



## BRIEFING PAPER

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# European Union Referendum Bill 2015-16

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## Summary

This Bill was introduced in the House of Commons on 28 May 2015 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 debate on Tuesday 9 June 2015.

The Prime Minister, David Cameron, announced on 23 January 2013 that if the Conservative Party was elected to power following the 2015 general election, it would hold a referendum on the UK's membership of the EU in the next Parliament, framed on an in/out question. 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 details of the date and the conduct of the election to be contained in orders to be laid before both Houses. Two Private Members' Bills based on this draft bill failed to progress through both Houses in the previous Parliament.

The UK has been a member of the EU since 1973. An earlier referendum on membership took place in 1975. Proposals for EU reform, legal issues and alternatives to EU membership are discussed in Briefing Paper 07214, [Exiting the EU: UK reform proposals, legal impact and alternatives to membership](#), 4 June 2015. The likely effects of the UK leaving the EU are considered in Briefing Paper 07213, [EU exit: impact in key UK policy areas](#), 9 June 2015.

The *Political Parties, Elections and Referendums Act 2000* (PPERA) provides a regulatory framework for referendums held in the UK. Each referendum still requires primary legislation to set the terms of the question and the franchise to be used, amongst other provisions.

This Bill contains eleven clauses which deal with the question, the franchise and the conduct of the referendum. Three schedules provide further details of the rules governing the campaign and the conduct of the referendum. The Bill gives the Secretary of State the power to make provisions for the date and the conduct of the poll, through regulations, subject to the affirmative procedure. Prior consultation with the Electoral Commission is required for most regulations concerning the conduct of the poll.

This paper provides details of the provisions in the Bill and includes information about the two European Union (Referendum) Bills that were introduced in the last Parliament. More information on these Bills is provided in Briefing Paper 14/55 [European Union \(Referendum\) Bill](#).

# 1. Introduction

The Prime Minister, David Cameron, announced on 23 January 2013 that if a Conservative Government was elected to power following the general election of 2015, it would hold a national referendum on European Union (EU) membership, framed on an in/out question, during the next Parliament.

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 details 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 was re-introduced in the 2014-2015 session by Bob Neill and was unchanged from the Bill that left the Commons in the previous session. The Bill had its second reading but no money resolution was brought forward by the Government so the Bill could not progress to detailed scrutiny by a Public Bill Committee.

In its manifesto for the 2015 general election, the Conservative Party reiterated a commitment to an in/out referendum on EU membership on renegotiated terms before 2017.<sup>1</sup> The Labour Party manifesto for the 2015 general election contained a commitment to hold an in/out referendum on the occasion that powers are transferred from the UK to the European Union.<sup>2</sup> Acting Labour leader Harriet Harman has since declared support for a Bill providing for a referendum on EU membership to be held before 2017.<sup>3</sup> Liberal Democrat policy is also to have a referendum following any treaty change that would transfer power from the UK to the EU.<sup>4</sup> The SNP manifesto stated opposition to an in/out referendum, and specified that should such a referendum occur, the SNP will "seek to amend the legislation to ensure that no constituent part of the UK can be taken out of the EU against its will."<sup>5</sup> It has been reported that SNP leader Nicola Sturgeon will reiterate a commitment to a 'double lock' on EU membership, to prevent Scotland being forced out of the EU against its will.<sup>6</sup>

The Bill (Bill 2) was announced in the Queen's Speech on 27 May 2015, and introduced the day after. It is due for a second reading on 9 June 2015. It extends to the United Kingdom and Gibraltar. It differs from the Draft Bill published by the Conservative Party in 2013 in that it includes Commonwealth citizens living in Gibraltar in the franchise, and provides more technical detail about the rules governing the campaign

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<sup>1</sup> [Conservative Party Manifesto](#), p30

<sup>2</sup> [Labour Party Manifesto](#), p77

<sup>3</sup> ['Labour to back EU Referendum Bill, says Harman'](#), *BBC News*, 24 May 2015

<sup>4</sup> [Liberal Democrat Manifesto](#), p149

<sup>5</sup> [Scottish National Party Manifesto](#), p9

<sup>6</sup> ['Nicola Sturgeon: EU membership "vital for jobs"'](#), *BBC News*, 31 May 2015

and the conduct of the referendum. The *Explanatory Notes* state that the Bill does not contain any provisions that fall within the terms of the Sewel (legislative consent) convention. Secretary of State Phillip Hammond has stated that in his opinion, the Bill is compatible with the European Convention on Human Rights. The *Explanatory Notes* provide a detailed commentary, which covers the franchise, the question and the conduct of the referendum

## 2. A brief overview of the UK in the EU

The question of the UK's relationship with the European Union (EU) has been a matter of political contention for a generation.

The UK joined the European Community (EC) in 1973. This membership was put to a referendum in 1975, when 67% of the electorate voted in favour of staying.

The Member States of the EC agreed to establish a single market in 1986. In 1993, they created the European Union and provided for the free movement of goods, services, people and money. The European Union saw its largest expansion to date in 2004, when 10 new countries joined at the same time.<sup>7</sup>

In the 1990s, the Referendum Party and the United Kingdom Independence Party (UKIP) were formed to seek the withdrawal of the UK from the EU.<sup>8</sup> UKIP won 24 out of the UK's 73 seats in the European Parliament in the 2014 European election, making it the biggest UK party in the European Parliament. The party secured its first two elected Westminster MPs in by-elections on 9 October 2014 and 20 November 2014, and retained one seat following the 2015 general election.

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 *European Union Act 2011* provides that any transfer of power or competences from the UK to the EU needs to be approved by a national referendum.

A *YouGov* poll from February 2015 shows that in a referendum on UK's EU membership, 45% would vote to stay in the EU, while 35% would vote to leave. A similar poll showed that in September 2011 these numbers were 30% in favour of staying, and 52% in favour of leaving.<sup>9</sup>

Prime Minister David Cameron has emphasised that he wishes to renegotiate the terms of the UK's EU membership before the referendum is held. These negotiations focus, among other things, on restricting access to benefits for EU citizens from other countries resident in Britain, a removal of the commitment to 'ever closer union' from the European treaties, and the transfer of power back to national parliaments.

The Labour Party is committed to an in/out referendum if power were to be transferred to the EU.<sup>10</sup> On EU reform, Labour is against "isolation and cutting ourselves off from our European allies", and its manifesto for the 2014 European Parliament elections stated that Labour would "work with our European partners to deliver real and effective reform

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<sup>7</sup> ['The history of the European Union'](#), *European Union Website*, accessed 26 May 2015

<sup>8</sup> Robert Ford and Matthew Goodwin, *Revolt on the Right*, 2014, pp1-60

<sup>9</sup> ['Record support for staying in the EU'](#), *YouGov*, 23 February 2015

<sup>10</sup> Labour Party Manifesto, p77

from within the EU". Labour's areas of reform include: "restraint in EU annual and long-term budgets; scrapping the Strasbourg Parliament; more transparency in meetings of EU Ministers and for national parliaments to play a stronger role in the making of new EU rules; changes to the European Parliament to make sure votes are more transparent and the expenses system for MEPs is reformed".<sup>11</sup> Labour also proposed to appoint an EU Growth Commissioner, review the EU budget and EU agencies to help secure savings and efficiencies.

The Scottish Nationalist Party described itself as "unashamedly, though not uncritically pro-European" in its manifesto for the European Parliament elections in 2014.<sup>12</sup> It emphasised a commitment to EU membership for an independent Scotland. SNP areas for reform included fishery and agriculture, where Scottish interests are said to diverge from UK interests.

The Liberal Democrats' priorities lie in reforming trade with the EU and reforming the EU budget.<sup>13</sup> While they advocate an in/out referendum on the occasion of the transfer of further powers to Brussels, former party leader, Nick Clegg, defeated an attempt by senior party members to guarantee a referendum in the party's general election manifesto.<sup>14</sup>

Proposals for EU reform, legal issues and alternatives to EU membership are discussed in Briefing Paper 07214, [Exiting the EU: UK reform proposals, legal impact and alternatives to membership](#), 4 June 2015. The likely effects of the UK leaving the EU are considered in Briefing Paper 07213, [EU exit: impact in key UK policy areas](#), 9 June 2015.

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<sup>11</sup> [Labour Party European Manifesto](#), 2014

<sup>12</sup> [Scottish National Party European Manifesto](#), 2014, p3

<sup>13</sup> Liberal Democrats, [Referendum and Reform](#)' (accessed 7 January 2015)

<sup>14</sup> [Liberal Democrat Voice, 2 July 2014](#)

### 3. The referendum in the UK

Many states have provisions to hold referendums in relation to major constitutional changes and in recent decades the UK has also used the device, despite having no codified constitutional rules requiring its use. Only two referendums have been held nationwide. The first was the referendum on the continuing membership of the European Community (preceding the European Union) in 1975, and the second was on proposals to introduce the Alternative Vote (AV) for Parliamentary elections in May 2011.

Just before the 2010 general election, the House of Lords Constitution Committee published a report [Referendums in the United Kingdom](#). It concluded that referendums are most appropriately used for 'fundamental constitutional questions', which are hard to define but would include the question of leaving the EU, along with other questions such as whether:

- To abolish the Monarchy; [...]
- 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.<sup>15</sup>

The *Political Parties, Elections and Referendums Act 2000* (PPERA) sets out a regulatory framework for referendums. Among other things, PERPA regulates how much can be spent by campaigners (these limits are higher for campaigners registered with the Electoral Commission, known as permitted participants) and what donations they can accept. Each referendum held subsequently still requires 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 PERPA came into effect:

- Assembly for the North East and local government reorganisation, held on 4 November 2004 by an all-postal ballot;<sup>16</sup>
- Greater devolved powers for the National Assembly for Wales, held in March 2011;<sup>17</sup>
- Whether to move to the AV system of election of MPs to the Commons, held on 5 May 2011.<sup>18</sup>

<sup>15</sup> House of Lords Constitution Committee, [Referendums in the United Kingdom](#), HL 99 2009-10

<sup>16</sup> Electoral Commission, [The 2004 North East regional assembly and local government referendums](#), November 2005

<sup>17</sup> 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



In each case, there was separate legislation setting out the question, the franchise and any relevant modifications to PPERA, 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 PPERA.<sup>19</sup>

Part 7 of Briefing 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. Briefing Paper 14/50 provides details of the [Scottish Independence Referendum 2014](#).

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<sup>18</sup> See Library Research Paper 11/44 [Alternative Vote Referendum 2011](#) for question and results

<sup>19</sup> See [Scottish Independence Referendum Act 2013](#)

## 4. The Bill's provisions on the EU referendum

### 4.1 The referendum (clause 1)

**Clause one** sets out the requirement to hold a referendum (subsection one). The date must be appointed by the Secretary of State by regulation (subsection two), and must be no later than 31 December 2017 (subsection three). Subsection four provides that the question to appear on the ballot paper is:

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

Subsection five provides that the Welsh version of the question will also appear on ballot papers in Wales:

“A ddylai'r Deyrnas Unedig ddal i fod yn aelod o'r Undeb Ewropeaidd?”

#### 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.<sup>20</sup> 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 specified in the *European Union (Referendum) Bill 2013-2014*: ‘Do you think that the United Kingdom should be a member of the European Union?’ The Commission recommended that the question should preferably be phrased so that the answer would not take a ‘yes’ or ‘no’ form, as this could appear biased; but that if these response options were retained, the wording should be changed to ‘Should the United Kingdom remain a member of the European Union?’<sup>21</sup>

The Electoral Commission will produce a separate assessment for the question specified in this Bill after consultations close on 19 June 2015.<sup>22</sup>

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)?

### 4.2 Entitlement to vote in the referendum (clause 2)

**Clause two** specifies that the referendum will use the parliamentary franchise, which consists of British citizens, resident Irish citizens, Commonwealth citizens who meet the residency requirement for

<sup>20</sup> Electoral Commission, [Our approach to assessing the intelligibility of the question](#), November 2009

<sup>21</sup> Electoral Commission, [Referendum on Membership of the European Union: Question Testing](#), October 2013

<sup>22</sup> Electoral Commission, [EU Referendum question assessment](#), accessed 1 June 2015

registration as an elector, and British citizens who are overseas voters (British citizens may register as overseas voters for up to 15 years after leaving the UK). Service voters are also eligible. Members of the House of Lords are not eligible to vote in the elections for the Commons, but are specifically given the vote. Commonwealth citizens who would be entitled to vote in European elections in Gibraltar are also entitled to vote in the referendum.

### The franchise

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. EU citizens from Cyprus and Malta resident in the UK qualify as Commonwealth citizens, and Irish citizens resident in the UK are also included in the parliamentary franchise.<sup>23</sup>

The referendums to establish the devolved legislatures in Wales and Scotland in 1997 were held under the local government franchise, but the AV referendum and the 1975 referendum on the EC 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.

16 and 17 year olds cannot vote in UK Parliamentary elections and are therefore not included in the franchise for the referendum. The voting age was previously reduced in Scotland specifically for the Scottish independence referendum but Scotland has been given the power to legislate to allow 16 and 17 year olds to vote in Scottish Parliament elections. There is a bill currently before the Scottish Parliament to make provision for reducing the voting age at these elections. Unless the voting age is reduced for UK Parliamentary elections, 16 and 17 year olds will not be able to vote in the referendum in any part of the UK.

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 European Parliament elections in Gibraltar to be included in the franchise.

The previous *European Union (Referendum) Bill 2013-2014* had been amended at report stage to extend the vote to Commonwealth citizens resident in Gibraltar.

The number of registered 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

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<sup>23</sup> *Representation of the People Act 1983*, section 1

December 2010.<sup>24</sup> The Government's legislative agenda presented in the Queen's Speech on 27 March 2015 included a *Votes for Life Bill 2015-16* that abolishes the restriction on voting in British parliamentary elections for British citizens living abroad for more than 15 years.<sup>25</sup>

### 4.3 The conduct of the referendum (clauses 3 & 4)

**Clause three** provides that the referendum is governed by Section VII of PPERA; and by Schedules one, two and three of the Bill, which introduce detailed arrangements concerning the conduct of the poll and the campaign.

**Clause four** provides that the Minister may make regulations on the conduct of the referendum, including provisions about voting, and applying or modifying relevant legislation for the purpose of this referendum.

Subsection two provides that the Minister may, by regulations, make provision for the referendum to be held on the same day as any other election or referendum.

Subsection three provides that the Minister may, by regulations, modify or amend this legislation where necessary because the referendum will be held in Gibraltar as well as the United Kingdom.

Subsection four provides for the types of regulations that may be made under this clause.

Subsection five requires the Minister to consult with the Electoral Commission before making any regulations under this clause. Such consultation may be carried out before the commencement of this clause (subsection six).

#### Combination of polls

There is nothing in statute at present which would prevent a combined poll. There are arguments for and against holding referendums on the same day as another election.<sup>26</sup> Whilst combining polls may improve turnout and is likely to reduce overall costs, the specific issue of the referendum may be overshadowed by the competition for power between political parties, or vice versa, and this may confuse voters.

The Lords Constitution Committee recommended against holding referendums on the same day as general elections in its 2010 report, but thought other combinations should be considered by the Electoral Commission on a case by case basis.<sup>27</sup> The Electoral Commission

<sup>24</sup> ONS *Electoral Statistics*, General Register for Scotland *Electoral Statistics*, Electoral Office for Northern Ireland personal communication

<sup>25</sup> Prime Minister's Office (Press Office), *The Queen's Speech 2015*, 27 May 2015, p96

<sup>26</sup> See for example *A comparative study of referendums: Government by the people*, Matt Qvortrup 2005

<sup>27</sup> [House of Lords Constitution Committee, \*Referendums in the United Kingdom\*](#), HL 99 2009-10, para 145

evidence to the Committee suggests that each case should be considered on its merits.<sup>28</sup>

The AV referendum in 2011 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.<sup>29</sup>

The Electoral Commission report on the AV referendum noted:

During Parliamentary scrutiny of the PVSC [Parliamentary Voting System and Constituencies] 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.<sup>30</sup>

The Scottish independence referendum was held as a stand-alone poll. Turnout was 84.6 per cent. The Electoral Commission report on the Scottish referendum states that the decision not to combine the poll with other elections enabled a clear cross-party campaign; had other elections been held, voters could have been confused by political parties campaigning together in the referendum campaign, but against each other for the purpose of the other poll.<sup>31</sup>

The Electoral Commission further commented that while it continued to be of the view that each proposed combination of polls needs to be considered on its own terms:

Where significant cross-party campaigning for a future high-profile referendum is likely (such as, for example, a referendum on the UK's membership of the European Union), we would not expect the poll to be held on the same day as another set of polls. This would help ensure voters and campaigners are able to easily participate in the referendum and minimise the risk of voter confusion.

Any government introducing legislation for future referendums, not only in Scotland but also those held across or in other parts of the UK, should also publish at the same time its assessment of the implications of holding other polls on the same day. This will enable legislatures (including the Scottish Parliament and the UK Parliament) to consider the relative benefits and risks of the proposal as they scrutinise the referendum Bill.<sup>32</sup>

There have been reports that the EU referendum could be held in 2016.<sup>33</sup> A number of other polls are statutorily scheduled to be held on

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<sup>28</sup> [Electoral Commission written evidence to Lords Constitution Committee](#)

<sup>29</sup> For details see Research Paper 11/44 [Alternative Vote referendum](#)

<sup>30</sup> Electoral Commission, [Referendum on the voting system for UK parliamentary elections](#), October 2011

<sup>31</sup> Electoral Commission, [Scottish Independence Referendum](#), December 2014

<sup>32</sup> *Ibid*, pp 40-1

<sup>33</sup> [‘David Cameron may bring EU referendum forward to 2016’](#), *The Guardian*, 11 May 2015

5 May that year, including elections for the three devolved legislatures, Police and Crime Commissioners in England and Wales, the London Assembly and Mayor of London, and local authorities in many parts of England. In a briefing on the EU referendum prepared in May 2015, the Electoral Commission has specified that:

It is important that voters and campaigners are able to engage fully with the issues which are relevant at these elections. It is also important that any debate about the UK's membership of the European Union takes place at a time that allows the full participation of voters and campaigners, uncomplicated by competing messages and activity from elections which might be held on the same day.

We therefore believe that a referendum on an issue as important as the UK's membership of the European Union should not be held on the same day as the other polls taking place on 5 May 2016.<sup>34</sup>

Combining the referendum with other polls could also create administrative challenges, as combining expenditure limits for both devolved elections and a referendum is likely to prove complex. Moreover, the franchise used for the other polls scheduled in 2016 is different from the one used for the referendum: citizens from other EU countries resident in the UK are entitled to vote in local elections.

#### 4.4 Gibraltar (clause 5)

**Clause five** specifies that regulations under clause four may extend and apply to Gibraltar any enactment relating to elections and referendums that applies in any part of the United Kingdom. This clause also provides that the creation of powers under this legislation does not affect the capacity of the Gibraltar legislature to make laws for Gibraltar; or the operation of the *Colonial Laws Validity Act 1865*.

#### 4.5 Regulations under this legislation (clause 6)

**Clause six** provides that all powers to make regulations contained in this Bill (other than those under paragraph 12(10) of Schedule 3) are exercisable by statutory instrument.

The *Explanatory Notes* clarify that:<sup>35</sup>

Regulations under paragraph 12(10) of Schedule 3 are made by the Electoral Commission and concern the accounts to be rendered for the purposes of the payment of the charges of a counting officer, a Regional Counting Officer or the Chief Counting Officer.

Statutory instruments containing regulations under this Bill are subject to the affirmative procedure, except for those containing only regulations under clause ten (commencement), or paragraph twelve of Schedule three (the maximum amount which a counting officer or

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<sup>34</sup> Electoral Commission, [Referendum on the United Kingdom's membership of the EU](#), 14 May 2015

<sup>35</sup> *Explanatory Notes*, para 22

Regional Counting Officer is entitled to recover in respect of services rendered or expenses incurred in connection with the referendum).

## 4.6 Miscellaneous provisions (clauses 7-11)

**Clause seven** provides for the relevant expenditure to be authorised by Parliament. **Clause eight** defines certain terms used in the Bill. **Clause nine** provides for the extent of the Bill, and clarifies that for the purpose of this referendum, Part VII of PPERA extends to Gibraltar.

**Clause ten** provides that sections six to eleven come into force upon Royal Assent; the other provisions come into force on the day the Minister appoints by regulations (and these may differ per provision).

**Clause eleven** provides that the short title of the Bill is the *European Union Referendum Act 2015*.

### Cost of the referendum

The documents accompanying the Bill do not provide an estimate of the cost of holding the EU referendum. The Electoral Commission reported that the total cost of the AV Referendum in 2011 in terms of UK Parliament authorised funds was £75 million (excluding other costs funded through donations and other sources). The Government had overestimated the amounts payable for fees and reimbursements to Counting Officers: they paid out £58 million rather than the estimated £80 million.<sup>36</sup>

The Commission also noted that the overall cost of the referendum would have been higher if it had been a stand-alone poll; because it was held on the same day as other polls, certain costs, such as the hiring of polling stations and staff, could be shared. The Commission estimated that the referendum would have cost around £90 million on a stand-alone basis.<sup>37</sup>

On 16 July 2013, then Minister for Europe, David Lidington, introduced the money resolution for the European Union (Referendum) Bill 2013-14. He said that there had not been a detailed estimate of the cost of the referendum, but referred to the precedent of the £75.3m cost of the Alternative Vote referendum in 2011. He stated that exact costs would be dependent on whether the poll was combined with other elections.<sup>38</sup>

## 4.7 Campaigning and financial controls

**Schedule one** supplements Part VII (Referendums) of PPERA where it concerns the regulation and finances of the referendum campaign.

Paragraph one provides that the referendum period, during which the financial controls in PPERA and this legislation apply, is to be set by the Minister through regulations subject to the affirmative procedure.

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<sup>36</sup> Electoral Commission, [Costs of the May 2011 Referendum on the UK Parliamentary voting system](#), December 2012, p7

<sup>37</sup> *Ibid*, p8

<sup>38</sup> [HC Deb 16 July 2013 c1019](#)

Paragraphs two to six contain provisions relating to who may register as a permitted participant with the Electoral Commission, what information they need to provide, and the requirements relating to responsible persons.

Paragraph seven provides that the Electoral Commission may pay grants to designated lead campaign organisations in instalments. The *Explanatory Notes* state:

Paragraph 7 modifies section 110 of the 2000 Act [PPERA] regarding the payment of grants by the Electoral Commission to designated lead campaign organisations. The effect is that, in relation to the proposed referendum, the Electoral Commission will be entitled to pay the grant in instalments, and may withhold instalments if it is satisfied that the designated organisation has breached one of the conditions that the Commission has set when making the grant. Under the 2000 Act, the level of the grant paid to each designated organisation must be of the same amount, but this need not be the case if the Commission has withheld any instalment(s) from any of the designated organisation(s) under this paragraph.<sup>39</sup>

The Electoral Commission pays grants to one 'designated lead campaign organisation' on each side of the campaign

Paragraph eight makes provision for assistance to be granted to designated organisations in Gibraltar, while paragraphs nine to eleven concern the appointment of referendum agents.

Paragraph twelve provides that the media is not covered by controls on campaign expenditure. It states that the following are not treated as 'referendum expenses' (which are subject to control):

(2) Those expenses are—

- a) expenses incurred in respect of the publication of any matter relating to the referendum, other than an advertisement, in—
  - (i) a newspaper or periodical;
  - (ii) a broadcast made by the British Broadcasting Corporation, Sianel Pedwar Cymru or the Gibraltar Broadcasting Corporation;
  - (iii) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996;
- b) expenses incurred in respect of, or in consequence of, the translation of anything from English into Welsh or from Welsh into English;
- c) reasonable expenses incurred that are reasonably attributable to an individual's disability;
- d) expenses incurred in providing for the protection of persons or property at rallies or other public events.

(3) In sub-paragraph (2)(c) "disability" has the same meaning as in the Equality Act 2010 (see section 6 of that Act).

Paragraph thirteen protects the rights of creditors of the campaign organisations. Paragraph fourteen concerns the aggregation of

Permitted participants may appoint a 'referendum agent' to be responsible for any voting area; Referendum agents are regulated under Clause 4 of this Bill

<sup>39</sup> *Explanatory Notes*, para 36



expenses by people acting in concert at the referendum. The *Explanatory Notes* state:

Sub-paragraph (1) sets out the circumstances in which persons will be regarded as having acted in concert. Sub-paragraph (2) provides that where expenses are incurred by persons acting in concert, the total value of those expenses is to be regarded as having been incurred by each of the persons in question, and counted against each person's spending limit accordingly. Sub-paragraph (5) provides that expenses incurred by or on behalf of a designated organisation are not to be regarded as having been incurred by any other person. Sub-paragraph (6) applies section 117(5) and (6) of the 2000 Act [PPERA]. The effect of those provisions is, in certain circumstances, to treat expenses incurred before the beginning of the referendum period as incurred during the referendum period. Sub-paragraph (7) provides that this applies even if the expenses were incurred prior to commencement. Sub-paragraph (8) provides that section 112 of the 2000 Act, which relates to notional referendum expenses, applies to this paragraph.<sup>40</sup>

Paragraphs fifteen and sixteen concern the application of the Bill and provisions of PERA to Gibraltar and the UK. Paragraphs seventeen to twenty-four concern donations to the referendum campaign, including their permissibility, recording, and reporting; and related offences. In particular, paragraph twenty-two provides that the Minister may, by regulations, prescribe that periodical reports must be submitted to the Electoral Commission before the date of the poll. These reports must be published as soon as reasonably practicable (paragraph twenty-four).

Paragraph twenty-five provides that section 125 of PERA, restricting the publication of promotional material for referendum campaigns by local and central governments, does not apply to this referendum.

Paragraph twenty-six extends controls on campaign broadcasts (PERA, section 127) to Gibraltar. Paragraph twenty-seven provides that other provisions, including those specifying the role of the Electoral Commission in relation to compliance, apply to this legislation.

### **Designated organisations: public funding**

Schedule one of the Bill provides that the Electoral Commission may pay grants to designated lead campaign organisations in instalments, and may withhold funding where an organisation fails to comply with certain conditions.

PERA provides that the Electoral Commission may nominate designated or umbrella organisations for each side of the outcome of the referendum. These will benefit from maximum grants of £600,000 to each organisation for infrastructure costs, combined with a free referendum address sent to every household, and referendum campaign broadcasts.<sup>41</sup> 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,

<sup>40</sup> *Explanatory Notes*, para 41

<sup>41</sup> Electoral Commission, [Referendum on the parliamentary voting system in the UK](#), 17 February 2011

£125,000 each was made available to the two lead groups, using powers under the *Referendum Act 1975*.

The Electoral 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 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.<sup>42</sup> The main 'No' campaign had decided against applying for designation, reportedly in order to deny extra expenditure limits to the 'Yes' campaign.<sup>43</sup> The Commission published criteria for designation for the AV campaign.<sup>44</sup> However, there were concerns about the tight timetable for designation; the 'No' campaign were forced to commit funds before being officially informed of designation.<sup>45</sup>

### Expenditure limits

The Bill gives the Minister the power to determine the 'referendum period', during which controls on expenditure apply. It also excludes the media from controls on 'referendum expenses', and provides for the aggregation of such expenses by persons acting in concert.

PPERA established maximum expenditure limits for regional and national referendums as primary legislation.<sup>46</sup> These limits are higher for campaigners who register with the Electoral Commission as 'permitted participants'. Expenditure limits apply during the 'referendum period', which is 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.

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<sup>42</sup> Electoral Commission, [No lead campaigners for National Assembly referendum](#), 25 January 2011

<sup>43</sup> [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

<sup>44</sup> [Delivering the 5 May elections and referendum statement](#) by Jenny Watson 16 February 2011

<sup>45</sup> Scottish Affairs Select Committee, *The Referendum on Separation for Scotland*, HC 1608 2010-12 Q499

<sup>46</sup> 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.

**Box 1: Total spent on the AV referendum campaign in £000s**

Campaign	Lead designated campaign organisation	Other registered campaigners	Total
YES	2,100	70	<b>2,210</b>
NO	2,600	900	<b>3,500</b>

Source: Electoral Commission, *Costs of the May 2011 referendum on the UK Parliamentary voting system*, p34

Media comment is excluded from controls on campaign expenditure. A similar provision was contained in Section 5 of the *Parliamentary Voting System and Constituencies Act 2011* (PVSC). 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. 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.

Campaigning in the 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.<sup>47</sup>

### Permitted participants

Groups (including political parties, campaign groups and other bodies) must register as permitted participants with the Electoral Commission if they plan to spend more than £10,000 during the referendum period. The designated permitted participants are eligible for grants (see above) and 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. Maximum expenditure for political parties that attracted less than 5 per cent of the vote is £0.5m. These limits are set out in Schedule 14 of PPERA.

<sup>47</sup> Electoral Commission, [Referendum on the voting system for UK parliamentary elections](#), October 2011

**Box 2: The EU Referendum: spending limits for political parties**

Party	Vote share in the 2015 general election	Spending limit
Conservative	36.9%	£5m
Labour*	29.0%	£4m
UKIP	12.6%	£3m
Liberal Democrat	7.9%	£2m

Source: *BBC News, Election 2015*; House of Commons Library calculations

\* Adjusted to account for votes for Co-op candidates

The Bill provides for pre-polling reports to be submitted. This modifies the requirement under PPERA that 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 modification deals with the issue that full details of expenditure would not be 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.<sup>48</sup>

Like the PVSC Act 2011, the Bill provides for the aggregation of expenses where persons are acting in concert.<sup>49</sup> The Electoral Commission had in the past expressed concern that existing legislation did not guarantee equality of spending, and that permitted participants could proliferate, causing difficulties in assessing whether expenditure limits had been breached.<sup>50</sup> A number of witnesses to the Lords 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.<sup>51</sup> The Lords Committee recommended the aggregation of spending limits for permitted participants who operate to a common plan.

**Political parties**

If a registered party campaigns as a permitted participant under sections 105 and 106 of PPERA, it needs to indicate the outcome or outcomes for which it proposes to campaign. 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.

<sup>48</sup> [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

<sup>49</sup> [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*

<sup>50</sup> [Evidence to Select Committee on Transport, Local Government and the Regions](#), 10 July 2002, HC 1077-1, Session 2001-2, Q85

<sup>51</sup> [Written evidence submitted to the Scottish Affairs Select Committee from the No Campaign Ltd](#) March 2012

## Controls on donations

The Bill includes provisions on which donations can be accepted, and how they should be recorded and reported.

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.<sup>52</sup> The Bill (schedule one, paragraph 17) extends the list of permissible donors for donations to permissible participants who are not registered political parties other than minor parties to include: a body incorporated by Royal Charter, a Charitable Incorporated Association, a Scottish or Northern Irish Charitable Incorporated Association, a Scottish Partnership, an individual registered in Gibraltar for the purposes of European Parliamentary elections, and bodies who are permissible Gibraltar based donors (as specified by section 54(2A)(b) ) of PPERA

The Electoral Commission issued guidance for permitted participants on the acceptance of donations for the AV referendum.<sup>53</sup> The Commission will publish specific guidance for the EU referendum.

## The regulation of campaigns

The Bill removes restrictions on the supply of campaign material by public bodies for the purpose of this referendum.

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.<sup>54</sup> 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 prohibiting false statements about candidates (which led to the election petition in Oldham East and Saddleworth in November in 2010).<sup>55</sup>

Section 125 of 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.<sup>56</sup> 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.<sup>57</sup> This Bill provides that the restrictions of section 125 do not apply to the

<sup>52</sup> 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

<sup>53</sup> Electoral Commission, *Referendum on the parliamentary voting system in the UK: Situations and Procedures*, 2011

<sup>54</sup> Section 126

<sup>55</sup> See Library Briefing: [Election Petition: Oldham East and Saddleworth](#)

<sup>56</sup> Section 125

<sup>57</sup> Schedule 1, paras 8 and 9

referendum, and additionally requires the Electoral Commission to promote public awareness of the referendum, and the Chief Counting Officer, Regional Counting Officers, counting officers and registration officers to encourage participation in the referendum (Schedule 3, paragraphs 10 and 11, discussed below).

## Campaign broadcasts

The Bill extends controls on campaign broadcasts to Gibraltar.

Only designated umbrella organisations can have referendum campaign broadcasts.<sup>58</sup> This is to ensure that, in any referendum, each side of the campaign will have equal access to free airtime for campaigning.<sup>59</sup>

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' 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.<sup>60</sup>

## 4.8 Control of loans etc. to permitted participants

**Schedule two** supplements PPERA where it concerns loans and other regulated transactions to permitted participants that are not registered political parties, or are minor parties. It establishes controls in relation to such transactions that are similar to those on donations (contained in PPERA and schedule one of this Bill).

Regulated transactions are loans, credit agreements, and transactions based on the provision of security to a lender, provided for use towards referendum expenses (paragraph 2 of a new schedule 15A, to be inserted after Schedule 15 of PPERA for the purpose of this referendum).

The schedule sets out which regulated transactions are permissible, the information that needs to be recorded when they are entered into, and how they must be reported. Paragraph 15 of new Schedule 15A states that transactions worth over £7,500 must be recorded and reported; paragraph 20 of new Schedule 15A provides that reports must also include the total value of all regulated transactions that are not recorded (i.e. that are of a lower value).

The schedule also gives details of when non-compliance is an offence and the penalties related to these offences.

Paragraph three of the schedule states that the provisions contained in paragraphs one and two apply to regulated transactions entered into prior to the commencement of this schedule; except for the provisions on who may provide regulated transactions to campaigners, and what actions constitute offences.

A minor party is registered on the Great Britain Register, but it can only contest parish council elections in England and community council elections in Wales.

<sup>58</sup> PPERA Section 127

<sup>59</sup> *Explanatory Notes*, paragraph 223

<sup>60</sup> [Referendum campaign broadcasts](#), BBC Trust, September 2014

Paragraphs four to six establish a pre-poll reporting regime for regulated transactions in line with that provided for donations in schedule one (discussed above).

Paragraph seven applies provisions in PPERA relating to compliance and enforcement to this schedule.

## 4.9 The administration of the poll

**Schedule three** applies section 128 of PPERA (Chief counting officers, and counting officers for referendums) to the referendum with certain modifications. It defines the role, responsibilities, duties and powers of the officers involved in the administration of the poll.

It also creates duties for local authorities and the Government of Gibraltar to place the services of their officers at the disposal of the counting officers (paragraph five).

Paragraph ten concerns the role of the Electoral Commission. Among other things, the Commission must promote public awareness of the referendum and how to vote in it. Paragraph eleven provides that the Chief Counting Officer, Regional Counting Officers, counting officers and registration officers must encourage participation in the referendum.

Paragraphs twelve to fourteen provide for the payment of officers involved in the conduct of the referendum. The Minister may specify the overall maximum recoverable amounts in regulations, with the consent of the Treasury. Payments are made by the Electoral Commission.

Paragraph fifteen sets out the procedure for challenging the result of the referendum in court. A challenge to the number of ballot papers counted or votes cast as certified by any of the officers involved in the conduct of the poll must be brought by way of judicial review and within six weeks of the date that the certificate to which the challenge relates was produced.

### The conduct of the poll

PPERA provides that the Chief Counting Officer for a referendum is the chair of the Electoral Commission, currently Jenny Watson, who may delegate responsibility to counting officers for each relevant local government area.<sup>61</sup> The Bill confirms this role and allows the Chief Counting Officer to appoint Regional Counting Officers for this referendum for any of twelve regions. It provides that local returning officers will act as counting officers. The same provisions had been made 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.

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<sup>61</sup> *Parliamentary Voting System and Constituencies Act 2011*, Section 128

This is provided for in clause four (discussed above). For the AV referendum, the passage of the legislation was so close to the actual poll that the conduct rules appeared in primary legislation.<sup>62</sup> 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.

### **Public awareness and information**

The Bill provides that the Electoral Commission must promote public awareness of the referendum, and the officers involved in the conduct of the poll must take steps to encourage participation.

Before the 1975 referendum on EC membership, 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.<sup>63</sup>

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

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<sup>62</sup> *Parliamentary Voting System and Constituencies Act 2011*, Schedules 2 to 8

<sup>63</sup> Committee on Standards in Public Life, [\*The Funding of Political Parties in the United Kingdom\*](#), 1998, Cm 4057, paras 12.7 and 12.21



## 5. Types of referendum

This 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 1997 and 1998 are examples of this type, where opinion was tested before legislation was introduced. The UK does not have constitutional provisions 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 are 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.<sup>64</sup>

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<sup>64</sup> For details see Commons Library briefing [Regulation of Referendums](#) 29 January 2013.

## 6. A threshold for the referendum?

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.<sup>65</sup>

Discussion of the need for some form of threshold usually arises in the context of ensuring the legitimacy and acceptance of the outcome of a referendum. Certain states require constitutional change to be validated by a special majority in a referendum. This incorporates the idea that major constitutional change is something more important than the result of ordinary elections, and therefore should be the outcome of something more than a simple plurality of the votes. The UK does not have a comprehensive written constitution and so any requirement for a threshold has to be included in the individual referendum legislation. Standard Note 2809 [Thresholds in Referendums](#) gives further details and provides comparative examples of the use of thresholds.

### 6.1 1979 referendums

Campaigners for a Yes vote in the referendums on devolution held in Scotland and Wales on 1 March 1979 failed to meet the requirement that forty per cent of all electors should vote in favour of change. This threshold had been inserted on 25 January 1978 during the passage of the relevant legislation against the wishes of the Labour Government as a result of action by a combination of Labour backbenchers opposed to devolution and the official Opposition. 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'.<sup>66</sup> The Secretaries of State were required to calculate the size of the total electorate and deductions were made to allow, for example, for the number of voters on the register who had died.<sup>67</sup>

### 6.2 Referendums 1979-2014

Since 1979 no further referendums have been held using a threshold. However, the issue has been raised from time to time. The *Referendums (Scotland and Wales) Act 1997* received a rapid passage through Parliament, achieving Royal Assent on 31 July 1997. The campaigners for a Yes vote in Wales won by a very narrow margin. However, there was some concern about the possible turnout for the North East referendum; the then junior minister, Nick Raynsford, reportedly said during the launch of the referendum campaign that ministers would not approve the creation of assemblies in regions where the turnout was

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<sup>65</sup> See Library briefing [Thresholds in Referendums](#) for background

<sup>66</sup> *Scotland Act 1998*, s.85 *Wales Act 1998* s.80

<sup>67</sup> Further detail is available in *The Referendum Experience: Scotland 1979* ed John Bochel and *The Welsh Veto* ed David Foulkes

"derisory".<sup>68</sup> This term was not further defined. When the poll was held on 4 November 2004, there was a turnout of 47.8 per cent and 78 per cent of voters rejected a North East Assembly.<sup>69</sup>

The House of Lords voted for a 40 per cent threshold for the AV referendum during the passage of the *Parliamentary Voting System and Constituencies Bill*, but this was subsequently overturned in the House of Commons.

There was no threshold for the Scottish independence referendum.

### 6.3 A 'double lock' threshold

In some federal countries there is a requirement for certain referendums to secure a majority in the population as a whole and in a majority of the states. This is the case in Australia, where referendums to approve changes to the constitution must achieve a majority of voters as a whole (voting is compulsory), and a majority in a majority of states. If one state is particularly affected by the proposed change, then there must also be a majority in that state.<sup>70</sup>

The SNP have pledged they will "seek to amend the legislation to ensure that no constituent part of the UK can be taken out of the EU against its will."<sup>71</sup> The party proposes that the UK should remain in the EU, unless each constituent part of the UK (England, Scotland, Wales and Northern Ireland) votes to leave.

The SNP leader, Nicola Sturgeon, has indicated that another referendum on Scottish independence could be called in a situation in which Scotland voted against leaving the EU while the rest of the UK voted in favour.<sup>72</sup>

Prime Minister David Cameron has refused such a threshold for each constituent part of the UK, referring to the reserved nature of foreign policy:

They didn't give Orkney and Shetland an opt out, or the Borders an opt out, so this is a UK pledge, it will be delivered for the UK and it will be debated and discussed in Parliament after we publish the Queen's Speech.<sup>73</sup>

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<sup>68</sup> See e.g. "Parliaments for the north: Prescott takes plans to the people", *Independent*, 4 November 2003 p8

<sup>69</sup> "North East votes 'no' to assembly" BBC News 5 November 2004

<sup>70</sup> Caroline Morris, 'Referendums in Oceania', in Matt Qvortup (ed), *Referendums around the world*, 2014, pp218-9

<sup>71</sup> Scottish National Party Manifesto, p9

<sup>72</sup> ['EU referendum top priority for UK government'](#), *Scottish legal news*, 19 May 2015

<sup>73</sup> Ibid

## 7. Agreements to differ in a referendum campaign

The media has reported on differences within the Conservative Party with regards to remaining in the EU. It has been suggested that ministers could resign in order to campaign in favour of leaving the EU if Prime Minister David Cameron supports the campaign in favour of remaining a member of the EU, on renegotiated terms.<sup>74</sup> This way, the principle of Cabinet collective responsibility would remain unchallenged.

In some previous referendums, there have been 'agreements to differ' which suspended this principle. These are outlined in Briefing Paper 04/82 [The collective responsibility of Ministers](#).

Most notably, this was the case for the 1975 European Community referendum, and the AV referendum in 2011.

### 7.1 1975 EC Referendum

Perhaps the most familiar instance of the twentieth century agreements to differ is that over the referendum of June 1975 on EC membership. The issue of Europe had caused divisions within as well as between the two major parties, and the Labour Government had come into office in 1974 pledged to renegotiate the terms of UK entry and to allow the people to vote on the outcome, either by referendum or general election. Three senior Cabinet Ministers - Michael Foot, Tony Benn and Peter Shore - wrote to the Prime Minister, Harold Wilson, in late November stating that "Ministers will have very deep convictions that cannot be shelved or set aside by the normal process of Cabinet decision-making ... The only solution might be to reach some understanding on the basis of 'agreement to differ' on this single issue and for a limited period".<sup>75</sup>

In a statement on 23 January 1975 the Prime Minister announced that a referendum would be held before the end of June, once the outcome of the renegotiation was known and the Government had made its recommendation. He stated:

The circumstances of this referendum are unique, and the issue to be decided is one on which strong views have long been held which cross party lines. The Cabinet has, therefore, decided that, if when the time comes there are members of the Government, including members of the Cabinet, who do not feel able to accept and support the Government's recommendation; whatever it may be, they will, once the recommendation has been announced, be free to support and speak in favour of a different conclusion in the referendum campaign. [HON. MEMBERS: 'Oh!']<sup>76</sup>

<sup>74</sup> "David Cameron warned he could lose ministers over EU campaign" *Guardian* 20 May 2015

<sup>75</sup> *Tony Benn: a political biography*, by R Jenkins, 1980 p219; *Against the tide: diaries 1973-76*, by Tony Benn, 1990 pp274, 283

<sup>76</sup> HC Deb 23 January 1975 c1746. See also Benn, *op cit* p305, and *The Castle diaries 1974-1976* by Barbara Castle, 1980 pp287-92

The Opposition Leader, Edward Heath, noted that in that “unique operation and a major question of our time the Government are not going to maintain collective responsibility”. He asked several questions about how the Government would make a recommendation; whether it would set out which Cabinet ministers supported the recommendation; and on the course the Prime Minister would follow.<sup>77</sup>

In his response, the Prime Minister said:

The right hon. Gentleman said that a major constitutional question had been raised by what I have announced. This matter has divided the country. People on both sides of the question hold their views very deeply, very sincerely and very strongly. That applies both in this House and in the country. ... while there may be differences about the Common Market, there is no division on this side of the House, or in the Cabinet, on the major issue of the referendum. That is why I believe it right to take this step in this unique situation.<sup>78</sup>

On 7 April, Mr Wilson set out the guidelines for the agreement to differ, as approved by the Cabinet:

In accordance with my statement in the House on 23rd January last, those Ministers who do not agree with the Government’s recommendation in favour of continued membership of the European Community are, in the unique circumstances of the referendum, now free to advocate a different view during the referendum campaign in the country.

This freedom does not extend to parliamentary proceedings and official business. Government business in Parliament will continue to be handled by all Ministers in accordance with Government policy. Ministers responsible for European aspects of Government business who themselves differ from the Government’s recommendation on membership of the European Community will state the Government’s position and will not be drawn into making points against the Government recommendation. Wherever necessary Questions will be transferred to other Ministers. At meetings of the Council of Ministers of the European Community and at other Community meetings, the United Kingdom position in all fields will continue to reflect Government policy. I have asked all Ministers to make their contributions to the public campaign in terms of issues, to avoid personalising or trivialising the argument, and not to allow themselves to appear in direct confrontation, on the same platform of programme, with another Minister who takes a different view on the Government recommendation.<sup>79</sup>

A Labour backbencher, Michael English, asked the Speaker if the announced guidelines were a contempt and breach of privilege, because they restricted ministerial freedom to participate in Parliamentary proceedings. He pointed out that such a restriction did

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<sup>77</sup> Ibid, c1748

<sup>78</sup> Ibid, c1750

<sup>79</sup> HC Deb 7 April 1975 c351W. Several dissenting Ministers had issued a statement at a press conference on 23 March explaining their reasons for disagreeing with the Government’s recommendation: *Keesings*, 1975, p.27137. See also Mr Wilson’s written answer of 20 March, HC Deb Vol 888 c.471W; Benn *op cit* pp339-56 and Castle, *op cit*, pp347-9

not apply in 1932, when the coalition partners of the National Government had disagreed over Tariff Reform.<sup>80</sup>

However the Speaker ruled that “in general, I think that arrangements made within political parties in this House would be unlikely to raise questions of contempt or privilege. Also, the Chair must be careful not to appear to be trying to interfere in such arrangements”. He believed that the guidelines meant that “the new element is freedom to dissent in the country, not any change in the normal practices in this House”.<sup>81</sup>

The Prime Minister clearly set the limits of the ‘agreement to differ’ when, in response to a Parliamentary Question, he stated that it would end “on 5 June, when the referendum poll has been closed”.<sup>82</sup>

## 7.2 2011 Alternative Vote Referendum

During the campaign for the Alternative Vote referendum held in May 2011, it was not MPs within one political party, but two coalition partners that agreed to differ. The 2010 Coalition Agreement signed by the Conservative Party and the Liberal Democrats stated that:

We will whip both Parliamentary parties in both Houses to support a simple majority referendum on the Alternative Vote, without prejudice to the positions parties will take during a referendum.<sup>83</sup>

The Conservative Party supported the campaign against reform, while the Liberal Democrats campaigned for the introduction of the Alternative Vote electoral system. The parties continued to cooperate in the coalition government until the end of the 2010 Parliament.<sup>84</sup>

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<sup>80</sup> HC Deb 8 April 1975 c1018. The first official ‘agreement to differ’ occurred over Tariff Reform, as the coalition partners of the National Government disagreed. More information can be found in Research Briefing 02809 [Thresholds in Referendums](#).

<sup>81</sup> HC Deb 9 April 1975 c1238

<sup>82</sup> HC Deb 13 May 1975 c65W

<sup>83</sup> Coalition Programme, p27

<sup>84</sup> [“Vote 2011: Tories ruthless and calculating, says Cable”](#), *BBC News*, 7 May 2011; [“AV wont split coalition, say Clegg and Cameron”](#), *BBC News*, 1 May 2011

## 8. Progress of Private Members' Bills in the previous Parliament

In the 2010 Parliament, two identical Private Members' Bills were introduced. In the 2013-2014 session, James Wharton introduced the *European Union (Referendum) Bill*, and a Bill with the same name was introduced in the 2014-2015 session by Bob Neill. The Conservative Party supported the Bills and agreed to differ with their partners in the Coalition Government, the Liberal Democrats. Both Bills failed to pass through both Houses of Parliament and did not receive Royal Assent.

Research briefing 14/55 [European Union \(Referendum\) Bill](#) provides more details about both these Bills, and the procedure for passing a Private Member's Bill.

Briefly, the *European Union (Referendum) Bill 2013-14* received its Second Reading in the House of Commons on Friday 5 July 2013. It provided for a referendum to be held before the end of 2017 on whether the UK should be a member of the European Union. The Secretary of State was required to specify the date and conduct of the referendum in Orders before the end of 2016. These Orders would be subject to affirmative resolution in both Houses.

A money resolution was agreed and the Bill was debated in a Public Bill Committee. A new clause was added on the Bill's first day on report to allow those Commonwealth citizens in Gibraltar eligible to vote in European Parliamentary elections there to vote in the referendum. No further amendments were passed and the Bill passed its third reading without a division.

The Bill received a Second Reading in the House of Lords on 24 January 2014. In Committee stage, amendments were passed to change the wording of the question in line with the recommendations of the Electoral Commission; to make the referendum contingent on the production of impact assessments; and to require the Secretary of State to publish an assessment of the UK's intended relationship with the EU in the event of withdrawal. However, the debate on the Bill was then adjourned and no further progress on the Bill was made.

Issues debated during the different stages of the Bill included:

- whether the Prime Minister would be able to negotiate reforms in the EU before the referendum
- whether a referendum was necessary for the legitimacy of continued EU membership
- whether the Bill should be introduced as a Government Bill
- whether the referendum should be mandatory
- whether holding a referendum up to four years in the future was creating uncertainty about the UK's relationship with the EU
- the length of the campaign period
- the wording of the question
- the franchise, including the position of Gibraltar
- a threshold for the referendum

- the possible combination of the poll with other elections
- the use of the super affirmative resolution procedure
- the role of the devolved administrations

The *European Union (Referendum) Bill 2014-15* received its Second Reading in the House of Commons on 17 October 2014. It was identical to the Bill introduced in the previous session (including the clause to extend the vote to Commonwealth citizens resident in Gibraltar that was added during report stage). The Bill was committed to a Public Bill Committee but the Government did not bring forward a money resolution, therefore the Bill was unable to progress any further. There were reports about tensions in the Coalition Government over the failure to pass a money resolution.<sup>85</sup>

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<sup>85</sup> ["EU referendum bill: Tories accuse Lib Dems of 'killing off' bill", BBC News, 28 October 2014](#)



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