

Lisbon Treaty Referendum Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Foreign and Commonwealth Office, are to be published separately

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Hague has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Lisbon Treaty Referendum Bill are compatible with the Convention rights.

Lisbon Treaty Referendum Bill

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Make provision for a referendum on the Treaty of Lisbon signed at Lisbon on 13 December 2007 for the suspension of the European Union (Amendment) Act 2008 until the result of that referendum; and for its repeal if the Treaty is not approved in the referendum.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

REFERENDUM ON THE LISBON TREATY

1 Holding a referendum

- (1) A referendum shall be held throughout the United Kingdom and Gibraltar on the day specified by an order made by a Minister of the Crown.
- (2) The question to be asked in the referendum is—
“Should the United Kingdom approve the Lisbon Treaty?” Yes / No
- (3) A Minister of the Crown may by order make provision in relation to the referendum which—
 - (a) determines the referendum period for the purposes of Part 7 of the Political Parties, Elections and Referendums Act 2000 (c. 41); and

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- (b) requires ballot papers to be used by voters in Wales, after having set out the question and the possible answers in English, to set them out again, with equal prominence, in Welsh.
- (4) The question in Welsh is—
- “A ddylai'r Deyrnas Gyfunol gymeradwyo Cytundeb Lisbon?” Dylai /Na Ddylai
- (5) Every power of a Minister of the Crown to make an order under this section shall be exercisable by statutory instrument.
- (6) An order under this section may be made only if a draft of the order has been—
- (a) laid before Parliament; and
 - (b) approved by a resolution of each House.
- (7) The Schedule (which makes provision about the conduct of the referendum) has effect.

2 Entitlement to vote in the referendum

- (1) Subject to subsection (2), a person is entitled to vote in the referendum if, on the day it is held, he is—
- (a) an individual who would be entitled to vote as an elector at a parliamentary election in a constituency in the United Kingdom;
 - (b) a peer who would be entitled to vote as an elector at a local government election in an electoral area in Great Britain or at a local election in an electoral area in Northern Ireland; or
 - (c) a Commonwealth citizen who would be entitled to vote in Gibraltar as an elector at a European Parliamentary election.
- (2) A Minister of the Crown may by order made by statutory instrument make provision for the purposes of subsection (1) for disregarding alterations made after a specified date in a register of electors.
- (3) An order under subsection (2) may—
- (a) apply or incorporate, with or without modification, any provision of any enactment or subordinate legislation relating to elections;
 - (b) make different provision for different cases;
 - (c) make provision subject to such exemptions and exceptions as the Minister making the order thinks fit; and
 - (d) make such incidental, supplemental, consequential and transitional provision as that Minister thinks fit.
- (4) An order under subsection (2) may be made only if a draft of the order has been—
- (a) laid before Parliament; and

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- (b) approved by a resolution of each House.

- (5) In subsection (1)(b) “electoral area” means—
- (a) an electoral division or ward (or, in the case of a parish or community in which there are no wards, the parish or community) for which an election of councillors is held in England and Wales under the Local Government Act 1972 (c. 70);
 - (b) an electoral ward for which an election of councillors is held in Scotland under the Local Government etc. (Scotland) Act 1994 (c. 39); or
 - (c) an area for which an election of members of a district council is held in Northern Ireland under section 11 of the Electoral Law Act (Northern Ireland) 1962 (c. 14).

3 Legal challenge to the referendum result

- (1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast in the referendum, as certified—
- (a) by the Chief Counting Officer, or
 - (b) by a counting officer,
- unless the proceedings are brought in accordance with this section.
- (2) The proceedings may be brought—
- (a) in England and Wales, only by a claim for judicial review;
 - (b) in Scotland, only by a petition for judicial review;
 - (c) in Northern Ireland, only by an application for judicial review; or
 - (d) in Gibraltar, only by a claim for judicial review.
- (3) The court in England and Wales or Gibraltar must not give permission for a claim unless the claim form is filed before the end of the permitted period.
- (4) The court in Scotland must refuse a petition unless it is lodged before the end of the permitted period.
- (5) The court in Northern Ireland must refuse an application for leave to apply for judicial review unless it is lodged before the end of the permitted period.
- (6) In this section “the permitted period” means the period of six weeks starting with—
- (a) the date on which the Chief Counting Officer or (as the case may be) the counting officer gives a certificate as to the number of ballot papers counted and votes cast in the referendum; or
 - (b) if he gives more than one such certificate, the date of the last to be given.

PART 2**4 Repeal of the European Union (Amendment) Act 2008**

- (1) The European Union (Amendment) Act 2008 is suspended until an order is made under subsection (2).
- (2) As soon as possible after the end of the permitted period specified in subsection 3(6), or if any proceedings are brought in accordance with section 3, as soon possible after the final conclusion of any such proceedings including any appeals, a Minister of the Crown shall make an order by statutory instrument which shall either bring the European Union (Amendment) Act 2008 back into force if the condition in subsection (3) is satisfied, or shall repeal it if that condition is not satisfied.
- (3) The condition referred to in subsection (2) is
 - (a) The Chief Counting Officer has given a certificate under section 128(6) of the Political Parties, Elections and Referendums Act 2000 (c. 41) certifying the outcome of the referendum; and
 - (b) the total number of votes certified as cast in favour of the answer “Yes” exceeds the total number certified as cast in favour of the answer “No”.
- (4) If the European Union (Amendment) Act 2008 is repealed under this section, the provisions of the Acts and instruments repealed, revoked or amended by or under that Act shall again have effect as if that Act had never been passed.

PART 3

SUPPLEMENTAL

5 Financial provisions

- (1) There shall be paid out of money provided by Parliament—
 - (a) any expenditure incurred by a Minister of the Crown or government department by virtue of this Act; and
 - (b) any increase attributable to this Act in the sums payable out of such money under any other Act.
- (2) There shall be charged on and paid out of the Consolidated Fund—
 - (a) any sums required to meet expenditure of the Electoral Commission in accordance with an order under paragraph 6 of Schedule 3;

- (b) any sums required to meet expenditure falling to be so charged and paid in accordance with an order under paragraph 8 of that Schedule;
 - (c) any increase attributable to this Act in the sums so charged and paid under any other Act.
- (3) There shall be paid out of the National Loans Fund any increase attributable to this Act in the sums payable out of that Fund under any other Act.
 - (4) Sums received by a Minister of the Crown or government department by virtue of this Act must be paid—
 - (a) unless the Treasury determine that they must be paid into the National Loans Fund, into the Consolidated Fund; and
 - (b) if the Treasury do so determine, into the National Loans Fund.
 - (5) Subsection (4) does not apply where subordinate legislation made by virtue of this Act provides for the sums to be dealt with in another way.
 - (6) The consent of the Treasury is required for the making of provision for the purposes of subsection (5).

6 Supplemental provisions

- (1) This Act may be cited as the Lisbon Treaty Referendum Act 2009
- (2) In this Act—
 - “Chief Counting Officer” means the Chief Counting Officer for the referendum for the purposes of section 128(6) of the Political Parties, Elections and Referendums Act 2000 (c. 41);
 - “counting officer” means a counting officer in relation to the referendum for the purposes of section 128(5) of the Political Parties, Elections and Referendums Act 2000;
 - “enactment” includes Acts of the Scottish Parliament and Northern Ireland legislation and any enactment passed after the passing of this Act and before the entry into force of the EU Treaty;
 - “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;
 - “subordinate legislation” means any Order in Council, order, rules, regulations, scheme, warrant, byelaws or other instrument made (whether before or after the passing of this Act) under any Act, Act of the Scottish Parliament or Northern Ireland legislation;

“Treaty of Lisbon” means the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community signed at Lisbon on 13th December 2007;

- (3) Part 1 and, so far as it relates to that Part, this Part of this Act extend to Gibraltar.

SCHEDULE 1

CONDUCT OF THE REFERENDUM

Introductory

- 1 (1) In this Schedule “the 2000 Act” means the Political Parties, Elections and Referendums Act 2000 (c. 41).
- (2) Expressions used in this Schedule and in Part 7 of the 2000 Act have the same meanings in this Schedule as in that Part.

Encouraging voting

- 2 The Electoral Commission may do anything they think necessary or expedient for the purpose of encouraging voting at the referendum.
- 3 (1) For the purpose of encouraging voting at the referendum the Electoral Commission may, in particular, direct each counting officer to provide such information as may be specified in the direction to every person who is entitled, in the referendum, to vote in the counting officer’s voting area.
- (2) A direction under this paragraph may also include requirements as to the form and manner in which the information is to be sent.
- (3) A direction under this paragraph may not require the inclusion of additional information in a document or part of a document the form of which is prescribed by or under any enactment.
- (4) In sub-paragraph (1) “voting area”, in relation to a counting officer, means—
- (a) in the case of a counting officer appointed for a relevant area in Great Britain, that area;
 - (b) in the case of the Chief Electoral Officer for Northern Ireland in his capacity as a counting officer, Northern Ireland; and
 - (c) in the case of a counting officer for Gibraltar, Gibraltar.

Provision of information to voters

- 4 (1) This paragraph applies if the Electoral Commission have not, before the appropriate day, designated an organisation under section 108 of the 2000 Act (organisations to whom assistance is available under section 110 of that Act) in relation to each possible outcome of the referendum.

- (2) The Electoral Commission may take such steps as they think appropriate to provide such information for persons entitled to vote in the referendum as the Commission think is likely to promote awareness

among those persons about the arguments for each answer to the referendum question.

- (3) In this paragraph “the appropriate day” means—
- (a) the day specified for the purposes of this paragraph in an order under subsection (6) of section 109 of the 2000 Act;
 - (b) if no such order is made and one or more applications under that section are made in relation to each possible outcome of the referendum before the 29th day of the referendum period, the 43rd day of the referendum period; and
 - (c) in any other case in which no such order is made, the 29th day of the referendum period.
- (4) Information provided in pursuance of this paragraph must be provided by whatever means the Electoral Commission think is most likely to secure (in the most cost-effective way) that the information comes to the notice of everyone entitled to vote in the referendum.

Combination of polls

- 5 (1) A Minister of the Crown may by order make provision for, or in connection with, the combination of polls at the referendum with those at an election or at another referendum, or both.
- (2) An order under this paragraph may include provision creating criminal offences.

Payment of the charges and expenses of relevant officers by the Electoral Commission

- 6 (1) A Minister of the Crown may by order make provision for the payment by the Electoral Commission of any of the following—
- (a) the charges in respect of services properly rendered, or expenses properly incurred, in connection with the referendum by a relevant officer; and
 - (b) the sum equal to any increase in the superannuation contributions required to be paid by a local authority in respect of a person in consequence of a fee paid as part of those charges.
- (2) The order may include provision as to—
- (a) the services and expenses, or descriptions of services and expenses, in respect of which payment may be made;

- (b) the maximum amount to be paid or reimbursed in respect of such services and expenses, or descriptions of services and expenses;
 - (c) payments in advance; and
 - (d) accounts to be submitted.
- (3) Before making an order under this paragraph, the Minister in question must consult the Electoral Commission.
 - (4) The consent of the Treasury is required for the making of an order under this paragraph.
 - (5) In this paragraph “relevant officer” means—
 - (a) a counting officer; or
 - (b) a person appointed by the Chief Counting Officer or a counting officer to discharge all or any of his functions.

Accounts relating to expenditure under paragraph 6

- 7 (1) As soon as reasonably practicable after the holding of the referendum the accounting officer of the Electoral Commission must—
 - (a) prepare and sign an account of the payments made by the Commission in accordance with an order under paragraph 6; and
 - (b) submit a copy of the account, as signed, to the Comptroller and Auditor General.
- (2) The account must be in such form as the Treasury direct and must set out—
 - (a) the aggregate amount of charges and expenses falling within subparagraph 6(1)(a) in respect of which those payments have been made; and
 - (b) the aggregate amount of sums falling within paragraph 6(1)(b) in respect of which they have been made.
- (3) The Comptroller and Auditor General must—
 - (a) examine and certify the account submitted to him under this paragraph; and
 - (b) lay a copy of the account, as certified, and of his report on it before each House of Parliament.

Gibraltar

- 8 (1) A Minister of the Crown may by order make such provision as he considers appropriate for the purposes of, or in connection with, one or both of the following—
 - (a) the holding of the referendum in Gibraltar; and
 - (b) the regulation there of the conduct of the referendum.
- (2) The provision that may be included in an order under this paragraph

includes, in particular—

- (a) provision about any matter as respects which the Political Parties, Elections and Referendums Act 2000 (c. 41) makes provision for the United Kingdom in connection with referendums;
 - (b) provision for applying any provision made under section 7(2) to Gibraltar with modifications;
 - (c) provision about donations to political parties and others who campaign, or are proposing to campaign, for one or other of the possible outcomes to the referendum;
 - (d) provision imposing obligations in relation to the referendum on the providers of programme services;
 - (e) provision conferring functions in relation to the referendum on any public authority in Gibraltar that is responsible for regulating those providers;
 - (f) provision conferring jurisdiction on courts in Gibraltar that are specified in the order or which are determined in the manner so specified;
 - (g) provision conferring jurisdiction in relation to matters arising in Gibraltar on courts in the United Kingdom;
 - (h) provision for expenses incurred by specified persons in accordance with the order to be charged on and paid out of the Consolidated Fund.
- (3) Before making an order under this paragraph the Minister in question must consult both—
- (a) the Government of Gibraltar; and
 - (b) the Electoral Commission.
- (4) An order under this paragraph may—
- (a) provide for conduct to constitute a criminal offence under the law of Gibraltar;
 - (b) extend and apply to Gibraltar, with or without modification, the provisions of any enactment or subordinate legislation relating to any matter mentioned in sub-paragraph (2);
 - (c) modify any such enactment or subordinate legislation (including any imposing criminal liability) so far as it has effect in relation to any part of the United Kingdom;
 - (d) modify or apply or incorporate, with or without modification, the provisions of any legislation in force in Gibraltar relating to elections or referendums or to any such matter.
- (5) The capacity of the Gibraltar legislature to make law in relation to any matter in relation to which provision may be made under this paragraph is not affected by the existence of the power conferred by this paragraph.

- (6) But sub-paragraph (5) is not to be construed as restricting the operation in relation to a law made by the Gibraltar legislature of the Colonial Laws Validity Act 1865 (c. 63) (under which colonial laws are void if repugnant to provision made under an Act of Parliament).

Supplementary provision

- 9 This Act does not affect the power of the Secretary of State to make provision under section 129 of the 2000 Act (orders regulating the conduct of referendums) for or in connection with the referendum.
- 10 Section 126 of the 2000 Act (identification of promoter and publisher of referendum materials) does not apply to any material published for the purposes of the referendum if the publication is required under or by virtue of an order under section 129 of that Act.

Orders under this Schedule

- 11 (1) Every power to make an order under this Schedule shall be exercisable by statutory instrument.
- (2) An order under paragraph 5 or 8 may be made only if a draft of the order has been—
- (a) laid before Parliament; and
 - (b) approved by a resolution of each House.
- (3) An order under this Schedule may—
- (a) apply or incorporate, with or without modification, the provision of an enactment or subordinate legislation relating to donations, elections or referendums;
 - (b) make different provision for different cases, including different provision for different parts of the United Kingdom and different provision for Gibraltar;
 - (c) make provision subject to such exemptions and exceptions as the Minister making the order thinks fit; and
 - (d) make such incidental, supplemental, consequential and transitional provision as that Minister thinks fit.

Interpretation of Schedule

- 12 (1) In this Schedule—
- “donation” means anything which is or corresponds to a donation within the meaning of Part 4 of the Political Parties, Elections and Referendums Act 2000 (c. 41); and
- “programme services” means any services which would be programme services within the meaning of the Broadcasting Act 1990 (c. 42) if Gibraltar were part of the United Kingdom.

Lisbon Treaty Referendum Bill

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B I L L

Make provision for a referendum on the Treaty of Lisbon signed at Lisbon on 13 December 2007 for the suspension of the European Union (Amendment) Act 2008 until the result of that referendum; and for its repeal if the Treaty is not approved in the referendum.

*Presented by Mr Secretary Hague
supported by
The Prime Minister, Mr Chancellor of the Exchequer,
and Mr Mark Francois.*

*Ordered, by The House of Commons,
to be Printed, xx xxxxx 2009.*
