁸⁰

Combined polls tend to increase turnout.⁸¹ The AV poll was held on the same day as the elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly as well as local elections in 279 local councils in England and 26 in Northern Ireland. The turnout rate in Scotland and Northern Ireland for the AV poll was higher than in England, at 50.4 per cent and 55.2 per cent respectively. The turnout for England was 40.7 per cent and for Wales 41.5 per cent.⁸² The Electoral Commission report on the AV referendum noted:

During Parliamentary scrutiny of the PVSC Bill, concerns were expressed that the referendum would dominate media coverage at the expense of the scheduled elections held on the same day. Evidence from media content analysis, however, suggests that there was a reasonable balance between coverage of the referendum and the scheduled elections, with each attracting varying levels of coverage in the UK-wide or other media.⁸³

5.5 Conduct of the referendum

The Bill provides for the Secretary of State to make the relevant statutory instruments, subject to affirmative resolution in both Houses.

PPERA provides that the Chief Counting Officer for a referendum is the chair of the Commission, currently Jenny Watson, who may delegate responsibility to counting officers

⁷⁷ See Library briefing [Thresholds in Referendums](#) for background

⁷⁸ See for example *A comparative study of referendums: Government by the people*, Matt Qvortrup 2005

⁷⁹ [House of Lords Constitution Committee, Referendums in the United Kingdom](#), HL 99 2009-10

⁸⁰ [Electoral Commission written evidence to Lords Constitution Committee](#)

⁸¹ See comments by the Government spokesperson, Lord Strathclyde during the passage of the *Parliamentary Voting System and Constituencies Bill 2010-12* HL Deb 30 November 2010 c1451

⁸² For details see Research Paper 11/44 [Alternative Vote referendum](#)

⁸³ Electoral Commission, [Referendum on the voting system for UK parliamentary elections](#), October 2011

for each local government relevant area.⁸⁴ There were 12 Regional Counting Officers appointed to assist with coordination and local returning officers acted as counting officers for the AV referendum. The Electoral Commission therefore has a major role in directing the conduct of a referendum. The Chief Counting Officer has powers of direction which make the poll more centrally managed than elections, which are subject to the discretion of local returning officers.

In general, the normal rules for the conduct of the poll contained in the *Representation of the People Acts* are applied to a referendum by order. For the AV referendum, the passage of the legislation was so close to the actual poll that the conduct rules appeared in primary legislation.⁸⁵ There would be several detailed points of electoral administration to consider, such as the count and declaration of result. Results for the AV referendum were given by local authority area, for example, rather than parliamentary constituency.

6 Generic regulation of referendums

6.1 Expenditure limits and permitted participants

PPERA established maximum expenditure limits for regional and national referendums as primary legislation.⁸⁶

Briefly, expenditure limits apply during the 'referendum period'; a time period set out in the legislation authorising a particular referendum. The referendum on the Alternative Vote (AV) was the first nationwide referendum to be held under the PPERA provisions and the referendum period began with Royal Assent to the Parliamentary Voting System and Constituencies Act on 16 February 2011 and lasted 11 weeks.

Groups (including political parties, campaign groups and other bodies) must register with the Electoral Commission if they plan to spend more than £10,000 during the referendum period. The Electoral Commission may nominate a designated organisation for each side under section 108 of PPERA. These designated permitted participants are eligible for grants (see section 6.3). The limit on expenses incurred by these 'designated' organisations is £5 million. In the case of permitted participants not designated under section 108, the maximum expenditure is £0.5m except for political parties, where the limit is related to share of the vote at the last general election, ranging up to £5m. These limits are set out in Schedule 14 of PPERA.

Permitted participants must submit returns of expenditure to the Electoral Commission, within 6 months of the poll. More detail is required where participants have spent over £250,000. This means that full details of expenditure are not known until the referendum has taken place. The Electoral Commission has expressed concern in the past about the difficulty of regulating expenditure during the short campaign period, when accounts will not be submitted until after the poll.⁸⁷

The Commission also expressed concern that the legislation did not guarantee an equality of spending, and that permitted participants could proliferate, causing difficulties in assessing whether expenditure limits had been breached.⁸⁸ A number of witnesses to the Lords

⁸⁴ *Parliamentary Voting System and Constituencies Act 2011*, Section 128

⁸⁵ *Parliamentary Voting System and Constituencies Act 2011*, Schedules 2 to 8

⁸⁶ This was contrary to the recommendations of the Neill Committee. Its report argued that controls would be impractical and might be considered an unwarranted restriction on freedom of speech.

⁸⁷ [Evidence from Sam Younger](#), former Chairman of the Electoral Commission, to the Treasury Select Committee, 18 March 2003, HC 187-II, Session 2002-03, Q1327

⁸⁸ [Evidence to Select Committee on Transport, Local Government and the Regions](#), 10 July 2002, HC 1077-1, Session 2001-2, Q85

Constitution Committee inquiry on referendums in April 2010 also repeated these concerns, as did witnesses to the Scottish Affairs Committee inquiry into a referendum for Scotland in 2012.⁸⁹ The Lords Committee recommended the aggregation of spending limits for permitted participants who operate to a common plan. The Government made specific provision in the *Parliamentary Voting System and Constituencies Act 2011* to aggregate expenses where persons are acting in concert.⁹⁰

Political parties

If a registered party campaigns as a permitted participant under sections 105 and 106 of PPERA, it needs to indicate the policy it intends to adopt. S106 (7) defines ‘outcome’ as ‘a particular outcome in relation to any question asked in the referendum. The declaration must be signed by the ‘responsible officers of the party’, defined in s64 (7) as the ‘registered leader’, the ‘registered nominating officer’ and any other registered officer. Under s106, it is necessary to make the declaration in order to become a permitted participant.

6.2 Controls on donations

Donations made to permitted participants are also controlled by PPERA. Permitted participants have to register donations received over £7,500 with the Electoral Commission, and refuse donations over £500 if they are from donors not on the UK electoral register, from non UK companies, from blind trusts, or from unknown sources.⁹¹ Information on donations will not be made available until after the result of the poll is known, since section 120 of PPERA does not require the return to be made on referendum expenses and donations until after the end of the referendum period. The Electoral Commission issued guidance for permitted participants on the acceptance of donations for the AV referendum.⁹²

During the passage of the *Parliamentary Voting System and Constituencies Act 2010* (PVSC) an opportunity was taken to clarify the position on media comment. Section 5 of the PVSC Act sets out that press or media comment is not to be treated as referendum expenditure. Newspaper advertisements would count as campaign expenditure. There are no specific guidelines on accuracy, beyond the usual Advertising Standards Authority guidance which notes that it has no remit over non-broadcast adverts where the purpose of the advert is to persuade voters in a local, national or international election or referendum. Complaints of political bias in radio or TV advertisements are made to Ofcom.

6.3 Designated organizations - public funding

The Electoral Commission may nominate designated or umbrella organisations for each side of the outcome of the referendum. These benefit from maximum grants of £600,000 to each organisation for infrastructure costs, combined with a free referendum address to every household and referendum campaign broadcasts.⁹³ The Commission decided to award £380,000 to each side for the AV referendum. Designated organisations have a maximum spending limit of £5 million. In the 1975 European Referendum, £125,000 each was made available to the two lead groups, using powers under the *Referendum Act 1975*.

The Commission may decide not to designate, where it does not consider that an organisation exists which represents the body of opinion on one side. It cannot designate

⁸⁹ [Written evidence submitted to the Scottish Affairs Select Committee from the No Campaign Ltd](#) March 2012

⁹⁰ *Referendums in the United Kingdom* HL Paper 99 2009-10, para 200. See para 17 of Schedule 1 to the *Parliamentary Voting System and Constituencies Act 2011*

⁹¹ These limits were set out in Section 20 of the *Political Parties and Elections Act 2009*, brought into force by [SI 2009/3084](#); the Act also introduced new restrictions on donations for non-domiciled UK nationals, but these have not yet been brought into force

⁹² Electoral Commission, *Referendum on the parliamentary voting system in the UK: Situations and Procedures*, 2011

⁹³ Electoral Commission, [Referendum on the parliamentary voting system in the UK](#), 17 February 2011

one side only. The Commission was unable to designate for the referendum on further devolution in Wales, held on 3 March 2011, since the only applicant for the ‘No’ campaign did not meet a statutory test of adequately representing those campaigning for a ‘No’ vote.⁹⁴ The main ‘No’ campaign had decided against applying for designation, reportedly in order to deny extra expenditure limits to the ‘Yes’ campaign.⁹⁵ The Commission published criteria for designation for the AV campaign.⁹⁶ However, there were concerns about the tight timetable for designation - the ‘No’ campaign were forced to commit funds before being officially informed of designation.⁹⁷

6.4 The regulation of campaigns

PPERA provides that any material to do with the referendum which is published in a referendum period must carry the name and address of the printer together with the name of any person or body on whose behalf it is published.⁹⁸ This was intended to help the Electoral Commission and the public identify who is behind publications, and therefore who has incurred referendum expenses. Campaign material is subject to statutory regulation in terms of defamation, incitement to hatred etc, but there is no equivalent to the electoral law provision on false statements about candidates which led to the election petition in Oldham East and Saddleworth in November in 2010.⁹⁹

PPERA places restrictions on promotional material published during the 28 days (known as the “relevant period”) before a referendum by the Government, local authority or other publicly funded body, apart from the Electoral Commission.¹⁰⁰ This has caused some difficulties, according to the Commission, in alerting voters to the issues. The powers in the PVSC Act 2011 to enable the Commission to encourage participation in the AV referendum were added as a result.¹⁰¹

6.5 Public awareness and information

An unusual feature of the 1975 referendum campaign was the fact that the Government in effect agreed to suspend the normal convention of collective responsibility and individual Cabinet members campaigned on different sides. This was in the context of a single party government, rather than a coalition.¹⁰²

The Government ensured the distribution to all households free of charge of a non-technical version of its White Paper explaining its own recommendation of a Yes vote and short statements of both the ‘Yes’ and the ‘No’ views during the days immediately before the referendum.¹⁰³

The Electoral Commission issued a booklet to each household in the UK before the AV referendum in May 2011. Content included different ways to vote (at a polling station, postal,

⁹⁴ Electoral Commission, [No lead campaigners for National Assembly referendum](#), 25 January 2011

⁹⁵ [Lack of official campaigns for referendum ‘sad day’](#) 20 January 2011 *BBC News*; see also written evidence from No Campaign Ltd to Scottish Affairs Select Committee inquiry [The Referendum on Separation for Scotland](#) HC 1608 2010-2012, para 4.14

⁹⁶ [Delivering the 5 May elections and referendum statement](#) by Jenny Watson 16 February 2011

⁹⁷ Scottish Affairs Select Committee [The Referendum on Separation for Scotland](#) HC 1608 2010-12 Q499

⁹⁸ Section 126

⁹⁹ See Library Briefing: [Election Petition: Oldham East and Saddleworth](#)

¹⁰⁰ Section 125

¹⁰¹ Schedule 1, paras 8 and 9

¹⁰² For background see [Research Paper 04/82](#) *The Collective responsibility of Ministers: An outline of the issues*, Part V

¹⁰³ Committee on Standards in Public Life, [The Funding of Political Parties in the United Kingdom](#), 1998, Cm 4057, paras 12.7 and 12.21

proxy etc.) and a brief guide to AV and First Past the Post. The Commission did not provide political context to the choice of electoral systems.

In the Scottish referendum campaign the Electoral Commission published a voting guide to the referendum which was sent to each household in Scotland. The booklet contained statements from both the 'yes' and 'no' campaign and a joint statement by the Scottish Government and the UK Government.

Campaigning in any referendum on the question of remaining a member of the European Union is likely to be intense. In its report on the AV referendum, the Electoral Commission expressed its view that the regulated period should be extended beyond 28 days to the whole referendum period following the passage of the legislation.

The media have an important role in the debate over the future of Europe. Media ownership in the UK is not restricted to UK nationals, yet it is worth noting that donations from individuals abroad directly to referendum campaigns are prohibited if these are over £500. There was an explicit provision (section 5) in the *Parliamentary Voting System and Constituencies Act 2011* to ensure that press comment was not caught by the spending controls in PPERA.

6.6 Referendum campaign broadcasts

Only designated umbrella organisations can have referendum campaign broadcasts.¹⁰⁴ This is to ensure that, in any referendum, each side of the campaign will have equal access to free airtime for campaigning.¹⁰⁵ Section 127 of PPERA prevents the main purpose of any broadcast, other than a referendum campaign broadcast, from being to procure or promote a referendum's outcome. The broadcasters will in the first instance have to interpret this. The Broadcasters' Liaison Group has a role in the allocation and regulation of party political broadcasts and has issued [production guidelines](#) for referendum broadcasts. The BBC Trust has consulted on these and referendum guidelines were adopted by the BBC in December 2010.¹⁰⁶

7 Passage of a Private Member's Bill

A Private Member's Bill (PMB) has to complete its passage through both Houses, like any other bill, before it can receive Royal Assent (subject to use of the Parliament Act, as detailed in section 5). However, unlike most Government bills, PMBs are not timetabled.

When a PMB is presented, the Member in charge nominates the day on which second reading is to take place. Thirteen Fridays in each session are allocated for the consideration of PMBs. The order of bills on the first seven Fridays is simply the order in which the bills were set down for that date, and those Fridays are therefore usually taken up with second reading debates, but on and after the eighth Friday, PMBs are arranged in the following order:

consideration of Lords amendments, third readings, consideration of reports not already entered upon, adjourned proceedings on consideration, bills in progress in committee, bills appointed for committee, and second readings.¹⁰⁷

¹⁰⁴ PPERA Section 127

¹⁰⁵ *Explanatory Notes*, paragraph 223

¹⁰⁶ *Referendum campaign broadcasts- give us your views* December 2010 BBC Trust

¹⁰⁷ House of Commons, *Standing Orders of the House of Commons – Public Business 2012*, September 2012, HC 614 2012-13, Standing Order No 14(10)

Those Members drawn early in the ballot are able to secure the first slot for debate on the first seven Fridays allocated for PMBs. However, if their bill is not given a second reading it has no precedence over other bills already awaiting second reading on subsequent PMB Fridays.

7.1 Second reading debate

If debate concludes before the moment of interruption, the question that the Bill be read a second time is put (see below).

A Member may try to bring the debate to a close by moving the closure:

Closure of debate.

36.—(1) After a question has been proposed a Member rising in his place may claim to move, 'That the question be now put,' and, unless it shall appear to the chair that such motion is an abuse of the rules of the House, or an infringement of the rights of the minority, the question 'That the question be now put,' shall be put forthwith.

(2) When a question 'That the question be now put' has been decided in the affirmative, and the question consequent thereon has been decided, a Member may claim that any further question be put which may be requisite to bring to a decision any question already proposed from the chair, and if the assent of the chair, as aforesaid, be not withheld, any question so claimed shall be put forthwith.

(3) This order shall apply in committee only when the Chairman of Ways and Means or either Deputy Chairman is in the chair.

Majority for closure or for proposal of question.

37.—If a division be held upon a question for the closure of debate under [Standing Order No. 36 \(Closure of debate\)](#) or for the proposal of the question under [Standing Order No. 29 \(Powers of chair to propose question\)](#), that question shall not be decided in the affirmative unless it appears by the numbers declared from the chair that not fewer than one hundred Members voted in the majority in support of the motion.¹⁰⁸

If the Speaker allows the question 'That the question be now put,' it is put forthwith and, if it is agreed with the required majority, the question that the Bill be read a second time is then put.¹⁰⁹

The question that the Bill be read a second time is then determined on a simple majority (although, if fewer than 35 Members vote (not counting the tellers), the business stands over until the next sitting.¹¹⁰)

If the question that the Bill be read a second time is agreed to, the Bill stands referred to a public bill committee.

¹⁰⁸ House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13

¹⁰⁹ For example, on 3 December 2010, Rebecca Harris claimed to move the closure during the second reading debate on the *Daylight Saving Bill 2010-12*. The Deputy Speaker allowed the closure [[HC Deb 3 December 2010 c1154](#)]. During the debate on the *Lawful Industrial Action (Minor Errors) Bill 2010-12* on 22 October 2010, the Deputy Speaker initially declined to put the question [[HC Deb 22 October 2010 c1255](#)] but after the minister had spoken, he allowed the closure motion to be put [[HC Deb 22 October 2010 c1260](#)]

¹¹⁰ House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13, Standing Order No 41

If debate is continuing at the moment of interruption, the Speaker will adjourn the debate and the Member in charge will need to nominate another Friday for the debate to continue. However, his bill will be added to the bottom of the list of bills awaiting debate on that day.

7.2 Money resolution – required before a bill can be considered in committee

The main objective of a PMB cannot be to create a charge by way of taxation or expenditure.¹¹¹ However, if it requires any spending, a money resolution (or it raises any charges, a ways and means resolution), must be agreed by the House before it can be considered by a committee. Erskine May states that:

... If ... a bill is of the kind which does not require to be brought in on financial resolutions, any financial provisions which it may contain must be authorized by a resolution of the House before they can be considered by the committee on the bill.¹¹²

Such a resolution would need to be initiated by the Government.¹¹³ The Government would table a money resolution to allow the committee stage to proceed, even if it opposed a bill. In the debate on the money resolution for the *Daylight Saving Bill 2010-12*, Mark Prisk, Minister of State, Department for Business, Innovation and Skills, after moving the motion, said that:

The House last debated the Bill on 3 December 2010 when, despite the Government's Opposition, it received its Second Reading.¹¹⁴

7.3 Public bill committee

The Member in charge of a PMB nominates the members of the public bill committee (PBC) to the Committee of Selection.¹¹⁵

Because PMBs are not timetabled, there would be no out date for the PBC. However, the Member in charge could table a sittings motion, setting out when the committee would meet. By convention PBCs considering PMBs meet on Wednesdays but they can meet at other times.¹¹⁶

Order of proceedings

The order of proceedings in a public bill committee is as follows:

- motion to agree programme or sittings motion (if any);
- motion (if any) to vary the order in which the clauses and schedules are considered;
- debate on the first amendment (or group of amendments) to the first clause to be considered. The mover makes a speech; the Chair proposes the question 'That the amendment be made'; there is a debate. Members may speak as many times as they wish. At the end of the debate, either the mover seeks leave to withdraw the amendment (which can be prevented by a single objection) or the Chair puts the question;
- once the amendments to each clause or schedule have been disposed of (or as soon as the

¹¹¹ Erskine May, *Parliamentary Practice*, 24th edition, 2011, pp542-543

¹¹² Erskine May, *Parliamentary Practice*, 24th edition, 2011, p542

¹¹³ House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13, Standing Order No 48

¹¹⁴ [HC Deb 22 November 2011 c256](#)

¹¹⁵ A PBC of 16 members would include: 8 Conservative, 6 Labour, 1 Liberal Democrat members and 1 member of a minority party

¹¹⁶ The first business of the PBC on the *Scrap Metal Dealers Bill 2012-13* was the consideration of a sittings motion [[Scrap Metal Dealers Bill Deb 11 September 2012 c3](#)]

clause or schedule is reached, if there are no amendments), the Chair proposes the question 'That the clause stand part of the bill' or 'That the schedule be the [first] schedule to the bill'. The question can be debated, unless the Chair considers there has already been adequate debate while going through the amendments;

- new clauses are dealt with after existing clauses and new schedules after existing schedules;
- finally, the Chair puts the question 'That I do report the bill [as amended] to the House'. This cannot be debated, but may be divided on.

Source: derived from House of Commons, *Business of the House and its Committees – a short guide*, November 2011, p74

Selection and grouping of amendments

The Chair seeks to group amendments to assist debate at both committee and report stage (see below). Even for amendments which are technically in order, the Speaker or committee chair has the power of selection.¹¹⁷ The Chair's *selection list* (which includes grouping) is published in hard copy and on the internet on the day that a bill is to be taken, or if possible the previous day.

Amendments to bills to leave out clauses or schedules are not selected in committee, since a question is automatically put on whether each clause and schedule should remain part of the bill. This does not apply at report stage, where there is no automatic question on each clause and schedule.¹¹⁸

7.4 Report stage

When the public bill committee has completed its consideration of a bill, it returns to the floor of the House for Report stage.

The House as a whole has the opportunity to amend the bill. Only those parts of the bill which Members are seeking to amend are debated, so there is not automatically a question put on each clause. New clauses are taken before other amendments.

The criteria for selecting amendments are more stringent than at committee stage, and amendments re-opening issues already thoroughly dealt with in committee are not usually selected for debate. There is no report stage if the bill was considered in full in Committee of the whole House and not amended.¹¹⁹

7.5 Third reading

Third reading is usually taken immediately after the conclusion of Report stage. Debate is limited to the contents of the bill under consideration.

7.6 Lords Amendments

If the Lords amend a private Member's bill which began in the Commons (which is rare), the bill is returned to the Commons for consideration of the Lords Amendments. This would take place on a Private Member's Friday chosen by the Member in charge of the bill.

¹¹⁷ House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13, Standing Order No 32, Standing Order No 89(3)(a)

¹¹⁸ House of Commons, *Business of the House and its Committees – a short guide*, November 2011, p21

¹¹⁹ House of Commons, *Business of the House and its Committees – a short guide*, November 2011, pp76-77