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The EU Referendum Bill 2015

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Introduction

The EU Referendum Bill makes provision for a referendum to be held on the UK's membership of the EU by 31 December 2017. With 11 clauses and three schedules it contains considerable detail about the operation of the referendum, including the proposed franchise and the wording of the question, but other matters, including the actual date, will be settled later after approval by Parliament.

Following the Scottish independence referendum in 2014, the Electoral Commission called for all legislation (including regulations) concerning a referendum to be completed at least six months before the date of any poll.¹ This recommendation does not have binding force but the Government will be keen that the Bill completes its stages in both Houses of Parliament by late 2015 or early 2016 so that it can hold the poll in 2016 if it wishes to do so.

The Bill has already completed two of its stages in the House of Commons during which amendments to add votes for 16 and 17 year-olds, to prevent the Government from campaigning close to the poll date and to require a double majority were rejected. The Government did agree that the referendum should not be held on the same day as other elections in May 2016 and to bring forward amendments at the next stage on the Government's role in the campaign. The Commons will resume its consideration of the Bill in the autumn.

This paper considers the key issues raised by the Bill, including the franchise, the date and the way the competing campaigns will be funded and organised.

Timing of the Poll

Clause 1 of the Bill states that the Secretary of State "must" appoint the polling day by regulations and that the referendum must be held "no later than 31st December 2017" (clause 1(3)).

Clause 4(3) enables the Secretary of State to make regulations about holding the poll on the same day as another referendum and/or election. This provision would have allowed a referendum to take place on 5th May 2016 (when the elections for the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly and the London Mayoralty will take place) but following concerns expressed by the Electoral Commission and others, the Government ruled this out on 16 June 2015.² There are, however, Scottish local elections and mayoral and other local elections in England due in May 2017, another possible date for the referendum.³

¹ Electoral Commission, *Scottish Independence Referendum: Report on the referendum held on 18 September 2014*, 18 December 2014, p. 9

² Amendment 55 ruling out a referendum on 5 May 2016 was accepted by the House of Commons on 16 June 2015 without a vote; Electoral Commission, *Referendum on the United Kingdom's membership of the EU*, 14 May 2015

³ The Welsh Assembly Government launched a consultation in May 2015 about deferring the Welsh council elections from 2016 to 2017

The Electoral Commission has suggested that any proposal to hold a referendum on the same day as other polls should be explained by the Government when tabling a Referendum Bill but that has not so far happened on this occasion, presumably because the Government has not reached any conclusion about the date on which to hold the poll.⁴ The referendum on the voting system in May 2011 was held on the same day as other elections, including those for the Scottish Parliament and Welsh Assembly, but the Scottish independence referendum was held on its own. A referendum held at the same time as local elections has not been ruled out for May 2017.

The Question

The original text of the question was set out in clause 1(4) of the Bill:

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

This wording differed from that proposed in the 2013 (and 2014) European Union (Referendum) Bills tabled by the Conservative backbench MPs James Wharton and Bob Neill. The wording that they had proposed – “Do you think that the United Kingdom should be a member of the European Union?” – was criticised by the Electoral Commission after it had consulted the public.⁵ Following consultation on the question included in the Referendum Bill, the Commission recommended a significant change, to a question formulated in an entirely different way:

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

Remain a member of the European Union / Leave the European Union.⁶

The Government accepted this advice the same day it was published and announced it would table an amendment to the Bill.⁷

Franchise

The franchise for the referendum is set out in clause 2 of the Bill. The franchise consists of:

- The House of Commons franchise – that is British and Commonwealth citizens living in the UK, which includes citizens of Cyprus and Malta;
- Irish citizens – those living in the UK have the vote in all elections;
- British citizens who have lived abroad for less than 15 years – this includes such voters living outside the EU;
- peers – it is a convention that they always are entitled to vote in referendums; and

⁴ Electoral Commission, *supra* n. 1, p. 10

⁵ Electoral Commission, *Referendum on the United Kingdom's membership of the European Union: Advice of the Electoral Commission on the referendum question included in the European Union (Referendum) Bill*, 29 October 2013, p. 10

⁶ See Electoral Commission, *Referendum on membership of the European Union: Assessment of the Electoral Commission on the proposed referendum question*, 1 September 2015

⁷ 'EU Referendum: Cameron accepts advice to change wording of question', Nicholas Watt & Rajeev Syal, *The Guardian*, 1 September 2015

- Commonwealth citizens in Gibraltar eligible to vote in European Parliament elections – because they vote within the South West England region in the European Parliament elections.

The following are *not* included in this franchise:

- 16 and 17 year-olds – although they did have a vote in the Scottish referendum;
- European Union citizens living in the UK – unless they come from the countries mentioned above (they also had the vote in the Scottish referendum); and
- British citizens living overseas for more than 15 years.

The franchise set out in the Bill is similar to that adopted in 1975 (although there were no overseas voters in elections at that time), which was also based on the House of Commons franchise, and that adopted for the 2011 referendum on the voting system. The franchise for the Scottish independence referendum in 2014 was that for Scottish Parliament and local government elections with the addition of 16 and 17 year-olds. That is, it included EU citizens living in Scotland but excluded Scots living in other parts of the UK.

Attempts to amend the Bill to include votes for 16 and 17 year-olds and to include EU citizens were rejected during the Commons' committee stage.⁸ But this may well not be the final word on the issue as the House of Lords will have the chance to consider these issues when it debates the Bill later in the year.

The Count and the “Double-lock” Issue

Clause 8 of the Bill establishes local authority areas as “voting areas” for the purposes of the referendum. This means that the final result will be available for district councils, unitary counties, Scottish and Welsh councils and London boroughs but not for parliamentary constituencies. From these figures it will be possible to calculate the result for the individual home nations.

Plaid Cymru and the SNP have called for there to be a requirement that all four home nations must vote for the UK to leave the EU if a referendum result is to be binding, sometimes referred to as a “double-lock”. Legally, a referendum result is not binding (there is no clause in the Bill requiring the Government or Parliament to accept the result) but the Prime Minister has made a political statement that the result will be accepted as binding by the Government. A double-lock is provided for in some federal countries (*e.g.* Australia) so as to ensure that a referendum carries wide support but there is no precedent in the United Kingdom.⁹

An attempt to amend the Bill on this point was rejected by the House of Commons at committee stage. But there can be little doubt that the political argument that the Scottish independence question will be re-opened if the majority votes for exit but Scotland does not will continue to be made.

⁸ HC Deb 18 June 2015, vol 597, col 559

⁹ Elise Rietveld, *European Union Referendum Bill 2015-16*, House of Commons Library Briefing Paper 07212, 3 June 2015, p. 28

It seems unlikely that issues such as a minimum threshold of the electorate to vote or a minimum threshold for a majority, which featured in the referendums on Scottish and Welsh devolution in the 1970s, will be raised.

Other Issues

The House of Lords amended the 2013 Private Members Bill to make the holding of a referendum contingent on the production of objective impact assessments on the effects of the UK leaving the EU and to require the Secretary of State to publish a statement on the UK's relationship with the EU which the government would seek to negotiate if the referendum result called for the UK to withdraw. There is no provision for either of these things in the current Bill but amendments to that effect were moved without success in the House of Commons; they may also be introduced in the House of Lords.

Finance & Campaigning

Schedule 1 of the Bill follows the formula laid down in the *Political Parties, Elections & Referendums Act 2000* in stating that there will be a "referendum period" during which donations and expenditure will be subject to regulation. This period cannot be decided before the date of the poll is determined. For the Scottish referendum, this period ran for three and a half months and each of the designated campaigns (see below) was permitted to spend up to £1.5 million over that period; scaled up that would be a limit of £12.32 million for a UK-wide poll.¹⁰ The 2000 Act specified an upper limit of £5 million for each of the designated campaigns but the Referendum Bill has raised that to £7 million.

Under the 2000 Act, any person or organisation (including businesses) can spend up to £10,000 in a referendum campaign without having to register with the Electoral Commission. Over that limit and they must register with the Commission, be on the electoral roll or be a British-based business and comply with the rules on the permissibility and declaration of donations.¹¹ No registered participant can spend more than £500,000 in the referendum period but there are separate rules for political parties (see below).

Section 108 of the 2000 Act establishes a system for the Electoral Commission to designate recognised bodies campaigning for the yes and no outcomes. If designation is secured, those bodies have a higher spending limit, the right to free delivery of an item of literature to every household through the Royal Mail, referendum broadcasts and the use of public premises (e.g. school halls) for public meetings. The Commission has the power to make grants of up to £600,000 each to these designated organisations and the current Bill amends that provision to enable it to pay these grants in instalments (schedule 1, clause 7).

Designation is not automatic; certain statutory tests about the breadth of support of the applicant body, its ability to campaign nationwide and its financial robustness must all be assessed by the Commission. Under the 2000 Act, if one campaign does not meet the required tests, then no organisation can be designated on either side; this happened in the Welsh Assembly powers referendum in March 2011.

¹⁰ Calculation by SEE, based on 2013 electoral statistics

¹¹ For guidance, see Electoral Commission, *Situations and procedures: Referendum on independence for Scotland 2014: Pre-poll reporting for referendum campaigners*, 4 January 2014

Schedule 1 of the Referendum Bill amends the 2000 Act for the EU referendum so that charities and bodies established by Royal Charter are explicitly permitted both to campaign and to give funds. This puts charities and bodies established by Royal Charter on a par with other organisations, businesses, political parties and individuals for this referendum. It will enable, for example, universities and scientific bodies to play a role in the referendum campaign if they wish to do so.

The regulation of donations by businesses falls under the *Companies Act 2006* and there is a complex interaction between that legislation and the 2000 Act. In essence, public companies require the consent of their shareholders to spend money on political activity, including donating to a referendum campaign.

The political parties are permitted by the 2000 Act to participate in the referendum and spend up to a certain amount, depending on their share of the vote at the most recent general election. For this referendum those limits will be: £7 million each for the Conservatives and Labour, £4 million for UKIP, £3 million for the Liberal Democrats and £700,000 each for the SNP, the Green Party and Plaid Cymru.¹²

The cost of holding the poll itself – that is, separate from the costs of the campaigns – was estimated at around £75 million in 2013, using the figure for the 2011 referendum on the voting system as the base line.¹³

Schedule 1, clause 25 of the Bill amends the 2000 Act to allow government (central and local) to spend money on the publication of material about the issues in the referendum as well as on encouraging people to vote. Despite objections from some MPs, the Government successfully resisted attempts to remove this provision but has promised to table amendments to the schedule to clarify what spending will be permitted.¹⁴

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¹² The formula can be found in Schedule 14 of the *Political Parties, Elections and Referendums Act 2000*; amended by the Bill

¹³ The cost in 2011 was £75.3 million: HC Deb 16 July 2013, vol 566, col 1019

¹⁴ HC Deb 16 June 15, vol 597, col 278



Senior European Experts

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