

# PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Voting system for parliamentary elections**

##### ***Section 1: Referendum on the alternative vote system***

26. *Section 1* provides that a referendum on whether to change the voting system for parliamentary elections is to be held on 5 May 2011 unless before that date the Minister makes an Order to appoint an alternative date that is before 31 October 2011. Such an Order will be subject to the affirmative resolution procedure and may only be made if the Minister is satisfied that it is impossible or impracticable for the referendum to be held on 5 May, or that it cannot be conducted properly if held on that day. Any Order may include supplemental or consequential provision and may, for the purposes of making such provision, amend or modify the Act or other primary or secondary legislation. Subsections (7) and (8) set out the question that will appear on the ballot papers in English and Welsh. Subsection (9) gives effect to Schedule 1 to the Act (described in detail below) which makes further provision for the purposes of this referendum.

##### ***Section 2: Entitlement to vote in the referendum***

27. *Section 2* provides for who is entitled to vote in the referendum. Under *subsection (1)(a)*, a person is entitled to vote in the referendum if, on the date of the referendum, he or she would be entitled to vote in a parliamentary election. This includes a person who is entitled to vote in a parliamentary election as an overseas elector by virtue of section 1 of the Representation of the People Act 1985.
28. *Subsection (1)(b)* enables a peer, who is disqualified by common law from voting in parliamentary elections, to vote in the referendum if, on the date of the referendum, he or she would be entitled to vote in a local government election. Subsection (1)(b) also enables a peer to vote in the referendum if he or she is entitled to vote at a European Parliamentary election by virtue of section 3 of the Representation of the People Act 1985. This latter category comprises peers who are resident outside the UK.

##### ***Section 3: Conduct of the referendum***

29. *Section 3* provides that the referendum must be conducted in accordance with the rules set out in *Schedule 2* to the Act. *Section 3* also gives effect to *Schedules 3 and 4* which provide further detail about the conduct of the referendum. *Schedule 3* relates to absent voting in the referendum and *Schedule 4* provides for the application of provisions of existing electoral legislation for the purpose of the referendum. These Schedules are described in more detail below.

#### ***Section 4: Combination of poll***

30. *Section 4* provides that the poll for the referendum must be combined with (and only with) the polls for the following elections or local referendums held on the same day: local authority and mayoral elections and local government referendums in England; the Welsh Assembly general election; the Scottish parliamentary general election; and the Northern Ireland Assembly general election and local elections in Northern Ireland. Section 4 also gives effect to Schedules 5 to 8 which provide detail about the conduct of the combined polls in each of England, Wales, Scotland and Northern Ireland respectively. These Schedules are described in more detail below. Subsection (8) deals with the position if, under existing legislative powers, the date of the poll for any of those elections is changed. Subsection (9) enables provision to be made by Order in a case where a new date for the referendum is fixed by Order under the power given by section 1 and that new date is also the date of another poll to be held in the United Kingdom or any part of it. Any Order may provide that in those circumstances the referendum is not to be taken together with any such poll. An Order may include supplemental or consequential provision, including provision modifying or amending the Act or any other provision in primary or secondary legislation.

#### ***Section 5: Press comment etc not subject to spending controls***

31. *Section 5* provides that, for this referendum, expenses incurred in the publication of non-advertising material in a newspaper or periodical, or in a broadcast by the BBC, S4C and other licensed broadcasters are not “referendum expenses” for the purposes of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”). This means that such expenses will not be caught by the spending restrictions that the 2000 Act places on individuals or organisations that campaign in this referendum.

#### ***Section 6: Control of loans etc to permitted participants***

32. *Section 6 and Schedule 9* have the effect of regulating loans made to permitted participants who campaign in the referendum on the voting system. The controls are similar to those made in relation to registered political parties by Part 4A of the 2000 Act. The provisions of the Act do not apply to a loan to a registered political party that is not a minor party, which would be governed by Part 4A of the 2000 Act. Schedule 9 to the Act contains provisions preventing a permitted participant from entering into certain regulated transactions with persons who are not “authorised participants” (e.g. individuals who are not on the electoral register). It also imposes certain reporting requirements. *Subsection (1)* of section 6 introduces the Schedule. *Subsection (2)* ensures that permitted participants provide a statement of regulated transactions in their return about referendum expenses. *Subsection (4)* ensures that the addresses of individuals who enter into regulated transactions with permitted participants are made available for public inspection (and this corresponds to the rules in the 2000 Act about donations). *Subsection (5)* ensures that regulated transactions are aggregated with donations for the purpose of determining whether the donations need to be reported. *Subsection (6)* ensures that the civil sanctions made available to the Electoral Commission by Schedule 19C to the 2000 Act may be imposed by the Commission in respect of the offences contained in paragraphs 8(1) to (12). *Subsections (7) and (8)* ensure that the provisions about reporting apply to transactions entered into before section 6 comes into force, but the provisions about the consequences of entering into unauthorised transactions (or making a transfer of an interest in a transaction to an unauthorised entity) and the offences relating to doing so do not apply to any transaction entered into (or transfer made) before the section comes into force.

#### ***Section 7: Interpretation***

33. This section defines certain terms used in Part 1 of the Act. This includes providing that the voting area for the referendum on the voting system will be a district in England for which there is a district council, a county in England in which there are no districts

with councils, a London Borough, the City of London, the Isles of Scilly, a constituency for the National Assembly for Wales, a constituency for the Scottish Parliament and Northern Ireland. Under this section, a single definition of “registration officer” is also provided throughout Part 1 of the Act.

### ***Section 8: Commencement or repeal of amending provisions***

34. This section deals with the coming into force, or repeal, of the provisions in the Act that are referred to as the “alternative vote provisions”. The “alternative vote provisions” are section 9, Schedule 10 and Part 1 of Schedule 12; and the effect of these provisions would be to alter the voting system for parliamentary elections to the alternative vote system.
35. If there is a “yes” vote in the referendum (that is, more people vote yes than vote no) then the alternative vote provisions must be brought into force on the same day as the coming into force of an Order in Council giving effect to the Boundary Commissions' recommendations for altering the parliamentary constituencies made under the revised scheme in Part 2 of the Act.
36. If there is a “no” vote in the referendum, the alternative vote provisions must be repealed.
37. *Subsection (3)(b)* makes a saving provision. It provides that where an Order is made to bring the AV provisions into force the Order will not apply to any election which takes place before the first general election that is held after AV comes into force. The effect is that a general election, rather than a by-election, will be the first election to be held using AV.

### ***Section 9: The alternative vote system: amendments***

38. *Subsections (1) and (2)* insert two new rules into the Parliamentary Elections Rules contained in Schedule 1 to the 1983 Act, which set out the key practical implications of the alternative vote system: how votes would be given (new rule 37A) and how they would be counted and the winning candidate determined (new rule 45A). *Subsection (2)* also inserts new rule 45B which stipulates the information to be given after each stage of counting.
39. Under new rule 37A (inserted by *subsection (1)*), voters mark candidates on the ballot paper in order of preference, using 1, 2, 3 etc. Voters may mark as many preferences as they wish, up to the number of candidates standing in the constituency at the election.
40. *Subsection (2)* inserts a new rule 45A which sets out how votes are to be counted under the alternative vote system. The key principle (contained in new rule 45A(1)) is that votes should be counted to give effect to the preference or preferences that voters express when marking their ballot paper. The candidate who is elected is determined by allocating votes in line with those preferences. It may be necessary for more than one stage of counting to take place for this to happen. The remainder of new rule 45A describes the circumstances in which more than round may be needed and what is to happen during each round.
41. Paragraph (2) of the new rule provides that if after the counting of voters' first preferences, any candidate has more votes than the other candidates put together (ie more than 50% of the votes) then that candidate is elected.
42. Under paragraph (3) if no candidate has more than 50% of the votes at this stage, then there would be a further round of counting. The candidate with fewest votes is eliminated. If voters who chose that candidate as their first preference also expressed other preferences each vote originally allocated to the eliminated candidate is reallocated to the candidate remaining in the count that the voter ranked highest. Where a ballot paper does not express any further preferences, or the preferences relate to candidates who have already been eliminated, the ballot paper plays no further part

in the counting. If a candidate has more than 50% of the votes left in the count once this reallocation of votes has taken place, the candidate is elected. If not, then a further round of counting will take place and the candidate now with fewest votes is eliminated and their votes reallocated. This process continues until one candidate has more than 50% of the votes left in the count and is elected.

43. New rule 45B (also inserted by *subsection (2)*) requires the returning officer to make publicly available a record of all the information listed in that rule at the end of each counting stage (except the final stage, at which the candidate is elected and the result is declared under rule 50) so that candidates and their agents and other persons at the count are aware of the state of play at the end of each counting stage.
44. *Subsection (4)* gives the Lord President of the Council and the Secretary of State an order-making power to make amendments to primary or secondary legislation that are consequential on amendments made by this section or Schedule 10. An order made under this subsection would be subject to the affirmative resolution procedure. Before making an order, *subsection (8)* requires the Lord President of the Council or Secretary of State to consult the Electoral Commission.

## **Part 2: Parliamentary constituencies**

### ***Section 10: Boundary Commissions: Reports etc***

45. *Section 10* amends sections 3 and 4 of the 1986 Act, altering the frequency and timing of reviews of the parliamentary constituencies. *Subsection (3)* amends section 3 of the 1986 Act so as to require the Boundary Commissions to submit boundary reports to the Minister before 1 October 2013 and every five years subsequently. This replaces a requirement to report every 8 to 12 years. *Subsection (4)* amends section 3 of the 1986 Act so as to require the Boundary Commissions to submit progress reports to the Speaker of the House of Commons while a report is pending. *Subsection (5)* removes the ability for Boundary Commissions to produce interim reports in relation to particular areas between general reviews. Because reviews will be more frequent, *subsection (5)* takes away the power of Boundary Commissions to submit reports on individual constituencies. *Subsection (6)* amends section 3 of the 1986 Act so as to require the Minister to lay before Parliament a draft of an Order in Council for giving effect to the recommendations in the boundary reports as soon as may be after the submission of the last of the four reports, rather than, as now, as each report is submitted.
46. If a Boundary Commission notifies the Minister that their recommendations are to have effect with modifications, and gives reasons for the modifications, the Order in Council must give effect to the recommendations with those modifications rather than, as now, the Secretary of State having a power to modify recommendations when giving effect to them. *Subsection (9)* adds the Chief Survey Officer of Land and Property Services as an assessor to the Boundary Commission for Northern Ireland, amending paragraph 5 of Schedule 1 to the 1986 Act. *Subsection (10)* broadens the scope of the functions of Assistant Commissioners from inquiring into and reporting on matters at the request of the Boundary Commissions to assisting the Commissions in carrying out any of their functions. This would increase the flexibility the Boundary Commissions have in what they might ask the Assistant Commissioners to do.

### ***Section 11: Number and distribution of seats***

47. *Section 11* replaces the rules under which the four Boundary Commissions make recommendations as to how their part of the UK should be divided into constituencies, which are currently set out in Schedule 2 to the 1986 Act. The section substitutes a new Schedule 2. *Rule 1* of the new Schedule 2 sets the number of constituencies in the UK at 600. *Rule 2* provides for there to be less variation in the size of the electorate in each constituency than at present: the electorate of each constituency is required to be within 5% either side of the UK electoral quota. The UK electoral quota is the number of

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people in the UK on the electoral register published two years and ten months before the date by which the Commissions' reports are to be submitted less the electorate on that date of the protected constituencies named in Rule 6, divided by 596, i.e. the number of constituencies in the UK (600) less the four protected constituencies in *rule 6*.

48. *Rules 3 and 8* prevent the Boundary Commissions from recommending constituencies that cross national borders and set out the procedure for calculating the number of constituencies which there are to be in each part of the UK. This is to be done by the Sainte-Laguë method. Under this method, the first constituency is allocated to the part of the UK with the largest electorate (that is to say, the part of the UK with the largest registered electorate). The next constituency and subsequent constituencies are allocated in the same way, except that the electorate of a part of the UK to which one or more constituencies have already been allocated is divided by twice the number of seats already allocated to that part of the UK plus one. If two (or more) parts of the UK are equally entitled to a seat (or seats), the seat is allocated to that nation, of those that are tied, with the smaller or smallest electorate. The preserved constituencies set out in *Rule 6* and their electorates are not included in the allocation process.
49. *Rule 4(1)* imposes a geographical size limit for constituencies of 13,000 square kilometres. This means that the Boundary Commissions may not draw up a constituency which is significantly geographically larger than the current largest constituency. *Rule 4(2)* provides for an exemption from the lower parity target of 95% of the UK electoral quota for a constituency larger than 12,000 square kilometres, if a Boundary Commission is satisfied that it is not reasonably possible for the constituency to comply with the parity rule. This resolves the problem that might be faced by a Boundary Commission should it be unable to draw up a constituency that meets both the parity rule and the size limit in a sparsely populated area.
50. *Rule 5* sets out factors which the Boundary Commissions may take into account in determining constituency boundaries (subject to their complying with the electoral parity rule and the rule about the maximum geographical size of constituencies). The factors are similar to those in the 1986 Act. They may consider special geographical considerations, such as the size, shape and accessibility of a constituency. The Commissions may also take account of local government boundaries, including those of wards. Because of the parity principle in *rule 2* constituencies are likely to cross such boundaries more frequently than in the past, but where a Commission has two or more options for recommending how a constituency should be drawn, all of which adhere to the principle in *rule 2*, but only one of which would not involve crossing the boundary of a local government area, the rule would enable the Commission to recommend that option. As at present, the Commissions may consider local ties such as social, commercial, cultural and transport links that would be broken by changes in constituencies and, in the case of reviews after the first one following the passing of the Act, any inconveniences which would result from a boundary change. They may also take the boundaries of existing constituencies into account.
51. *Rule 6* provides for the two Scottish island constituencies of Na h-Eileanan an Iar (the Western Isles) and Orkney and Shetland to be preserved, and for two constituencies on the Isle of Wight. The electorates of those four constituencies are to be removed from the UK electorate and the Scottish electorate (for Na h-Eileanan an Iar and Orkney and Shetland) and the English electorate (for the Isle of Wight) for the purposes of calculating the UK electoral quota.
52. *Rule 7* makes provision to compensate for the potential impact of *rules 3 and 8* on the average size of constituencies in Northern Ireland. Since the result of *rule 3* is that a whole number of constituencies is allocated to each part of the UK (which is done as set out in *rule 8*), it will almost always be the case that the number of constituencies allocated to a part of the UK is very slightly higher or lower, by a fraction of a constituency, than its purely theoretical entitlement. This may have a consequential effect on the average size of a constituency in Northern Ireland which,

because of the smaller electorate in Northern Ireland compared to other parts of the UK, might constrain the ability of the Boundary Commission for Northern Ireland (BCNI) to recommend constituencies within the parity principle in *rule 2*. *Rule 7* therefore provides that if the difference between the Northern Ireland electorate and the UK electoral quota multiplied by the number of seats in Northern Ireland exceeds one third of the UK electoral quota, and in the opinion of the BCNI it would unreasonably impair their ability to take into account the factors set out in *rule 5*, or would make the preparation of their report so complex that they would be unable to comply with the deadline for the submission of their report in section 3(2) of the 1986 Act, then the BCNI may propose constituencies that vary from the upper or lower limits imposed by *rule 2* by a fixed amount, being the difference between the UK electoral quota and the electorate of Northern Ireland as it exists on the review date divided by the number of seats allocated to Northern Ireland under *rules 3 and 8*.

53. *Rule 9* is an interpretation provision.

### ***Section 12: Boundary Commission proposals: publicity and consultation***

54. *Section 12* sets out the Boundary Commissions' responsibilities for publicising their provisional recommendations, and the consultation process once those recommendations have been publicised. *Subsection (1)* substitutes a new section 5 in the 1986 Act.
55. Subsection (1) of new section 5 requires the Commissions to inform people in the proposed constituencies of the provisional recommendations. It gives the Commissions discretion as to how to inform people. This replaces the existing requirement to give notification through a local newspaper. There is also a requirement to make a copy of the provisional recommendations available for inspection within the proposed constituency, except where no alteration is proposed to a constituency. There is provision for an initial twelve-week consultation period during which written representations on the provisional recommendations may be submitted to the relevant Commission. Subsection (1)(b) of new section 5 makes provision for public hearings to be held between the fifth week and the tenth week of the initial twelve-week consultation period. Subsection (3) of new section 5 provides that public hearings will be subject to the further provisions in Schedule 2A to the 1986 Act (set out at Schedule 11 to this Act). Subsection (4) of new section 5 requires the Boundary Commissions to publish, in such manner as they see fit, the representations made during the initial consultation period and records of public hearings. It also makes provision for a secondary four-week consultation period in which people can comment on representations made during the initial twelve-week consultation. Subsections (5) and (6) of new section 5 require that, if a Boundary Commission revises its provisional recommendations following the secondary four-week consultation period, the revised recommendations will also have to be publicised and consulted upon, during a period of 8 weeks; but this does not apply if the Commission revises its recommendations a second time. Subsection (7) of new section 5 provides that the steps taken by Boundary Commissions to publicise the secondary four-week consultation and any consultation on revised recommendations need not be of the same type as those taken to publicise the initial provisional recommendations and twelve-week consultation period. Subsection (8) of new section 5 requires the Boundary Commissions to take into consideration all written representations duly made and representations made at public hearings. Subsection (9) of new section 5 provides that, other than as set out in new section 5 and new Schedule 2A, the Boundary Commissions may not hold public inquiries or public hearings. Subsection (10) of new section 5 sets out that, where the Boundary Commissions publish general information on their proposed approach to a review, it is for them to decide whether and how to invite representations on this.
56. *Subsection (2)* provides for the insertion of *Schedule 11* of this Act into the 1986 Act as new Schedule 2A. *Subsection (3)* repeals section 6 of the 1986 Act, thereby removing the practice of holding local inquiries.

### ***Section 13: National Assembly for Wales***

57. Section 2 of the Government of Wales Act 2006 specifies that the National Assembly for Wales constituencies are the parliamentary constituencies in Wales. *Subsections (1) and (2) of section 13* of the Parliamentary Voting System and Constituencies Act 2011 amend that section to provide that the Assembly constituencies are the constituencies specified in the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006, as amended. The effect is that any future changes to Parliamentary constituencies made under the new rules introduced by this Act (see sections 10 to 12) would not change Assembly constituencies.
58. *Subsections (3) to (8)* make transitional provision to deal with interim reviews of constituencies in Wales which are ongoing or have not been implemented at the time when Part 2 of the Act comes into force. Where the Boundary Commission for Wales has informed the Secretary of State or Lord President of the Council of its intention to consider making a report on any constituency in Wales but has not delivered it at the time Part 2 of the Act comes into force, the Commission may give notice in writing to the Secretary of State or Lord President of the Council of its intention to proceed with the report and must then comply with the requirements which applied before the coming into force of Part 2 of the Act. Where the Commission has delivered a report recommending alterations to constituencies but no Order giving effect to its recommendations has been made, an Order must be laid before Parliament in accordance with the previous requirements. Such an Order will affect National Assembly for Wales constituencies (and, where appropriate, electoral regions) but not parliamentary constituencies.

### ***Section 14: Review of reduction in number of constituencies***

59. *Section 14* requires the Lord President of the Council or the Secretary of State to make arrangements for a committee, a majority of whose members are to be Members of the House of Commons, to carry out a review into the effects of the reduction in size of the House of Commons to 600 as set out in section 11. The arrangements for the review are required to be put in place between June and November 2015.

### **Part 3: Miscellaneous and General**

60. *Section 15* makes provision in relation to orders made under powers given by the Act.
61. *Section 16* gives effect to Schedule 12 to the Act (repeals).
62. *Section 17* deals with the financial provision necessary as a result of the Act.
63. *Section 18* details the territorial extent of the provisions of the Act.
64. *Section 19* provides that the Act comes into force on the date that it is passed. The exceptions to that are the provisions which would amend legislation in order to introduce the alternative vote system; these provisions come into force in accordance with provision made by an order under section 8(1).
65. *Section 20* gives the short title of the Act.

### ***Schedule 1: Further provisions about the referendum***

66. *Schedule 1* to the Act makes further provision about aspects of the referendum.
67. *Paragraph 1* of the Schedule sets out what will be the “referendum period” for the referendum on the voting system for parliamentary elections. The “referendum period” is the period during which the controls on spending by permitted participants (that is individuals or organisations that campaign in a referendum) will apply. After this period has begun the Electoral Commission will, within a prescribed time, designate a separate organisation or individual to be the official voice of each of the “yes” and

“no” campaigns. This paragraph of the Schedule provides that the referendum period will run from the date of Royal Assent until the date of the poll itself.

68. *Paragraph 2* provides that returning officers are automatically appointed as counting officers for the purposes of the referendum. In practice this means that in England, counting officers will be the same individuals who are returning officers for the local government elections, in Wales, counting officers will be the same individuals who are returning officers for the National Assembly of Wales election and in Scotland, counting officers will be the same individuals who are returning officers for the Scottish Parliamentary election. The counting officer for the Northern Ireland voting area is the Chief Electoral Officer for Northern Ireland. The paragraph also makes special provision for the City of London and Isles of Scilly.
69. *Paragraph 3* creates the role of Regional Counting Officers specifically for the referendum on the voting system for parliamentary elections. *Paragraph 3(1)* provides that the Chief Counting Officer may appoint a Regional Counting Officer for any region in Great Britain. *Sub-paragraph (2)* specifies that the regions for which Regional Counting Officers may be appointed are those used for the purposes of European Parliamentary Elections in relation to England, Scotland and Wales (specified in section 1 of and Schedule 1 to the European Parliamentary Elections Act 2002).
70. *Paragraph 4(1)(a)* imposes a duty on a local authority within a voting area (as defined in section 7) to place the services of their officers at the disposal of the counting officer. As regards Regional Counting Officers, paragraph 4(1)(b) imposes an equivalent duty on a local authority responsible for a voting area which falls within a region in respect of which a Regional Counting Officer is appointed. *Sub-paragraph (2)* defines what a local authority is in this context.
71. *Paragraph 5* relates to the role, duties and powers of counting officers, Regional Counting Officers and the Chief Counting Officer and applies in addition to the provisions relating to the Chief Counting Officer and counting officers in section 128 of the 2000 Act. *Sub-paragraph (1)* requires the Chief Counting Officer, Regional Counting Officers and counting officers to do whatever things are necessary for conducting the referendum in the manner set out in the legislation.
72. *Paragraph 5(2)* sets out the responsibilities of a counting officer with respect to the voting area for which he or she is appointed.
73. *Paragraph 5(3)* provides that responsibility for printing the ballot papers for a voting area may be taken by the Chief Counting Officer or, in the case of a voting area in a region for which a Regional Counting Officer is appointed, the Regional Counting Officer. Responsibility for printing the ballot papers will otherwise rest with counting officers (*paragraph 5(2)(b)*).
74. *Paragraph 5(4)* provides that each Regional Counting Officer is responsible for certifying the total number of ballot papers counted and total votes cast in favour of each answer to the referendum question in respect of the region for which the Regional Counting Officer is appointed. This corresponds to the duties imposed on counting officers and the Chief Counting Officer under section 128(5) and (6) of the 2000 Act.
75. *Paragraph 5(5)* provides that the Chief Counting Officer may issue directions to Regional Counting Officers or counting officers relating to the discharge of their functions in preparation for, or during, the referendum poll, including directions requiring the provision of information. Provision is also made for Regional Counting Officers to issue directions to counting officers for voting areas within their region (*paragraph 5(6)*), but only where this is authorised or required by the Chief Counting Officer (*paragraph 5 (7)*). Under *paragraph 5(8)*, a Regional Counting Officer or counting officer to whom a direction is given is required to comply with it.
76. *Paragraph 6* provides that the Chief Counting Officer, a Regional Counting Officer or counting officer may, in writing, appoint deputies to discharge all or any of the officer’s



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functions (*sub-paragraphs (1) and (2)*). *Sub-paragraph (3)* also enables a Regional Counting Officer to appoint such clerks as may be necessary to assist him or her in his or her functions in relation to the referendum. Provision is made for counting officers to appoint clerks in rule 14 of Schedule 2 to the Act.

77. *Paragraph 7* allows counting officers and Regional Counting Officers to correct errors or omissions that arise during the preparation for and conduct of the referendum. This will apply to errors and omissions that are made by the counting officer or Regional Counting Officer themselves and also errors and omissions made by other persons who have functions in connection with the referendum (including, registration officers, presiding officers, clerks and staff). By way of example, documents, such as official poll cards, printed with incorrect details would be capable of correction under this provision.
78. *Paragraph 8* relates to public notices that are required to be given by the Chief Counting Officer, a Regional Counting Officer or a counting officer under Part 1 of the Act. It provides that the officer must post the notice in a conspicuous place in the area or region for which the officer acts or must publicise it in such other manner as the officer thinks desirable.
79. *Paragraph 9* relates to the role of the Electoral Commission. *Paragraph 9(1)* provides that the Electoral Commission has a duty to promote public awareness of the referendum and how to vote in it. *Paragraph 9(2)* provides that the Electoral Commission may take whatever steps they think appropriate to provide information about each of the two voting systems referred to in the referendum question. *Paragraph 9(3)* imposes a duty on the Electoral Commission to publish the most accurate estimate reasonably possible of the turnout in each of England, Wales, Scotland and Northern Ireland, and specifies that this information must be included in any report on the referendum submitted by the Commission under section 6(1)(b) of the 2000 Act. Section 9(4) defines “turnout” and provides that for these purposes votes counted towards the turnout figure should include votes cast but not counted in accordance with rule 42(4)(b), (c) and (d) of the referendum rules set out in Schedule 2 (e.g. spoiled ballot papers).
80. *Paragraph 10* requires the Chief Counting Officer, Regional Counting Officers, counting officers and registration officers to take whatever steps they consider appropriate to encourage participation in the referendum. This is modelled on section 69 of the Electoral Administration Act 2006, which imposes a duty on returning officers and registration officers to encourage participation in elections. In addition, where such steps are taken, the Chief Counting Officer is required to take whatever steps the officer thinks appropriate to facilitate co-operation between those officers.
81. *Paragraph 11* enables a permitted participant to appoint a referendum agent for any voting area. Under rule 18 of the referendum rules in Schedule 2 to the Act, referendum agents are empowered to appoint polling agents to attend polling stations for the purpose of detecting personation and to appoint counting agents to attend at the counting of votes.
82. *Paragraphs 12 and 13* impose requirements in relation to the appointment of referendum agents. These include a requirement for the responsible person for the permitted participant to notify the counting officer of the appointment before noon on the 16<sup>th</sup> day ahead of the poll (*paragraph 12(2) and (3)*), and for the counting officer to give public notice of the appointment (*paragraph 13(2)*).
83. *Paragraph 14* applies if a permitted participant revokes the appointment of a referendum agent or a referendum agent dies and, before that event, the referendum agent had appointed a polling agent or a counting agent. In this situation, the permitted participant must, as soon as possible, appoint another referendum agent and the responsible person must notify the counting officer of the new appointment (*sub-paragraphs (2) and (3)*).

84. *Paragraph 15* of the Schedule makes provision to ensure that a person cannot be the “responsible person” (within the meaning of Part 7 of the 2000 Act) for more than one permitted participant at the proposed referendum on the voting system.
85. *Sub-paragraph (1)* has the effect that an individual who is already the responsible person for a permitted participant cannot become a permitted participant in his or her own right. *Sub-paragraph (2)* of the paragraph provides that where a registered political party (which is not a minor party) becomes a permitted participant and the treasurer of that party had already registered as a permitted participant in their own right, that treasurer ceases to be regarded as a permitted participant in their own right. *Sub-paragraph (3)* of the paragraph provides that a declaration or notification given under section 106(2)(b) or (4)(b)(ii) of the 2000 Act by a body wishing to become a permitted participant does not comply with the requirement to name a responsible person if the person that it names is already the responsible person in relation to another permitted participant (whether as an individual or for another organisation) or is an individual who would become a responsible person by virtue of a notification given for another body at the same time. *Sub-paragraph (4)* of the paragraph provides that where a registered political party (other than a minor party) becomes a permitted participant and the treasurer of that party was already a responsible person for another permitted participant, that treasurer ceases to be regarded as the responsible person for that other permitted participant and the other permitted participant has a period of 14 days in which to appoint a new responsible person.
86. *Paragraph 16* modifies section 110 of the 2000 Act regarding the payment of grants by the Electoral Commission to designated lead campaign organisations. The effect is that, in relation to the proposed referendum on the alternative vote system, 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. The level of the grant paid to each designated organisation must be of the same amount, unless the Commission has withheld any instalment(s) to any of the designated organisation(s).
87. *Paragraph 17* of the Schedule makes provision on the aggregation of expenses by persons acting in concert at the proposed referendum on the voting system. *Sub-paragraph (1)* of the paragraph sets out the circumstances in which persons will be regarded as having acted in concert. *Sub-paragraph (2)* of the paragraph 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)* makes clear that the requirement to report common arrangement expenditure applies whether or not, at the time, the separate individuals or bodies concerned are permitted participants.
88. *Paragraph 18* provides that the regulations referred to in *sub-paragraphs (1), (2) and (3)* apply to the display on any site of advertisements relating specifically to the referendum as they do to the display of advertisements relating to pending parliamentary elections. The effect is that local authority consent is not required in respect of the display of an advertisement relating to the referendum.
89. Under *paragraph 19*, the legislative provisions referred to in *sub-paragraphs (1) and (2)* apply in respect of the use of premises for purposes connected with the referendum as they do in respect of the use of premises for purposes connected with parliamentary elections. The effect is that the use of certain premises for the holding of public meetings promoting or procuring a particular outcome in the referendum or for the purpose of taking the poll in the referendum will not, in itself, render those premises liable to rates.
90. *Paragraph 20* makes provision for payments to counting officers and Regional Counting Officers in respect of the referendum. Under *sub-paragraph (1)* counting

officers and Regional Counting Officers are entitled to recover their charges in respect of the referendum provided they relate to services necessarily rendered, or expenses necessarily incurred, for the efficient and effective conduct of the referendum and they do not exceed the overall maximum recoverable amount specified in an order (“the charges order”) made by the Minister. The charges order may also specify, or make provision for determining, the maximum amount which counting officers or Regional Counting Officers may recover for services or expenses of a specified description (*sub-paragraph (4)*). The Minister is required to obtain the consent of Treasury to the making of the charges order.

91. Under *sub-paragraphs (2) and (3)*, the Electoral Commission has the power to reduce the fee element of charges that are paid to Regional Counting Officers and counting officers for the performance of their duties in the conduct of the referendum. The power to reduce a fee will apply where a Regional Counting Officer or counting officer fails to meet an adequate level of performance when carrying out her or his duties in relation to the conduct of the referendum. The level of reduction (which may reduce the fees to nil) is to be determined by what the Commission thinks is reasonable in all the circumstances. The power does not extend to allow the reduction of any sum payable for an expense which an officer is entitled to make a claim for.
92. The Electoral Commission is required to pay to counting officers and Regional Counting Officers the charges that they are entitled to recover (*sub-paragraph (8)*). However, the Electoral Commission can apply for the account to be taxed under *paragraph 21* before payment. *Sub-paragraph (9)* provides for the Electoral Commission to pay to local authorities any amounts required to reflect an increase in superannuation contributions that result from a fee paid as part of a counting officer’s or a Regional Counting Officer’s charges.
93. There is provision in *sub-paragraph (5)* for the Electoral Commission, with the consent of Treasury, to authorise payment of more than the amounts specified in the charges order if the conditions in *sub-paragraph (6)* are satisfied. The Electoral Commission is also empowered in *sub-paragraph (10)* to pay advances to counting officers and Regional Counting Officers upon request.
94. Under *sub-paragraph (7)* there is provision for the Chief Counting Officer, who is the Chair of the Electoral Commission to incur expenses for the effective conduct of the referendum in certain limited circumstances and to make payments in respect of those expenses out of the monies to be provided from the Consolidated Fund where Regional Counting Officers and / or Counting Officers would do so ordinarily but for the Chief Counting Officer to do so centrally provides better value for money.
95. Under *sub-paragraph (11)* the Electoral Commission may make regulations regarding the time when and the manner and form in which accounts are to be rendered to the Commission for the purpose of payment of counting officers’, Regional Counting Officers’ or the Chief Counting Officer’s charges.
96. *Sub-paragraph (13)* provides that any sums required by the Electoral Commission for making payments under *paragraph 20* are to be charged on and paid out of the Consolidated Fund.
97. *Paragraph 20* is modelled on section 29 of the 1983 Act, which provides for payments to returning officers in the context of parliamentary elections. Section 29 currently provides for these payments to be made by the Secretary of State but uncommenced amendments to that section made by paragraph 107 of Schedule 1 to the Electoral Administration Act 2006 transfer this function to the Electoral Commission. In making provision for payments to counting officers to be made by the Electoral Commission, *paragraph 20* is consistent with this aspect of the uncommenced amendments to section 29 as well as with the approach taken in section 10 of the Regional Assemblies (Preparations) Act 2003, which provides for payments to counting officers by the Electoral Commission in the context of referendums held under that Act.

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98. *Paragraph 21* makes provision in respect of applications for a counting officer's or Regional Counting Officer's account to be taxed before payment and is based on section 30 of the 1983 Act which provides for the taxation of returning officers' accounts in the context of parliamentary elections. *Sub-paragraph (2)* provides that the court may tax the account as it thinks fit and finally determine the amount payable to the counting officer or Regional Counting Officer.
99. Where an application for taxation of a counting officer's or Regional Counting Officer's account has been made, *sub-paragraph (3)* allows the counting officer or Regional Counting Officer to apply to the court to examine any claim made by a person ("the claimant") against the officer in respect of any charges included in the account. In this situation, the court may allow, disallow or reduce the claim against the counting officer, or Regional Counting Officer but must first give the claimant the opportunity to be heard and to tender evidence (*sub-paragraph (4)*).
100. *Paragraph 22(1)* provides that, if directed to do so by the Treasury, the Electoral Commission must prepare accounts in respect of their expenditure in relation to the referendum. The accounts must be prepared in accordance with any directions given by the Treasury (*sub-paragraph (2)*); those directions might include the matters set out in *sub-paragraph (3)*. The Electoral Commission is required to submit the accounts to the Comptroller and Auditor General and the Speaker's Committee as soon as practicable after it receives a direction under *sub-paragraph (1)* (*sub-paragraph (4)*). The Speaker's Committee is established under section 2 of the 2000 Act and has general oversight of the exercise of the Electoral Commission's functions. Under paragraph 18 of Schedule 1 to the 2000 Act, the Electoral Commission's accounts for any financial year must be submitted to the Speaker's Committee as well as to the Comptroller and Auditor General.
101. *Paragraph 23* relates to how the formal result of the referendum may be challenged in legal proceedings. It provides that any challenge in respect of the number of ballot papers counted or votes cast as certified by the Chief Counting Officer, a Regional Counting Officer or a counting officer must be brought by way of judicial review (*sub-paragraph (1)(a)*). In addition, the challenge must be commenced within six weeks of the date of the relevant certificate (*sub-paragraphs (1)(b) and (2)*). The six week period is intended to ensure that sufficient time is allowed for challenges to be brought while avoiding prolonged delay in the final result of the referendum being known.

***Schedule 2: Rules for conduct of the referendum***

102. *Schedule 2* sets out the rules governing the conduct of the referendum. Part 1 of the Schedule includes provisions for the action to be taken before and during the poll; the counting of the votes; the declaration of the result and the retention of and access to documents relating to the referendum. The provisions are modelled on the parliamentary election rules contained in Schedule 1 to the 1983 Act with appropriate modifications made to reflect features specific to the referendum such as, for example, the creation of the role of Regional Counting Officer.
103. Part 2 of the Schedule sets out the forms to be used in the referendum including poll cards and the ballot paper. Rule 10 in Part 1 of this Schedule grants the Chief Counting Officer a power to modify the forms etc used by voters (except the ballot paper) for the purpose of making them easier for voters to use or understand. This power applies to forms 3 to 10, 12 and 14 in Part 2 of this Schedule.

***Schedule 3: Absent voting in the referendum***

104. *Part 1* of *Schedule 3* is modelled on Schedule 4 to the Representation of the People Act 2000 and includes provision in relation to Great Britain which will enable people to apply for an absent vote specifically at the referendum on voting systems. Provision is also made for electors who register or are already registered for a postal vote at one of the polls combined with the referendum or at a UK parliamentary election, and who are

entitled to vote in the referendum, to be automatically registered for a postal vote for the referendum. Similar provision is made for those registered for other forms of absent vote. Provisions are also included which allow the voting arrangements which are in place for peers at local government or European Parliamentary elections to be applied for the referendum. Part 2 is modelled on sections 5 to 11 of the Representation of the People Act 1985 and makes similar provision for Northern Ireland.

## **Part 1 – Great Britain**

105. *Paragraph 2* determines the manner of voting in Great Britain of a person entitled to vote in the referendum, whether in person, by post or by proxy. The arrangements for absent voting in the referendum mirror and build on the existing arrangements for UK parliamentary, European parliamentary and local government elections.
106. *Paragraph 3* provides that if a person is on the postal voters list he or she can vote by post in the referendum. Similarly, if a person is on the list of proxies he or she can vote by proxy in the referendum.
107. *Paragraph 4* provides the circumstances in which a registration officer must grant an application from a person who wishes to vote by post or by proxy in the referendum.
108. Generally speaking, an application to vote by post or by proxy in the referendum must contain the applicant's signature. But *paragraph 4(7)* provides that the registration officer may dispense with the requirement for an applicant to provide a signature if the officer is satisfied that the applicant is unable to do so due to any disability or due to an inability to read or write. The registration officer may also dispense with the requirement to provide a signature if he or she is satisfied that the applicant is unable to sign in a consistent and distinctive way.
109. Specific provision for handling applications from persons who have an anonymous entry in the electoral register is made by *paragraph 4(3)*.
110. *Paragraph 5* provides that the registration officer must, for the purposes of the referendum, keep a postal voters list and a list of proxies. The paragraph sets out the information that must be included in each list.
111. An ordinary elector is included on the postal voters list if he or she has successfully applied to vote by post for the referendum on the voting system or if he or she has a postal vote for one of the polls which are combined with the referendum or for UK parliamentary elections. Peers are also included on the postal voters list if they have successfully applied to vote by post for the referendum or if they have a postal vote for either local government or European parliamentary elections.
112. An ordinary elector is included on the proxy voters list if he or she has successfully applied to vote by proxy for the referendum on the voting system or if he or she has an existing proxy vote for one of the polls which are combined with the referendum or for UK Parliamentary elections. Peers are also included on the proxy voters list if they have successfully applied to vote by proxy for the referendum or if they have a postal vote for either local government or European parliamentary elections.
113. Where an elector has an absent voting arrangement for a combined election and a different absent voting arrangement for a UK parliamentary election, the absent voting arrangement for the combined election will be applied to the referendum. Where an elector has a postal vote for one election which is combined with the referendum and a proxy vote for another election which is combined with the referendum, the postal voting arrangement will apply for the referendum. Where a peer has an absent voting arrangement for a local government election but no such arrangement for European parliamentary elections, or vice versa, the absent voting arrangements will be applied to the referendum. In circumstances where a peer has a postal vote for a local government election and a proxy vote for the European parliamentary election or vice versa, the postal voting arrangement will apply for the referendum.

114. *Paragraphs 6 and 7* set out certain requirements in relation to the appointment of proxies in the referendum.
115. *Paragraph 8* sets out the procedure for voting as a proxy. This paragraph includes provisions which enable a person who has been appointed as a proxy to apply to vote by post and provisions which enable such a person to apply to the registration officer for their referendum ballot paper to be sent to a different address from the one shown in the record. Paragraph 8(6) sets out the content of the proxy postal voters list which the registration officer is responsible for maintaining. A person is included on the proxy postal voters list for the referendum if he or she has either applied for a proxy postal vote for the purposes of the referendum or has a proxy postal vote for an election which is combined with the referendum or for UK parliamentary elections. A person who is entitled to vote by post as a proxy for a peer in either local government or European parliamentary elections is also to be included on the proxy postal voters list kept under paragraph 8(6).
116. *Paragraph 9* provides for the registration officer to provide the counting officer with, or give access to, the personal identifiers (dates of birth and signatures) of postal and proxy voters in the referendum. This will enable the counting officer to carry out verification of postal ballot papers. *Paragraph 10* provides that the registration officer may disclose personal identifiers collected in connection with applications for postal and proxy votes for the referendum to other registration officers or to persons dealing with legal proceedings in relation to elections. This will enable queries and challenges to voting arrangements to be dealt with effectively.
117. *Paragraph 11* provides that any person who makes a statement which he or she knows to be false in a declaration or form which is used for the purposes of Part 1 of this Schedule or attests an application knowing it to be false is guilty of an offence and liable on summary conviction to a fine. The fine would not exceed level five on the standard scale (currently £5,000). Paragraph 11 also makes it an offence for a person to provide false information in connection with an application to vote by post or by proxy: this offence is based upon the offence in section 13(1A) of the 1983 Act.

## **Part 2 –Northern Ireland**

118. *Paragraphs 12-20* contain equivalent provisions with necessary adaptations for absent voting in Northern Ireland. This includes a requirement under *paragraph 15* for the registration officer to grant an application to vote by post or by proxy where certain conditions are met.

## **Schedule 4: Application to the referendum of existing provisions**

119. *Schedule 4* provides that certain provisions within existing electoral law will apply for the purposes of the referendum, with modifications specified in the Schedule. In particular, the rules governing registration for, and conduct of, elections will apply in the case of the referendum. The modifications specified in the Schedule are necessary to take account of those aspects of the referendum which differ from elections.
120. This Schedule comprises four Parts. *Part 1* sets out which sections of the 1983 Act will apply, with the effect of using existing electoral registers for the purposes of the referendum, and in order to ensure the integrity of the referendum process. *Parts 2 to 4* of the Schedule apply a number of existing provisions so as to deal in detail with matters such as the provision of registers to counting officers, applications for proxy or postal voting and the post-referendum access to certain documents used for the referendum.

## **Schedule 5: Combination of polls: England**

121. *Schedule 5* sets out the modifications which must be made to the rules governing the conduct of the referendum and the rules governing the conduct of the other polls held on the same day in England with which the referendum is combined under *section 4*.

*Part 1* contains the modifications that must be made to the rules governing the action to be taken before and during the polls and makes provision for the separation of the ballot papers and the counting of the votes. Some of the functions (such as the issue of poll cards and the provision of polling stations) that must be carried out for each poll are combined, and may be discharged by the counting officer for the referendum acting in relation to all combined polls. Provision is also included to apportion the cost of any combined polls equally between them.

122. *Part 2* sets out the modifications which must be made to the provisions governing the postal voting procedure for the poll for the referendum and the other polls in England with which the referendum is combined. Where the counting officer for the referendum and the returning officer for the combined polls agree, joint postal ballot packs may be sent to voters containing the ballot papers and information for the combined polls. *Part 3* contains the forms that must be used where polls are combined. These are modelled on the forms that would be used if the polls were taken separately, but are adapted to refer to all polls which are to be taken together.

#### ***Schedule 6: Combination of polls: Wales***

123. *Schedule 6* sets out the modifications which must be made to the rules governing the conduct of the referendum and the rules governing the conduct of the Welsh Assembly general election by reason of the polls being taken together under *section 4*. The provisions closely follow those modifications that are made in relation to the combination of polls in England set out in *Schedule 5* and described above.

#### ***Schedule 7: Combination of Polls: Scotland***

124. *Schedule 7* sets out the modifications which must be made to the rules governing the conduct of the referendum and the rules governing the conduct of the Scottish parliamentary general election by reason of the polls being taken together under *section 4*. The provisions closely follow those modifications that are made in relation to the combination of polls in England set out in *Schedule 5* and described above.

#### ***Schedule 8: Combination of Polls: Northern Ireland***

125. *Schedule 8* sets out the modifications which must be made to the rules governing the conduct of the referendum and the rules governing the conduct of the Northern Ireland Assembly general election and Northern Ireland local elections where the polls are taken together under *section 4*. The provisions are modelled on those modifications that are made in relation to the combination of polls in England set out in *Schedule 5*, but include appropriate adaptations to reflect the role of the Chief Electoral Officer for Northern Ireland. In particular, rather than specifying that certain functions for the combined polls are to be carried out by the counting officer for the referendum, provision is made that when the Chief Electoral Officer carries out some functions in relation to the Northern Ireland Assembly general election or the Northern Ireland local elections, the Chief Electoral officer acts under the power of direction of the Chief Counting Officer. *Schedule 8* also allows the Chief Electoral Officer (with the agreement of the Chief Counting Officer) to decide to issue joint postal ballot packs for the referendum, the Northern Ireland Assembly general election and Northern Ireland local elections.

#### ***Schedule 9: Control of loans etc to permitted participants***

126. *Schedule 9* sets out in detail the arrangements that are to apply for the regulation of loans and other regulated transactions to permitted participants who are not non-minor registered political parties (i.e. who are not regulated as political parties). These arrangements are set out in a new Schedule 15A that is to be treated as being inserted into the 2000 Act for the purposes of the referendum on the voting system for

parliamentary elections. References below to paragraph numbers are to paragraphs in the new Schedule 15A.

127. Schedule 15A provides that loans and other transactions entered into by permitted participants for the purposes of funding referendum expenses will be subject to certain controls. Under paragraph 4 a permitted participant will be prohibited from entering into a regulated transaction (as defined in paragraph 2) with a person who is not an authorised participant (as defined in paragraph 4(2)). Paragraphs 5 and 6 set out the effect on a transaction if it is entered into in breach of these rules and paragraph 8 establishes various offences that may apply in those circumstances. Paragraphs 10 to 16 provide that where regulated transactions are entered into, certain details of those transactions must be recorded and submitted to the Electoral Commission as part of a permitted participant's post-referendum return.

### ***Schedule 10: The alternative vote system: further amendments***

128. *Schedule 10* sets out further amendments required to be made to the 1983 Act and other primary legislation in order to replace the first past the post system with the alternative vote system.

### **Part 1: Amendments of the Parliamentary Elections Rules**

129. *Paragraph 2* substitutes rule 18 (poll to be taken by ballot) of the Parliamentary Elections Rules as set out in Schedule 1 to the 1983 Act to provide that votes must be given by ballot in accordance with new rule 37A which sets out how votes are given and the results determined in accordance with new rule 45A which sets out how the votes are to be counted. New rules 37A and 45A are inserted into the Parliamentary Elections Rules by section 9.
130. *Paragraph 3* amends rule 29(5) of the Parliamentary Elections Rules to prescribe new wording for the notice that is required to be displayed in polling station compartments in order to explain how to vote.
131. *Paragraph 5(1)* amends rule 46 of the Parliamentary Elections Rules to provide that a candidate or candidate's election agent may, at the time when any stage of the counting or re-counting of the votes is completed, request the returning officer to have the votes re-counted or again re-counted in relation to any or all of the stages that have been completed so far. The returning officer may refuse to comply with a request under these provisions if in the officer's opinion it is unreasonable.
132. *Paragraph 5(3)* also amends rule 46 of the Parliamentary Elections Rules to provide that at any time before the declaration of the result, the returning officer may, if the officer thinks fit, have the votes re-counted in respect of any or all of the counting stages (whether or not there have been any previous re-counts). This puts on a statutory footing existing practices and is intended to address the situation where the result is very close (but this had not been apparent from earlier counting stages) and the returning officer thinks it necessary to re-count the votes from the earlier counting stages.
133. *Paragraph 6* amends rule 47 so that it sets out the circumstances in which a ballot paper under the alternative vote system shall be deemed to be rejected or not reallocated. Under the revised rule 47, a distinction is made between:
- ballot papers that are rejected at the outset and will play no part at all in the count, and
  - ballot papers that are included in the count initially but are not reallocated at a later stage of the count, due to the order of preferences on the ballot paper becoming unclear, and are therefore removed at that stage.
134. *Paragraph 6(2)* amends rule 47(1) of the Parliamentary Elections Rules. It retains the current provisions, whereby a ballot paper that does not bear the official mark or has



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anything written or marked on it by which the voter can be identified is rejected and will play no part at all in the count. Additionally,

- if a number 1 has not been marked against the name of any of the candidates or if a voter marks the number 1 against the name of more than one candidate; or
- if the ballot paper is unmarked or is marked in a way that does not indicate a clear choice as to the voter's first (or only) preference,

then the ballot paper will be rejected as void and not counted at any stage. By virtue of rule 47(4) (as amended by *paragraph 6(5)*), the returning officer is required to draw up a statement showing the number of rejected ballot papers under each of these heads.

135. *Paragraph 6(3)* substitutes new provisions for paragraph (2) of rule 47 of the Parliamentary Elections Rules. These set out circumstances where notwithstanding the provisions at rule 47(1) a ballot paper may be deemed valid by the returning officer, where the voter's voting intention is clear, and the way the ballot paper is marked does not itself identify the voter. For example, this would cover where a voter marks the ballot paper with a mark that is not a number but nevertheless the mark expresses a clear preference for a particular candidate.
136. In addition, inserted paragraphs (2A) and (2B) provide that if the first preference is clear, this and all other preferences may be deemed valid, until the order of preferences on the ballot paper becomes unclear. At that point, the other mark(s) on the ballot paper are ignored and the ballot paper is removed from the count. Paragraphs (3A) and (3B) (inserted by *paragraph (4)*) provide that where this occurs the returning officer is required to endorse the words "not reallocated" on the ballot paper and an indication of the stage at which the mark(s) were ignored. The returning officer shall add to the endorsement the words "decision objected to" if an objection is made by a counting agent to his decision. The reason for endorsing the ballot papers in this way is so that if there is a re-count, returning officers will know at what stage the ballot papers were not reallocated by reason of rule 47(3A) and so will not have to take these decisions afresh. The requirement to endorse the ballot paper does not apply to ballot papers where the voter's order of preferences are clear but the ballot paper is not reallocated at a counting stage due to the ballot paper not showing a preference for any candidates remaining in the count and where this fact is clear.
137. *Paragraph 7* concerns equality of votes, where:
- there are two or more candidates with fewer votes than the other candidates but who have the same number of votes as each other, or
  - there are three or more candidates, or remaining candidates, and they all have the same number of votes as each other, or
  - there are two remaining candidates and they have the same number of votes as each other, or
  - there are only two candidates contesting an election and they have the same number of votes.
138. Under the present first past the post system, a tie between candidates is resolved by the drawing of lots. However, under the alternative vote system, the candidate would be either eliminated or elected, as appropriate, with reference to the number of voters' first preferences received by each candidate, or if that fails to resolve the tie, with reference to the number of votes allocated to each candidate at the next counting stage (if any). Where this does not resolve the tie or there have been no previous eliminations, the returning officer will decide by lot which of the candidates is to be eliminated or elected. For example this will apply where only two candidates are contesting the election and they receive an equal number of votes.

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139. *Paragraph 8* sets out provisions concerning the declaration of the result. It amends the list of information in rule 50 of the Parliamentary Elections Rules that the returning officer is required to declare and to give public notice of once the result of the poll has been ascertained in a contested election.
140. *Paragraph 9* concerns the return or forfeiture of a candidate's deposit and provides that a candidate's deposit shall be forfeited if the number of first preference votes obtained by the candidate is not more than one twentieth of the total number of votes allocated to candidates in accordance with voters' first preferences.
141. *Paragraphs 10 and 11* amend rules 61 and 62 of the Parliamentary Elections Rules concerning the death of an independent candidate at a parliamentary election so that these rules work under the alternative vote system.
142. *Paragraph 12* amends wording on certain forms in the Appendix of Forms in the Parliamentary Elections Rules: the Form of Front of Ballot Paper, Directions as to printing the ballot paper, and Form of directions for the Guidance of the Voters in voting. The changes to these Forms are consequential to parliamentary elections being held under the alternative vote system. Given that voters would be voting under a new voting system, the amendments are designed to provide clear guidance on how to cast a vote under the system and to make it clear that voters may express a preference for more than one candidate if they wish.
143. *Paragraph 12(2)(b) and (3)* removes the pre-printed numbering of candidates on the left-hand side of ballot papers. Under the current requirements for ballot papers, candidates are listed in alphabetical order by surname and put into rows that are numbered. The amendment is intended to address the concern that, under the alternative vote system, pre-printed numbering on ballot papers could be a cause of confusion for voters and that voters could seek to use the numbers in some way in making their preferences and therefore lead to uncertainty about their intentions.

**Part 2: Amendments of other provisions of the 1983 Act**

144. *Paragraphs 14 to 22* make consequential amendments to other provisions in the 1983 Act. The amendments ensure that the various provisions are consistent with the alternative vote system.
145. *Paragraph 14* amends section 66 of the 1983 Act which concerns the secrecy of the ballot. Anyone attending at a polling station, the count or any other procedure at the elections in an official capacity or as an observer must maintain and aid in maintaining the secrecy of voting. The section has been amended so that the secrecy of the ballot requirements will cover information about how a voter has voted and so will include preferences expressed by a voter.
146. *Paragraphs 15 to 17* amend sections 113, 114 and 115 of the 1983 Act which contain the offences of bribery, treating and undue influence respectively. Whilst the nature of these offences and the penalties remain the same, the sections have been amended to clarify that references to "voting or refraining from voting" in the case of a parliamentary election includes a reference to marking (or refraining from marking) choices on the ballot paper. There is a similar clarifying provision in relation to references to "the vote of any voter" contained in these sections.
147. *Paragraph 19* inserts subsection (6A) into section 139 of the 1983 Act, which concerns the situation where an election court is considering an election petition and it appears that there is an equality of votes between any candidates at the election. Under the amendments, for parliamentary elections under the alternative vote, the court would resolve the tie by applying the same principles to ties as set out in revised rules 49, 49A and 62 which apply where there is an equality of votes.
148. *Paragraphs 20 and 21* amend section 165 and section 166 of the 1983 Act respectively. These sections provide for votes for a candidate in certain circumstances to be thrown

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away or disregarded. Under the amendments only the preferences obtained or given illegally would be thrown away/disregarded; the preferences that are validly given would continue to be used in the count. This reflects the fact that under the alternative vote system a ballot paper may show a preference for more than one candidate.

149. *Paragraph 22* amends section 199B of the 1983 Act which concerns the translations of certain documents. The amendments revise the wording on the enlarged sample copy of the ballot paper that must be displayed at every polling station. The revised wording is in line with that made to other notices in Schedule 10 and reflects that voters would be voting under a new voting system.

### **Part 3: Amendments of other enactments**

150. *Paragraph 23* makes a consequential amendment to the definition of “qualifying party” which is used in the provisions inserted in the Parliamentary Constituencies Act 1986 by section 12 of and Schedule 11 to the Parliamentary Voting System and Constituencies Act 2011. Those provisions provide for public hearings about Boundary Commission proposals. The amendment specifies that in the event that the alternative vote system is implemented, where share of the vote in the most recent parliamentary general election is used to determine whether a party is a ‘qualifying party’, this would be done with reference to the percentage of first preference votes received by the party at that election.
151. *Paragraph 24* amends section 3A of the 2000 Act concerning the four Electoral Commissioners put forward by registered parties and makes provision for determining the size of two registered parties with the same number of MPs under the alternative vote system. Currently, the relative size of any two or more parties is determined by the number of MPs each party has – if they each have the same number, the party that secured the most votes at the most recent general election is deemed to be the larger party. The amendment provides that this will be determined in accordance with the total number of first preference votes cast for candidates standing for the party at the most recent general election.

### **Schedule 11: Public hearings about Boundary Commissions Proposals**

152. Schedule 11 sets out the rules governing the new public hearings process introduced by section 12 of this Act. *Paragraph 1* sets out the purpose of public hearings - to enable representations to be made about the proposals which are the subject of the hearing. *Paragraph 2* states that there shall be between 2 and 5 hearings held in each region in England and in each of Scotland, Wales and Northern Ireland, which will collectively cover proposals for that region or country. Each hearing will last for up to 2 days (*paragraph 4*). *Paragraph 3* requires the Boundary Commission to appoint a chair, who will determine the procedure governing each hearing (*paragraph 5*) and who will make sure that each hearing begins with an explanation of the proposals which are the subject of the hearing and the process for making written representations on the proposals (*paragraph 6*).
153. *Paragraph 7* requires the Chair to allow representations from each qualifying party (a political party which has at least 1 MP in the region/part of the UK affected, or which received at least 10% of the votes cast in that region or part of the UK in the last general election), and from any other people who they consider to have an interest in the proposals. The Chair may restrict the amount of time allowed for representations, and need not allocate the same amount of time to each party or person. The Chair may determine the order in which representations are made, and if there is not enough time to hear from everyone, the Chair may decide who will not be permitted to make representations. *Paragraph 8* empowers the Chair to ask, or allow others to ask, questions at the hearing. If questions are allowed, the Chair can decide how questions should be asked, or restrict the number of questions a person may ask.
154. Lastly, *Schedule 11* sets out the interpretation of terms used in this schedule.

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***Schedule 12: Repeals***

155. *Schedule 12* provides for repeals of other legislative provisions to be made in consequence of the provision made by the Act.