Thresholds in referendums

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Referendums have become an established mechanism for validating constitutional initiatives in the UK. The possibility of using an appropriate minimum turnout, or a special majority to ensure that the outcome of such a poll is seen as legitimate is sometimes raised. This note looks at the debate in the UK so far and briefly looks at the use of referendum thresholds in states outside the UK.

Contents

1 General Principles

Discussions of the need for, or advantage of, some form of threshold usually arises in the context of ensuring the legitimacy and acceptance of the outcome of a referendum exercise. This incorporates the idea that major constitutional change is something more important than the result of ordinary elections, and therefore should be the result of something more than a simple plurality of the votes. There are various forms of special majority, such as requiring an overall majority of voters (if a multi-option question) or of the electorate, or a specified level of support in terms of votes, or again as a proportion of the electorate.

It must be borne in mind that special majorities make the issue of the scope of the eligible electorate of particular importance. The accuracy and currency of the relevant electoral register, and the means whereby the total electorate is calculated is crucial, as was seen in the devolution referendums in 1979 where, for example, the Secretary of State for Scotland was given the task of making such determinations as the number of voters on the register who had died, or were convicted prisoners and so on. This is not a mere technical issue, as the official figure of deductions from the register (c.90,000) was far less than the maximum possible deduction made by some academics of nearly 630,000. Such a difference clearly affects the achievement of the 40% electorate threshold necessary for the devolutionist cause to succeed1. Special majorities can also cause confusion about the effect of abstention, again as the 1979 devolution referendums demonstrated.

The question of thresholds was considered in 1996 by the independent Commission on the Conduct of Referendums chaired by Sir Patrick Nairne. It noted:

> 95 The main difficulty in specifying a threshold lies in determining what figure is sufficient to confer legitimacy e.g. 60%, 65% or 75% and whether the threshold should relate to the total registered electorate or those who choose to vote. Requiring a proportion of the total registered population to vote 'Yes' creates further problems because the register can be so inaccurate. Some of the electorate may believe that abstention is equal to a 'No' vote. Thus the establishment of a threshold may be confusing for voters and produce results which do not reflect their intentions. A turnout threshold may make extraneous factors, such as the weather on polling day, more important.[2]

2 1975 EU referendum

The first and only UK wide referendum so far was held in 1975, when the question of thresholds was considered. In the February 1975 white paper, the Government said that they "have considered whether [the] result should be subject to any special conditions in terms of the size of the poll or the extent of the majority."[3]

> 7. It may be argued that a verdict of such importance should not depend on a simple majority-theoretically a single vote in an electorate of 40 million.
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> A poll of a minimum size might be specified. Alternatively it might be laid that the number of votes cast or the number composing the majority should exceed a specified proportion of the total electorate. Some countries have applied conditions of this kind

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1 V. Bogdanor "The 40 per cent rule", (1980) 33 *Parliamentary Affairs* 249, pp.252-5

2 Report of the Commission on the Conduct of Referendums 1996 Electoral Reform Society and the Constitution Unit p42

3 Cmnd 5925, Para 6

> to their referenda, although they are usually intended to make it impossible for constitutional changes to be introduced too easily or by a minority of the electorate.
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> 8. The Government are concerned that the size of the poll should be adequate, and they are confident that it will be so. They also consider it to be of great importance that the verdict of the poll should be clear and conclusive. In the circumstances they believe that it will be best to follow the normal electoral practice and accept that the referendum result should rest on a simple majority - without qualifications or conditions of any kind.

The issue was debated at Commons report stage, when Peter Emery (Conservative) moved a new clause to declare the result null and void unless there was a turnout of 60% of the eligible electorate and at least a two-thirds majority 'yes' or 'no'.[4] In face of Government resistance, the new clause was withdrawn.

3 Referendums in Scotland and Wales 1979

The first referendums in the UK, which contained thresholds, were over the question of devolution. The 1979 Scotland and Wales referendums were provided for in the *Scotland Act 1978* and the *Wales Act 1978* which both set out the date of the referendum, the electorate and the question.[5] Following a backbench amendment sponsored by George Cunningham, the Acts specified that where it appeared 'to the Secretary of State that less than 40 per cent of the persons entitled to vote in the referendum have voted "Yes"... or that a majority of the answers given in the referendum have been "No" he shall lay before Parliament the draft of an Order in Council for the repeal of this Act".[6]

There were also provisions to allow a delay of three months if Parliament were to be dissolved before the referendum had been held, so that the referendums would not take place immediately after the election. In the event, the 1979 General Election came after the referendums on March 1 1979. Following the failure to meet the necessary threshold of the electorate the *Wales Act* and *Scotland Act* were repealed through Orders in Council.[7]

The '40% rule' gained, and perhaps to some extent retains, a particular status in the devolution debate, especially in the minds of those pro-devolutionists who regarded it as a major reason for the failure of the 1970s scheme. It was the role of the Secretary of State to establish the figure for the total electorate. This was complex, since it is possible to be registered in more than one area and even in the 1970s there was evidence of under-registration. According to a leading study, the following calculations were made:

> In the end, the Secretary of State went for a minimalist strategy, deducting from the register a figure to take account of deaths (26,400) those under age on polling day (49,802) convicted prisoners (2,000) and only two categories of double registered voters (11,800). This then produced an 'adjusted' electorate. The official figure did not, however, state in advance any estimate for others who were double-registered who could not legally have voted twice) for the 'recent sick' or for other inaccuracies. Bogdanor compares Secretary of State Millan's deductions (90,002) with the

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4 HC Deb vol 890 cc1772-95, 24.4.75

5 Scotland Act 1998 Schedule 17, Wales Act 1998, Schedule 12.

6 Scotland Act 1998, s.85 Wales Act 1998 s.80

7 Scotland Act 1978 (Repeal) Order 1979 SI no. 928 Wales Act 1978 (Repeal) Order 1979 SI no. 933

> "maximum possible number which he could have made if he had taken account of all the main categories of unavoidable non-voting" on which he puts a figure of 587,226.[8]

4 Referendums since 1997

The current Government has consistently resisted proposals to introduce thresholds for the referendums held in Scotland, Wales and Northern Ireland. This was clear from the time of the announcement made by the Labour Party that it would use referendums in its planned devolution legislation.

In press conferences in Glasgow and Cardiff on 27 June 1996, the shadow Scottish and Welsh Secretaries announced that Labour proposed to hold pre-legislative referendums. The then Shadow Secretary of State for Scotland, George Robertson said:[9]

> Part of the task Tony Blair gave me was not just to ensure the package itself was sound but to work on the details of implementation. In recent months I have been working with Shadow Cabinet colleagues on plans to make sure a Scottish Parliament was enacted as soon as possible after the election. Let me set out what I personally recommended and what Labour will do.
> As soon as Labour is returned to power, a White Paper will be published setting out the details of our plans.
> The people of Scotland will be asked to endorse the proposals in an early referendum to pave the way for legislation.
> There will be no tricks. No fancy franchise. The test will be a straightforward majority of the votes cast.
> It is right that a democratic Parliament should be founded on a democratic vote.

A similar statement was made by the Shadow Secretary of State for Wales, Ron Davies.[10]

The referendum held in Northern Ireland as a result of the Good Friday Agreement also did not have a threshold. This referendum was actually held following a commitment by the previous Prime Minister, John Major, that peace talks would be ratified by a referendum to be held in Northern Ireland. This was enacted in the *Northern Ireland (Entry to Negotiations) etc Act 1996*.

Gordon Prentice introduced the *Referendums (Thresholds) Bill*, which had its second reading adjourned on 27 February 2004.[11] It failed to make further progress. The Government response to the Bill was as follows:

> **The Parliamentary Under-Secretary of State for Constitutional Affairs (Mr. Christopher Leslie):** In the generous amount of time that I have left, I will endeavour to explain why, after a great deal of consideration, we have concluded that the Government cannot support the 50 per cent. threshold for referendums that my hon. Friend the Member for Pendle (Mr. Prentice) proposes. I know that that will be a disappointment to him, so it will be helpful if I explain why we take that view.
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> First, let us not forget that there is a legal and legislative structure for our referendums. The Political Parties, Elections and Referendums Act 2000 governs the general rules for matters such as expenditure limits and organisation. There is also a requirement for separate Acts of Parliament to specify the details of particular referendums—the

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8 *The Referendum Experience Scotland 1979* ed John Bochel, David Denver and Allan Maccartney 1981 p7. The work by Vernon Bogdanor cited is "The 40 per cent rule" *Parliamentary Affairs* Vol 33(3)1980

9 Scottish Labour press notice 12.6.96

10 Labour Wales press notice, 27.6.96

11 Bill 24 of 2003-4

question, the franchise, the date and so forth. Clause 1 of my hon. Friend's Bill would amend the generic legislation. That would be wrong. It would be too rigid and inflexible an approach to apply the 50 per cent. threshold for all referendums in all circumstances. It is important that every referendum is considered on its merits. On principle, it would be wrong to have a 50 per cent. threshold, thereby allowing non-voters effectively to veto a yes vote or even a no vote, depending on how one viewed a threshold. That is a fundamentally undemocratic approach. People who wanted a no vote could campaign for abstentions.[12]

5 Regional Assemblies

During the second reading of the *Regional Assemblies (Preparations) Bill 2002-03* the Conservative spokesman, David Davis, expressed support for a threshold:

> **David Davis: ...**I have been describing the grounds on which a referendum provides an acceptable and democratic outcome. Our view is that a reasonable level for the threshold that determines a settled will is that at least half the people vote, and a majority are in favour of the change proposed. That is a reasonable measure of the popular will. If the proposal receives the support of at least 25 per cent. of the total electorate, it should carry the day. That is pretty reasonable. Let us consider the result of the Scottish referendum. That exceeded the 25 per cent. threshold by 49 per cent. The Welsh referendum—
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> **Mr. Richard Shepherd (Aldridge-Brownhills):** What my right hon. Friend is saying is that, on a free election, if only 25 per cent., or one in four people, supported the proposal, and 75 per cent. of the population does not come out to vote for it, that is an authority by which one proceeds with profound constitutional change. That has never been so in our history previously, until we had new Labour and its contorted and distorted referendums rejigging our constitution. Will not he accept that for our party to have accepted the Welsh outcome, in which 75 per cent. of a free people in a free election did not support an assembly, is an extraordinary turnabout?
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> **David Davis:** My hon. Friend deserves a proper answer and I shall endeavour to give it. I know that he views these matters with a passion that is probably unequalled anywhere in this Chamber. We live in a time when referendums are used for constitutional amendment. I take the view that that is correct for the reason that I gave earlier. The constitutional rights of the people belong to the people and not to the politicians whom they temporarily elect. Therefore, we must determine at what level of support a referendum becomes valid.[13]

At Commons Committee stage, Philip Hammond, for the Conservatives, spoke to Amendment 24 that a referendum could only be called by the Secretary of State where at least 25 per cent of the electorate in a region indicated support. On a division, the amendment was lost by 352 by 135.[14]

At Lords Committee stage Baroness Blatch, for the Conservatives, spoke to Amendment 50 which would have required a majority of electors in each of the counties or county boroughs within a region to vote in favour.[15] The amendment was lost by 83 votes to 152. At Lords report stage on 8 April 2003, there was a similar amendment, no 49, moved by Baroness Hanham for the Conservatives[16] She then spoke to amendments 50 and 59 to require a

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12 HC Deb 27 February 2004 c587
13 HHC Deb 26 November 2002 c 202
14 HC Deb 18 December 2002 c915
15 HL Deb 24 March 2003 c497
16 HHL Deb 8 April 2003 c175

majority in favour of the change to meet a threshold test of at least 50 per cent of the whole electorate.[17] The amendment was withdrawn.

Following the passage of the *Regional Assemblies (Preparations) Act 2003*, on 16 June 2003 the Deputy Prime Minister, John Prescott, announced that assembly referendums would be held in the North East, the North West and Yorkshire and the Humber. At the same time he directed the Boundary Commission to make recommendations about the structure of local government in those regions. Due to a Liberal Democrats amendment to the Bill on Report stage in the House of Lords, there will now be a second referendum in those areas that currently have two tiers - both county and district councils - of local authority.

A campaign to raise awareness and spark debate about an elected regional assembly for the three northern regions was launched on 3 November 2003 by the then Deputy Prime Minister John Prescott. The 'Your Say' campaign was designed to explain what regional government would mean to people in the North West, North East and Yorkshire and the Humber so voters could make an informed choice in the referendums. The junior minister, Nick Raynsford, reportedly said during the launch that ministers would not approve the creation of assemblies in regions where the turnout was "derisory"[18] The turnout which would merit the term derisory was not officially defined. See the following parliamentary answer:

> **Mr. Hammond**: To ask the Deputy Prime Minister (1) what level of turnout at a referendum on whether to create a regional assembly would constitute the derisorily low turnout, to which the right hon. Member for Greenwich and Woolwich has referred; [124180]
>
> (2) what percentage of the electorate voting in favour of an elected regional assembly it is his policy to consider as sufficient to justify the creation of an elected regional assembly. [124184]
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> **Mr. Raynsford**: The Regional Assemblies (Preparations) Act 2003 does not set a turnout threshold for referendums about whether to establish an elected regional assembly.[19]

The North East Assembly referendum was held on 4 November 2004. In a turnout of 47.8 per cent, 78 per cent of voters rejected a North East Assembly.[20] As a consequence of this result, the planned votes in the North West and Yorkshire and the Humber were ruled out by the Government for the foreseeable future.[21]

6 Local authority referendums

Most local authorities were required by part II of the *Local Government Act 2000* to abandon their traditional decision-making procedure (the "committee system") in favour of new executive arrangements involving the formal separation of powers. Councils in England were required to consult local people about what new form of political management to adopt. A binding referendum needed to be held where:

- the council proposed an elected mayor;

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17 HHL Deb 8 April 2003 c180

18 See eg "Parliaments for the north: Prescott takes plans to the people", the Independent, 4 November 2003 p8

19 HC Deb 7 July 2003 c620w

20 "North East votes 'no' to assembly" BBC News 5 November 2004

21 "Prescott rules out regional polls" *BBC News* 8 November 2004

- 5% of local electors petitioned the council for a referendum on whether there should be an elected mayor;

- the Secretary of State required a referendum to be held (for example because a council had not produced a formal, detailed proposal or had not consulted adequately).

The *Local Government and Public Involvement in Health Act 2007* made changes to executive leadership arrangements in England. The Act:

- instituted two executive leadership models: the mayor and cabinet executive and the new-style leader and cabinet executive;

- provided for a council to be able to adopt a mayoral system by resolution and without the need for a referendum. However, the council must undertake local consultation, and it may make the decision subject to endorsement by referendum if it chooses to;

- Local people can still demand a referendum by petition;

- Where a mayoral system had been introduced following a referendum, a further referendum must be held before the council can move away from that system;

- The minimum period between referendums was extended from five years to ten.

Further information on mayoral petitions and referendums is given in a Library standard note – *Directly-elected mayors* (SN/PC/5000).

No minimum threshold applies to mayoral referendums. Some have taken place under very low turnouts, the lowest being 9.8 per cent in Ealing. The lowest turnout resulting in a "Yes" vote was Bedford, where the turnout was 15.5 per cent. The highest turnout was in Berwick-upon-Tweed (63.8 per cent) where the result was a "No" vote.

Section 116 of the *Local Government Act 2003* introduced new powers for local authorities to hold advisory referendums. However, no threshold applies.

7 Private Member's Bill: *Referendums Bill 2010-11*

Christopher Chope presented a Referendums Bill on 5 July 2010 which provide for thresholds in referendums, but this did not make further progress. Details can be found on the parliamentary website.

8 Parliamentary Voting System and Constituencies Bill 2010-11

On the first day of Lords Report, 7 February 2011, Lord Rooker moved an amendment to ensure that the referendum result would not be binding if fewer than 40 per cent of the electorate voted in favour. The amendment was passed by 219 to 218. [22] In the House of Commons similar amendments had been unsuccessful.

On 15 February 2011 the House of Commons voted on Lords Amendment 1, tabled by Lord Rooker.[23] The Government disagreed with the amendment, with Minister for Constitutional Reform Mark Harper stating that

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[22] HL Deb 7 February 2011 c35

[23] HHC Deb 15 February 2011 c897H

> The Government oppose the inclusion of this amendment in the Bill on two key grounds. First, it goes against our view that people should get what they vote for, and, secondly, it introduces the perverse consequences associated with thresholds.[24]

The amendment was rejected by the Commons by 317 to 247. The Bill was then returned to the Lords on 16 February 2011 where that House continued to insist on the amendment.

When the Bill was returned to the Commons on 16 February 2011 Mark Harper moved that

> We do not accept that there should be a threshold in the referendum, and the amendment does not propose one. It simply states that the Electoral Commission must publish information about the turnout. If we were simply to oppose Lord Rooker's threshold amendment again without this amendment, and were their Lordships to reject our position, the rules on double insistence would result in the loss of the Bill. We have tabled our amendment to avoid that eventuality.

The motion and proposed amendment (a) was passed in the Commons by 310 to 231 and the Bill was returned to the Lords on 16 February where attempts by Lord Rooker to reinstate the 40% threshold were defeated in the Lords by 153 to 221. This ended the ping pong on the *Parliamentary Voting Systems and Constituencies Bill* and no threshold was used in the referendum. For further details on the results of the referendum and the turnout, see Library Research Paper 11/44 *Alternative Vote Referendum*.

9 The European Union Bill

The *European Union Bill* completed its report stage—further consideration of amendments to the Bill—on Wednesday 15 June 2011. The House of Lords voted in favour of two amendments that will insert new clauses into the Bill, following a number of Government defeats. Further details about the background and content to this Bill can be found in House of Commons Library Research Paper 10/79, *European Union Bill (HC Bill 106 2010-11) .* and in a forthcoming Library Standard Note on Lords amendments.

One of these defeats involved thresholds. On 8 June 2011, the first day of Report Stage in the Lords, Lord Williamson of Horton moved Amendment 5, which sets a turnout threshold of 40% of the electorate to ratify treaty changes by referendum and sets out a process for ratifying treaty changes in Parliament when fewer than 40% of the electorate votes. On introducing the amendment in the Lords, Lord Williamson of Horton stated that;

> The effect of Amendment 5 is quite simple. The Government have proposed that, if, as a consequence of the referendum lock set up in the Bill, a national referendum were to be held on any of the about 50 cases covered by the Bill, that referendum result would be mandatory and Parliament would have no role. This amendment would not change that situation if at least 40 per cent of the persons entitled to vote had voted in the referendum. However, if there were a poor turnout and a smaller percentage of the electorate voted, the result would remain valid but would have to be confirmed by a Motion in each House of Parliament. This will give Parliament its proper representative role if there were, for example, a derisory turnout.

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[24] HHC Deb 15 February 2011 c897

> Unless, therefore, a sunset clause is inserted-the subject of later amendments-or, if it becomes an Act, a future Parliament repeals the Bill, the legislation has the potential to require national referendums for many years ahead[25].

On Amendment 5, Lord Howell of Guildford, Minister of State for the Foreign and Commonwealth Office stated:

> If the threshold is not met, regardless of the result, hey presto, the referendum would become advisory and not mandatory. This proposition has a whole string of disadvantages, which are not all obvious but become clear if you think about them. First, as many of your noble Lords have pointed out, instead of it being mandatory on the Government, it leaves the British people in real doubt about what the effect of their vote will be. The noble Lord, Lord Triesman, is incidentally entirely wrong that it will be mandatory on Parliaments; it will be mandatory on Governments, though it is true that Governments often, but not always, control Parliaments. However, this goes by the board if we pass the amendment. It will be the end of the British people's mandatory certainty and they will be back where they started, passing the ball back to Parliament and the party and Government controlling parliament. This is where the record has, frankly, not been brilliant or reassuring.

Lord Williamson of Horton stated in reply that:

> What we are discussing is what sort of referendum regime we want to build into our constitution for the medium term and what role we think Parliament should play in that. I think Parliament should play some part, particularly in those cases where the British public has shown a complete lack of interest in-or even their disagreement or contempt for-the Government's attempt to hold a referendum by voting in negligible numbers. I think it is perfectly reasonable, in those circumstances, for Parliament to take responsibility. That is the basic approach and I stand by it.[26]

Amendment 5 was agreed in the Lords 221 to 216. The Government is likely to attempt to overturn this amendment when the Bill returns to the Commons.

10 Thresholds for other types of ballots

Governments have also used minimum turnouts to validate policy initiatives. Two examples are given below:

10.1 Tenants' Choice

The *Housing Act 1988* provided for a scheme known as Tenants' Choice. New landlords could offer to take over council estates, and their bids could succeed, unless a majority of eligible tenants voted against. The detailed arrangements for the ballots provided for two tests:

1. At least 50 per cent of eligible tenants had to vote for the ballot to be valid
2. If more than 50 per cent of eligible tenants gave notice of their wish to remain with the local authority landlord, then the sale could not go ahead. However, tenants who did not vote were deemed to have voted in favour of the transfer.[27]

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[25] HHL Deb 8 Jun 2011, c282H
[26] HHL Deb 8 Jun 2011, c307H
[27] *The Housing (Change of Landlord) Regulations 1989* SI 367

10.2 Education ballots

1. A threshold was used for petitions to trigger a ballot on a grammar school or groups of grammar schools. The *School Standards and Framework Act 1998*, sections 104 to 109, made provision for parental ballots to determine whether particular grammar schools or groups of grammar schools should retain their selective admission arrangements. The detailed arrangements are set out in regulations. Parents can sign petitions asking for a ballot on grammar school selection by ability. A ballot can only be held if at least 20% of eligible parents have signed a petition requesting such a ballot. To date only one such ballot has taken place, in Ripon Grammar School, in North Yorkshire, where the parents voted to keep the school's selective admission arrangements.[28]

2. A similar arrangement applied to ballots on Grant-Maintained schools status under the *Education Act 1996,* which was a consolidation Act that re-enacted the provisions in the *Education Act 1993*, which in turn re-enacted with amendments the provisions of the *Education Reform Act 1988*.

11 Overseas examples of thresholds

It is often a requirement for states with written constitutions to allow constitutional change only when there is a specified majority for the innovation. Below are examples of states where such special threshold requirements are in force for referendums, either in the procedure for initiating a referendum or in the threshold required to validate a vote. This is followed by two tables giving information about threshold requirements in Western democracies and Western European states.

Austria

Article 44(3) of the Austrian Constitution provides that constitutional legislation, which 'does not touch on fundamental principles of the Constitution', is subject to approval or rejection through a referendum if at least one third of the Members of either chamber of Parliament demand it. A mandatory referendum is held for any legislation that does involve amendment to the 'fundamental principles.' Article 43 of the Constitution stipulates that any act of legislation can go to referendum if a simple majority in the Nationalrat demand it. In all cases the result, determined by a simple majority, is binding.[29]

Denmark

In Denmark, any constitutional amendments passed by Parliament are then put to the people for approval. To be approved, the amendment must receive a majority of votes that corresponds to at least 40 per cent of the electorate.[30] Under Article 42 of the Constitution, one third of the members of the Folketing can, within three weeks of its passing through Parliament, request that a bill go to the voters for rejection. To be rejected a negative majority of a minimum of 30 per cent of the electorate is required.[31] In addition, if a bill involving the delegation of Danish sovereignty to international authorities does not receive the approval of more than five sixths of Members in its passage through Parliament a mandatory referendum is held. For it to be rejected a 30 per cent negative majority is again

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[28] Hhttp://www.teachernet.gov.uk/management/atoz/g/Grammar_school_ballots/

[29] *The Referendum Experience in Europe* Michael Gallagher pp20-21

[30] *A Comparative Study of Referendums* Matt Qvortrup p167

[31] *The Referendum Experience in Europe* p35

required. A referendum of this kind was held in 1992 on the Maastricht Treaty after it failed to gain a five sixths majority in Parliament. The result was a narrow 'no' majority.[32]

Ireland

If there is a clash between the two chambers of the Irish Parliament over a bill then it may be submitted to the people. For this to happen, a majority of Members in the Seanad and at least one third of the Members of the Dail must petition the President to initiate a referendum. If a referendum is held then the bill passed by the Dail is vetoed only if a majority vote to reject it and this majority consists of a minimum of 30 per cent of those on the electoral register. Such a petition has never gone to the President. In addition, under Article 46(2) of the Constitution any constitutional amendment requires the consent of the people in a referendum. The result is determined by a simple majority.[33]

Italy

Article 75 of the Italian Constitution provides certain laws must be put to a referendum if 500,000 electors or five regional councils request it.[34] For a law to be repealed the motion calling for its annulment must receive a majority of votes and the turnout in the referendum must be over 50 per cent of those entitled to vote.[35] Additionally, under Article 138, a referendum on constitutional amendments, that have been passed by Parliament but not yet enforced, must be held if 500,000 electors, one fifth of the Members of Chamber or Senate or five regional councils request it within three months of the amendment being passed by Parliament. However, this can only be done for amendments that failed to receive a two thirds majority in one, or both chambers in their passage through Parliament.[36]

Sweden

In Sweden, a referendum, and simultaneous general election, must be held for constitutional amendments if at least one tenth of the Members of the Riksdag request one, and if this request is supported by at least a third of Members of Parliament. The amendment is vetoed if the number voting for rejection is both a majority and 'more than half of those who have voted in the simultaneous general election.' If the threshold for rejection is not met then the matter rests with the Riksdag.[37]

Switzerland

Under Article 123 of the Swiss Constitution a mandatory referendum is held for any constitutional amendments. For approval at referendum a double majority is required, therefore, a simple majority of votes cast in addition to a majority of the cantons. In addition, the procedure for a total revision of the Constitution can be set in motion if 100,000 electors request it. When such a request is made the principle of a total revision is put to the people. If a simple majority of voters support the proposal then Parliament is dissolved, a general election is held and the new Parliament drafts a revised Constitution. The new Constitution is then put to the electorate and must receive a double majority in order to be approved.[38] A partial revision of the Constitution can also be requested by 100,000 electors. Such a request can take the form of a precise amendment or a general petition for constitutional change. If the petition is for a precise amendment then this is considered by Parliament,

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32 *The Referendum Experience in Europe* pp42-43
33 *The Referendum Experience in Europe* pp 88-89
34 *A Comparative Study of Referendums* p127
35 *A Comparative Study of Referendums* p173
36 *The Referendum Experience in Europe* pp108-109
37 *The Referendum Experience in Europe* p172
38 *The Referendum: Direct Democracy in Switzerland* Kris W Bobach p 42

'which may recommend it for rejection or adoption at the popular vote.' Parliament can also formulate a counter-proposal to be put to the people simultaneously. The proposal or the counter-proposal must receive a double majority in order to be accepted.[39] If Parliament agrees to a suggestion for a partial revision of the Constitution put in general terms then it elaborates the specifics of a constitutional amendment. This is then put to the people and must receive a double majority to be approved. If Parliament rejects the suggestion then it is put to the people. If a simple majority support it then Parliament must elaborate a specific partial revision which must then receive a double majority in a referendum to be accepted.[40]

Since 1977 a double majority in a mandatory referendum has also been required in order to approve Switzerland's joining of 'organisations of collective security or supranational communities.'[41] Other treaty agreements, not falling under this category, go to referendum if 50,000 voters demand it. Only a simple majority is required for approval. In 1992 the Swiss decision to join the International Monetary Fund and the World Bank was challenged in such a way. In the subsequent referendum membership was approved by 55.8 per cent of voters.[42] In addition, 50,000 voters or eight cantons can demand a referendum on any law passed by the Federal Assembly, except those designated urgent, if done so within 90 days of the publication of the legislative text.[43] Legislation designated urgent by the Government can only be in effect for a year unless it receives approval through a double majority at a referendum. If the double majority is not received then the legislation ceases after the year has passed.[44]

States outside Europe

In Australia, for constitutional change to be approved it must receive a double majority, consisting of a simple majority nationwide in addition to a majority in four out of the six states.[45] In 24 states in the USA voters, usually a fixed percentage of the electorate, can protest to force laws passed by the legislative to go to the people. Such laws must receive the approval of a majority of voters before they can take effect.[46] In New Zealand, voters can petition for a referendum "on any issue" if signatures are collected from 10 per cent of the electorate.[47] The Supreme Court of Canada ruled in 1998 that a special majority requirement should be enacted lest a narrow majority of voters in Quebec vote for secession without negotiations with the rest of Canada.[48] The *Clarity Bill* sought to implement these recommendations. It stipulates that the outcome of any referendum concerning secession 'must be a clear expression of a will by a clear majority of a province to cease to be a part of Canada.' The bill, however, does not specify a percentage that represents a 'clear majority.'[49]

In addition, a number of states have special majority requirements in force for amendments to their bill of rights. Vernon Bogdanor notes a number of cases outside Europe where such practices exist:

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39 *The Referendum Experience in Europe* p189
40 *The Referendum* p 43
41 *The Referendum Experience in Europe* p189
42 *The Referendum* p 45
43 *The Referendum Experience in Europe* pp 188-189
44 *The Referendum* p44
45 *Referendum democracy : Citizens, Elites and Deliberation in Referendum Campaigns* 2001 ed Matthew Mendelsohn and Andrew Parkin p115
46 *The Referendum Device* Austin Ranney p 47
47 *A Comparative Study of Referendums* pp 126-127
48 Canadian Supreme Court, Reference re Secession of Quebec August 20 1998 at 153
49 *A Comparative Study of Referendums* p166

> The American Bill of Rights can only be amended by a special majority of Congress and a special majority of the states; the same is true of the protection of rights in the South African constitution. The Canadian Charter of Rights and Freedoms can be amended only by two-thirds majorities in both houses. New Zealand and Israel, which, like Britain lack a codified constitution, both give special legislative protection to certain rights. The 1993 Electoral Act in New Zealand contains an entrenched provision which can be amended only by 75% of MPs in the single-chamber Parliament or by referendum. Israel has a set of Basic Laws protecting rights which can be amended only by an absolute majority in the single-chamber Parliament, the Knesset.[50]

The following table sets out the constitutional procedure for referendums for a number of states in Western Europe:

Referendums in Western European Constitutions[51]

Country	*Referendums mentioned in Constitution?*	*Referendums required for Constitutional Amendments?*	*Constitutional provision for referendums in Noncon legislation?*	*Who Triggers?*	*Provision for qualified majority?*	*Consultative or binding?*
Austria	yes	yes[52]	yes	government or ML	no	binding
Belgium	no	no	no	government	no	consultative
Britain	no	no	no	government	yes	consultative
Denmark	yes	yes	yes	ML	yes	binding
Finland	yes	no	yes	government	no	consultative
France	yes	yes[53]	yes	government[54]	no	binding
Germany	yes	no	no	NA	no	binding
Greece	yes	no	yes	H	no	binding
Iceland	yes	no[55]	yes	H	no	binding
Ireland	yes	yes	yes	H and ML	yes	binding
Italy	yes	no	yes	E	yes	binding
Netherlands	no	no	no	NA	no	NA

50 *Human Rights and the New British Constitution,* Tom Sargant memorial annual lecture 2009, Vernon Bogdanor p 12

51 *Referendums around the World* pp 26-27

52 For a total revision of the constitution. A partial revision can be put to a referendum at the request of one-third of the members of either house

53 As one alternative, the other being a joint session of the two houses and a three-fifths majority.

54 The president, who is generally head of government as well as head of state, can normally call a referendum at his or her pleasure

55 Only for altering the position of the established Lutheran church

Norway	no	no	no	government	no	binding
Portugal	yes	no	yes	H	no	binding
Spain	yes	yes[56]	yes	government	no	binding
Sweden	yes	no	yes	government or ML	yes	binding & consultative
Switzerland	yes	yes	yes	E	yes	binding

Notes: NA = not available.
E = a portion of the electorate; H = the constitutional head of state; ML = a minority of the legislature.

The following table sets out threshold requirements for referendums held in established Western democracies:

Majority Provisions in established Western Democracies[57]	
Australia	Geographical requirement: majority of votes and majority of states
Austria	Simple majority
Belgium	No provisions for referendums
Canada	Under debate
Denmark	Registered voter requirement: 30% of voters, 40% of voters on constitutional changes
France	Simple majority
Finland	Simple majority
Germany	No provisions for referendums
Iceland	Simple majority
Ireland	Simple majority
Italy	Turnout requirement: 50% of the registered voters
Luxembourg	Simple majority
Malta	Simple majority
Netherlands	Simple majority
Switzerland	Geographical requirement: simple majority and majority of cantons

[56] For total revision, and for partial revision covering certain basic matters. Other matters can be put to referendums if demanded by one-tenth of the members of either house

[57] *A Comparative Study of Referendums* p171

United Kingdom	Simple majority (40% of registered voters in 1979)
USA	No provisions for nationwide referendums