

These notes refer to the European Parliamentary Elections Act 1999 (c.1) which received Royal Assent on 14 January 1999

EUROPEAN PARLIAMENTARY ELECTIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

The enactment formula

14. The enactment formula reflects the fact that this Act was passed using the Parliament Act procedure.

Section 1: Number of MEPs, electoral regions and electoral system

15. This section deals with the number of Members of the European Parliament (MEPs), the electoral regions, the system of election, the franchise and the date of general elections. It replaces sections 1 to 3 of the European Parliamentary Elections Act 1978 (which was enacted as the European Assembly Elections Act but the title of which was changed by the European Communities (Amendment) Act 1986).
16. *Replacement section 1* explains that the Act (as now amended) makes provision for the election in the United Kingdom of Members of the European Parliament (MEPs).
17. *Replacement section 2* creates 12 European Parliamentary electoral regions in the United Kingdom # one in each of Scotland, Wales and Northern Ireland and nine in England. It gives the number of MEPs that each electoral region returns. The total number of United Kingdom MEPs (87) and their distribution among England (71), Scotland (8), Wales (5) and Northern Ireland (3) remains as before.
18. *Subsection 2(5)* adds a new Schedule 2 into the 1978 Act (contained in Schedule 1 of the present Act) which sets out the composition of the electoral regions in England and the number of MEPs to be returned by each.
19. *Replacement section 3* describes the electoral system to be used in Great Britain for elections to the European Parliament. It provides that
- elections in each electoral region in Great Britain shall be conducted using the regional list system set out in the rest of the section (section 3(1))
 - voters will be able to vote either for a registered political party or for an individual candidate, as named on the ballot paper (section 3(2)). the first seat in each region will be allocated to the party or individual candidate with the most votes (section 3(3))
 - all further seats will be allocated in the same way as the first except that a party's total vote is to be divided by the number of seats it has already been allocated, plus one (section 3(4))
 - if a party gains as many seats as there are candidates on its list, it should then be ignored in the process of allocating the remaining seats, as should individual candidates who have already been elected (section 3(5))

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- seats allocated to a party shall be filled by its candidate(s) in the order in which they appear on its list (section 3(6))
- fractions should be taken into account when making the seat allocation calculations (section 3(7)).

Replacement section 3 also:

- defines (section 3(8)(a)) a "registered party" as one registered under any law dealing with registration of political parties. (The current statute is the Registration of Political Parties Act 1998.)
 - provides (section 3(8)(b)) that references to a party's list of candidates relate to lists submitted under regulations governing nominations made under paragraph 2(3B) of Schedule 1 of the 1978 Act as amended by this Act (see paragraph 6 of Schedule 2 to this Act).
20. *Replacement section 3A* replicates paragraph 2(2) of the existing Schedule 1 to the European Parliamentary Elections Act 1978. Northern Ireland will continue to elect its MEPs using the single transferable vote.
21. *Replacement section 3B* introduces Schedule 1 to the 1978 Act, thereby replacing the original section 3 of that Act. This Schedule deals with supplementary matters relating to the holding of elections, filling of vacancies and disqualification.
22. *Replacement section 3C* replicates, with some minor adjustments, the rules for the franchise for elections to the European Parliament set out in the European Parliamentary Elections Act 1978. As before, those entitled to vote are:
- those entitled to vote in a parliamentary election, including British citizens overseas who are on a parliamentary electoral register (section 3C(2)). Section 3C(2)(b) replicates the effect of section 3(1) of the Representation of the People Act 1985 which Schedule 4 of the present Act repeals. (The 1978 Act does not contain an equivalent provision.)
 - peers entitled to vote in local government elections (section 3C(3));
 - peers resident outside the UK who may vote by virtue of having been resident in the UK in the preceding 20 years (section 3C(4)); and
 - EU citizens who have opted to vote in the United Kingdom in elections to the European Parliament (section 3C(5)).

Replacement section 3C also

- allows regulations to be made to provide that alterations to the register of electors made after a certain date are to be disregarded for the purpose of the franchise for European Parliamentary elections (section 3C(6)); and
 - defines the term "local government election" as including a municipal election in the City of London; that is an election to the office of mayor, alderman, common councilman or sheriff, or the election of any officer elected by the mayor, aldermen and liverymen in common hall (section 3C(7)). There was no provision equivalent to section 3C(7) in the 1978 Act.
23. *Replacement section 3D* replicates the effect of paragraph 3(1) and (5) of the 1978 Act. It provides that the date of European Parliamentary general elections will be set out in an order made by the Secretary of State which is to be laid before Parliament after being made.

Section 2: Electoral regions in England

24. This section replaces Schedule 2 of the European Parliamentary Elections Act 1978 with the provisions in Schedule 1 to this Act (see below). Schedule 2 of the 1978 Act dealt with the role of the Boundary Commissions in putting forward proposals for European Parliamentary constituencies and is redundant as a consequence of the present Act.

Section 3: Amendments and repeals

25. This section introduces Schedules 2, 3 and 4 (see below).

Section 4: Expenses

26. This section provides for the costs of European Parliamentary elections to be met, as in the past, from the Consolidated Fund. It also provides for the Consolidated Fund to meet the costs of introducing the new electoral system. There will be one-off costs associated with training those responsible for the conduct of elections in how the new system will operate. Thereafter, it should not be any more expensive to conduct elections to the European Parliament in Britain using the new system. And in the longer term there will be savings as the Parliamentary Boundary Commissions for England, Scotland and Wales will no longer be required to conduct reviews of European Parliamentary constituency boundaries.

Section 5: Commencement

27. This section provides for the Act to come into force on a day to be specified by the Secretary of State in a statutory instrument which may specify different dates for commencement of different parts of the Act. It also allows the order to contain transitional provisions and savings.

Schedule 1: New Schedule 2 to the European Parliamentary Elections Act 1978

28. This Schedule replaces the existing Schedule 2 to the European Parliamentary Elections Act 1978. It deals with electoral regions.
29. *Paragraph 1* provides that the electoral regions in England will be those set out in the table at the end of the Schedule. *Paragraph 3* provides that the number of MEPs elected for each English region is the number set out in the table at the end of the Schedule.
30. *Paragraph 2* provides that references in the table to local government areas mean the local government area as it currently exists. Paragraph 2(2) delays the effect of the changes until the next general election of MEPs.
31. *Paragraph 4* relates to changes in the number of MEPs elected in each region.
- It requires the Secretary of State to calculate whether the ratio of electors to MEPs is as nearly as possible the same in every English region. This is to be done as soon as possible after 16 February (the date on which new electoral registers come into force) in each pre-election year (defined in paragraph 4(6) as the year prior to a general European Parliamentary election). The number of electors registered on 16 February in the pre-election year is to be used for making these calculations (paragraph 4(3)). Paragraphs 4(4) and 4(5) define a registered elector.
 - If the calculation shows that the distribution of MEPs should be changed, the Secretary of State must make an order making the necessary adjustments. The order cannot alter the total number of English MEPs (paragraph 4(2)), only change their distribution among the English electoral regions. The order is subject to the negative resolution procedure (paragraph 4(7)).

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- Paragraph 4(6) defines pre-election year as any year later than 2002 which immediately precedes a year in which a general European Parliamentary election is to be held. The present Act sets out the initial allocation of seats to the English regions which will apply for the 1999 European Parliamentary elections. The next elections after that will be in 2004, which makes 2003 the first “pre-election year”.

Schedule 2: Minor and Consequential Amendments of Schedule 1 to the European Parliamentary Elections Act 1978

32. This Schedule amends the existing Schedule 1 to the European Parliamentary Elections Act 1978.
33. *Paragraph 2* replaces the existing title of Schedule 1 to the European Parliamentary Elections Act 1978 with the new title "System of Elections &c”.
34. *Paragraph 3* removes paragraph 1 of Schedule 1 to the 1978 Act.
35. *Paragraph 4* removes paragraphs 2(1) and (2) of Schedule 1 to the 1978 Act, as substituted by section 1 of the present Act and Schedule 1 to that Act respectively.
 - Paragraph 2(1) concerned those who may be permitted to vote in elections to the European Parliament and is superseded by the new section 3C of the 1978 Act substituted by section 1 of the present Act.
 - Paragraph 2(2) concerned the electoral system in Northern Ireland. It is replaced by identical provisions in the new section 3A of the 1978 Act substituted by section 1 of the present Act.
36. *Paragraph 5* removes the reference to the registration of electors and limitations of candidates' expenses in paragraph 2(3)(a) of Schedule 1 to the European Parliamentary Elections Act 1978 (which deals with the power of the Secretary of State to make regulations). Limitation of candidates' expenses (and parties' expenses) is henceforth dealt with by the new paragraph 2(3A) inserted by paragraph 6 of this Schedule. The reference to registration of electors included in the 1978 Act has never been used and is not needed.
37. *Paragraph 6* inserts two new sub-paragraphs into paragraph 2 of Schedule 1 to the 1978 Act.
 - New sub-paragraph (3A) permits the Secretary of State to make regulations to:
 - limit election expenses (including expenses incurred in relation to the election as a whole);
 - allocate seats in the event of tied votes; and
 - prevent people from standing more than once at a European Parliamentary general election. A person is considered to be standing for election if nominated as an individual candidate or included in a list of candidates submitted by a party.
38. New sub-paragraph (3B) requires regulations made under paragraph 3 to allow registered political parties to be nominated for an election in electoral regions in Great Britain. Such nominations should be accompanied by a list of candidates containing no more names than there are seats to be filled in the region.
39. *Paragraph 7* removes paragraph 2(4)(c) of Schedule 1 to the 1978 Act which permitted regulations to be made to amend provisions relating to the registration of Parliamentary and local government electors. This power in the 1978 Act has never been used and is not needed.

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40. *Paragraph 8* replaces paragraph 3 of Schedule 1 to the 1978 Act which dealt with the timing of general elections and by-elections to the European Parliament and with the circumstances in which a by-election is to be held.
41. The timing of general elections is now covered by new section 3D of the 1978 Act inserted by section 1 of the present Act. Paragraph 8 creates a new paragraph 3 in Schedule 1 of the 1978 Act to deal with vacancies. It provides that regulations made by virtue of paragraph 2 of Schedule 1 to the European Parliamentary Elections Act 1978:
- shall prescribe the procedure to be followed when a seat is or becomes vacant;
 - may include provisions requiring a by-election to be held in certain circumstances and may provide for consequential modifications to the provisions in section 3 of the 1978 Act (the revised form of which is inserted by section 1 of the present Act) concerning the electoral system; and
 - may also require that when a seat which was filled by a candidate from a party list becomes vacant it should, in specified circumstances, be filled from the list without a by-election.
42. It is the Government's intention that when a seat becomes vacant as the result of the death or resignation of a candidate originally elected on a party list, it should be filled by drawing the next eligible and willing person from that list. Where the list has been exhausted or where the vacancy arises as a result of the death or resignation of an individual candidate, a by-election will be held.
43. New paragraph 3(3) provides that where the regulations provide for a by-election to be held, it will take place within the period specified in the regulations and on a day specified in an order made by the Secretary of State. However, the regulations may also allow the Secretary of State not to set a day for a by-election in certain circumstances # for example, if the next general European Parliamentary election is imminent.
44. New paragraph 3(4) provides that an order made by the Secretary of State setting a date for a by-election shall be laid before Parliament after it has been made.
45. *Paragraph 9* replaces paragraph 4 of Schedule 1 to the European Parliamentary Elections Act 1978 (which dealt with returning officers and their staff). The new paragraph 4 provides that each electoral region will have a returning officer. He or she will be designated for the purpose by order of the Secretary of State in England, Scotland and Wales. In Northern Ireland the returning officer will be the Chief Electoral Officer.
- New paragraph 4(2) allows regulations made under paragraph 2 of Schedule 1 of the 1978 Act to confer functions relating to the conduct and administration of the elections on returning officers for European Parliamentary electoral regions and on those who serve as acting returning officers and (in Scotland) returning officers for Parliamentary elections.
 - New paragraph 4(3) requires councils in relevant areas to place their staff at the disposal of returning officers and acting returning officers to enable them to perform their functions. New paragraph 4(4) defines "relevant area" as a district or London borough in England, a county or county borough in Wales and a local government area in Scotland.
46. *Paragraph 10* updates paragraph 5 of Schedule 1 to the 1978 Act (which deals with disqualification from office). It replaces all the references to "representative to" the European Parliament with "Member of" the European Parliament and all references to European Parliamentary "constituencies" with references to "electoral regions".
47. It also replaces sub-paragraph (4) which deals with the position of those who are disqualified from serving as MEPs. If anyone returned as an MEP is subsequently disqualified either from being an MEP or from being an MEP for the region for which

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he has been returned, his return shall be void and the seat shall be vacant. This applies whether the MEP was returned at a general election or as the result of a casual vacancy.

48. *Paragraph 11* amends paragraph 6 of Schedule 1 to the 1978 Act, which is concerned with judicial proceedings relating to the allegation that an MEP is legally disqualified from holding such an office. It:
- increases from £200 to £5,000 the maximum amount that the court may direct that any person bringing such a case must lodge with the court for security, to cover the costs of such proceedings (the figure of £200 dates back to at least 1957, whereas the corresponding sum for parliamentary election challenges is £5,000);
 - replaces each reference to a European Parliamentary "constituency" with a reference to an "electoral region";
 - replaces each reference to a "representative to" the European Parliament with a reference to a "Member of" the European Parliament.
49. *Paragraph 11* also inserts two new sub-paragraphs in paragraph 6 of Schedule 1 to the 1978 Act. These enable the Secretary of State to make an order changing the maximum amount that must be lodged with the court for security when such a challenge is made. The orders are subject to the negative resolution procedure.

Schedule 3: Minor and consequential amendments

50. These amendments repeal passages in legislation which are subsumed or overtaken by the changes made by the present Act; or substitute new terminology for old ("MEP" for "representative to the European Parliament"; "electoral region" for "constituency"). The legislation amended is:
- the European Parliamentary Elections Act 1978;
 - the European Parliament (Pay and Pensions) Act 1979;
 - the Representation of the People Act 1985; and
 - the [European Parliamentary Elections \(Changes to the Franchise and Qualification of Representatives\) Regulations 1994 \(S.I.1994/342\)](#)

Schedule 4: Repeals and Revocations

The European Parliamentary Elections Act 1978

51. The following provisions of this Act are repealed.
- Section 8(1) states that the provisions in the Act apply only to the election of MEPs in the United Kingdom. This is now clear from the amendments made by the present Act.
 - Schedule 1, paragraph 1 deals with the number of members of the European Parliament to be elected in the United Kingdom. It is replaced by the new section 2 inserted by section 1 of the present Act.
 - Schedule 1, paragraph 2(1) deals with the franchise for elections to the European Parliament. It is replaced by the new section 3C inserted by section 1 of this Act.
 - Schedule 1, paragraph 2(2) sets out the voting system in Northern Ireland. It is replaced by identical provisions in the new section 3A inserted by section 1 of the present Act.
 - In Schedule 1, paragraph 2(3)(a) the words "(including the registration of electors and the limitation of candidates' election expenses)". Paragraph 2(3) gives the Secretary of State power to make regulations. Specific references to election

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expenses are now contained in the new sub-paragraph (3A) of paragraph 2 of Schedule 1 to the Act which is set out in Schedule 2 to the present Act.

- Schedule 1, paragraph 2(4)(c) permits regulations to be made which amend provisions relating to the registration of Parliamentary and local government electors. This power has never been used and is no longer needed.

The European Parliamentary Elections Act 1981

52. This Act deals with European Parliamentary constituency boundaries. It is no longer relevant since constituencies are to be replaced by electoral regions.

The Representation Of The People Act 1985

53. [Section 3\(1\)](#) deals with the inclusion of British citizens overseas who are registered to vote in Parliamentary elections in the franchise for European Parliamentary Elections. It is superseded by the new [Section 3C\(2\)](#) of the 1978 Act inserted by section 1 of this Act.

The Parliamentary Constituencies Act 1986

54. [Schedule 3](#), paragraph 5 of this 1986 Act amends Schedule 2 to the European Parliamentary Elections Act 1978. The whole of Schedule 2 to the 1978 Act is replaced by the Schedule set out in Schedule 1 to this Act.

The European Parliamentary Elections Act 1993

55. [Section 1](#) deals with the number of representatives to the European Parliament. This is superseded by the provisions of the new section 2 of the 1978 Act inserted by section 1 of this Act.
56. [Section 2](#) and the Schedule are concerned with European Parliamentary constituencies and are no longer relevant since constituencies are to be replaced by electoral regions.

The Local Government (Wales) Act 1994

57. [Schedule 16](#), paragraph 54(1) amends paragraph 4 of Schedule 1 to the 1978 Act. This is replaced by the new paragraph 4 of Schedule 1 set out in paragraph 9 of Schedule 2 to this Act.
58. [Schedule 16](#), paragraph 54(2) amends paragraph 5A of Schedule 2 to the 1978 Act. The whole of Schedule 2 to the 1978 Act is replaced by the Schedule set out in Schedule 1 to this Act.

The European Parliamentary Elections (Changes To The Franchise And Qualification Of Representatives) Regulations 1994

59. Regulation 4(3) deals with candidates' consent to nomination. It is being revoked because new arrangements will be needed to enable candidates standing on a party list to indicate their consent to nomination.