

EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION REFERENDUM (CONDUCT) REGULATIONS 2016
2016 No. 219

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument contains rules that will govern the conduct of the European Union referendum in the United Kingdom. The instrument will supplement provisions about the conduct of the referendum that are contained in the European Union Referendum Act 2015 (“the 2015 Act”), in particular Schedule 3 to the 2015 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument varies between provisions.

4. Legislative Context

- 4.1 This instrument is the first set of regulations made under section 4(1) and (4) of the 2015 Act. The 2015 Act provides for a referendum to be held in the United Kingdom and Gibraltar before the end of 2017 on the United Kingdom’s membership of the European Union. This instrument principally contains rules that will govern the conduct of the referendum in the United Kingdom. The Parliament and Government of Gibraltar will make rules that will govern the conduct of the referendum there. Other rules relevant to the conduct of the referendum are contained in the 2015 Act, in particular Schedule 3.
- 4.2 Other statutory instruments will be required to implement the 2015 Act. In particular, there will be regulations appointing the day on which the referendum is to be held, setting the referendum period (the period leading up to the referendum in which referendum-related spending is regulated) and setting the start of the process by which the Electoral Commission will designate the lead referendum campaigners (known as the “designated organisations”).
- 4.3 The principal rules for the conduct of the referendum in the United Kingdom, as well as the rules about voting by post or proxy in the referendum in the United Kingdom, are set out as standalone regulations in the instrument (see Parts 1 and 2 of the instrument). They are based on the rules that applied for the 2011 Parliamentary Voting System referendum (see Schedules 2 and 3 to the Parliamentary Voting System and Constituencies Act 2011 (the “2011 Act”). The 2011 Act rules were themselves based on the rules that apply at other polls, in particular UK parliamentary

elections (see Schedule 1 to the Representation of the People Act 1983, sections 5 to 12 of the Representation of the People Act 1985 and Schedule 4 to the Representation of the People Act 2000). Accordingly, the rules in the instrument have been updated to reflect minor changes that were made to the UK parliamentary rules since the 2011 Act was enacted (in, for example, the Electoral Registration and Administration Act 2013).

- 4.4 The 2011 Act also made provision for the conduct of the Parliamentary Voting System referendum by applying, with modifications, existing legislation relating to elections and referendums (see Schedule 4 to the 2011 Act). The instrument makes corresponding provision for the European Union referendum (see Schedules 1 to 3 of the instrument). The modification of existing legislation is necessary in order to apply enactments about elections to the referendum and to reflect the fact that the European Union referendum will take place in Gibraltar as well as the United Kingdom. The application, by the instrument, of provisions of existing legislation for the purposes of the referendum is in addition to provisions of that legislation that will apply in any event (because eligibility to vote in the referendum follows from eligibility to vote in elections – see section 2 of the 2015 Act).

5. Extent and Territorial Application

- 5.1 This instrument extends to the whole of the United Kingdom. Some provisions of the instrument extend also to Gibraltar (see regulation 2(2) of the instrument).
- 5.2 The territorial application of the instrument varies between provisions. Some parts apply in each part of the United Kingdom and also in Gibraltar (for example, Part 1), while others apply in each part of the United Kingdom but not in Gibraltar (for example, Part 2). Other parts of the instrument apply in different parts of the United Kingdom (for example, Chapter 1 of Part 3 applies in Great Britain while Chapter 2 of Part 3 applies in Northern Ireland).

6. European Convention on Human Rights

- 6.1 John Penrose, the Minister for Constitutional Reform, Cabinet Office, has made the following statement regarding Human Rights:

In my view the provisions of the European Union Referendum (Conduct) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 As stated above, the 2015 Act provides for a referendum on the United Kingdom's membership of the European Union to be held in the United Kingdom and Gibraltar before the end of 2017. It gives effect to a commitment to hold such a referendum in the Conservative Party's manifesto for the 2015 general election.
- 7.2 This instrument contains detailed rules governing the conduct of the referendum in the United Kingdom. It supplements provisions in the 2015 Act – principally in Schedule 3 – which provide the overarching framework for the conduct of the referendum. Schedule 3 provides, for example, for the appointment of the Chief Counting Officer, Regional Counting Officers and Counting Officers who will administer the poll.

- 7.3 The framework set out in the 2015 Act and in this instrument follows that used for the conduct of the Parliamentary Voting System referendum in May 2011, amended to reflect:
- the fact that the European Union referendum will take place in Gibraltar as well as in the United Kingdom; and
 - minor changes to electoral law since 2011.
- 7.4 The instrument includes the range of provisions that are necessary for the conduct of the referendum, including:
- the manner of voting at the poll (which covers voting in polling stations, voting by post or voting by proxy);
 - the form of the ballot paper and other forms to be used by voters and administrators;
 - the appointment of polling and counting agents who will attend polling stations and the counting of votes on behalf of referendum agents appointed by registered campaigners at the referendum;
 - the arrangements for the counting of votes and declaration of results; and
 - the disposal of ballot papers and other referendum documents after the poll.
- 7.5 In general, the instrument will not affect the conduct of the referendum in Gibraltar, because the Parliament and Government of Gibraltar will make rules for the referendum there. However, one provision of the instrument provides for the Secretary of State to issue directions to the Gibraltar electoral registration officer for the purposes of the referendum in the same way as the Secretary of State may issue directions to a United Kingdom electoral registration officer (see paragraph 9 of Schedule 1). Other parts of the instruments modify, for the purposes of the referendum, legislation that applies in Gibraltar. Also, even where it does not directly regulate activity in Gibraltar, the instrument does reflect the fact that the referendum will take place there (for example, under paragraph 14 of Schedule 1 it will be an offence for a person to vote in the referendum in the United Kingdom if they have already voted in Gibraltar).
- 7.6 As noted above, the provisions in the instrument are modelled on those that applied at the Parliamentary Voting System referendum in May 2011, which were, in turn, modelled on rules that apply at other polls, in particular, UK parliamentary elections. The instrument ensures that recent changes to electoral law, notably those flowing from the Electoral Registration and Administration Act 2013 and changes in Northern Ireland to provide for the registration of anonymous voters, will apply for the purposes of the referendum. The key recent changes, which were designed to support the effective administration of the poll, are as follows:
- Extension of “emergency” proxy provisions – to those absent on the grounds of business or military service. This is to ensure that those who are absent at short notice for business or service reasons are eligible to apply for an emergency proxy vote in the days before the poll.
 - Enabling electors to cancel their postal vote or vary their absent vote arrangements, following receipt of the postal vote by the postal voter provided they do this before the postal vote application deadline (i.e. at least 11 working days before the poll) and that the postal ballot papers have not been completed and returned to the Returning Officer/Counting Officer. This ensures the

current flexibility afforded to electors to change their voting arrangements is maintained.

- Postal vote identifier rejection notifications – electoral registration officers (“EROs”) to inform electors after a poll where the signature or date of birth (the “postal vote identifiers”) which they supply on the postal voting statement, failed to match those held on record or had simply been left blank. This is to help ensure those people can participate effectively in future polls and not have their ballot papers rejected at successive polls because of a signature degradation or because they are making inadvertent errors. EROs are not obliged to inform individuals where fraud is suspected.
- 100% of postal vote identifiers to be checked, rather than a minimum of 20%. This reflects practice at recent national polls, and ensures all postal votes are subject to the same level of scrutiny.
- Enabling voters waiting in a queue at the close of poll (i.e. at 10pm on polling day) to vote. A voter in a queue for the purpose of voting may be issued with a ballot paper and cast their vote. Also, persons queuing at a polling station at close of poll in order to return a postal ballot paper or postal voting statement may return it despite the time of the close of poll having passed.
- Enabling Police Community Support Officers to enter polling stations. This will allow Police Forces additional flexibility to deploy their resources and provide a greater visible reassurance to the public.
- Updates to ballot papers and voting forms for accessibility – to ensure that the ballot papers and forms which voters use are as clear and easy to use as possible to improve the voter’s experience.
- Changes in Northern Ireland to provide for the registration of anonymous voters.

Consolidation

- 7.7 The Law Commission of England and Wales is currently conducting a review of electoral law in the United Kingdom. It plans to finalise substantive recommendations to the Government in 2016. The recommendations will be published on the Law Commission’s website (www.lawcom.gov.uk).

8. Consultation outcome

- 8.1 In July 2015, the Government published draft rules for the conduct of the European Union referendum in the United Kingdom. The Government consulted the Electoral Commission on the draft rules. In addition, the Cabinet Office has consulted informally with representatives of the Association of Electoral Administrators, the Society of Local Authority Chief Executives, the Scottish Assessors Association, the Electoral Management Board for Scotland and electoral administrators. The forms set out in Schedule 4 of the instrument are in line with forms that have been used for previous polls. The Cabinet Office has previously consulted interested bodies on those forms (in particular, SCOPE – the disability charity) and they were also subject to a programme of public user testing.
- 8.2 The Electoral Commission’s response welcomed the Government’s approach as set out in the draft rules. The Commission was pleased that they took account of recent changes to electoral law and applied them to the referendum.

- 8.3 The Commission made a number of detailed suggestions on the draft rules, which have been incorporated into the instrument. For example, the Commission suggested that the rules should clarify that accredited observers of referendum proceedings should be allowed to attend “count collation hubs” that will be set up by the Chief Counting Officer at a regional and national level to receive and collate local results at the referendum. Provision is made for this in Part 1 of Schedule 2 to the instrument. The wording of the guidance for voters notice that will appear in polling stations in Northern Ireland has also been changed to reflect that voters there will be required to show photographic ID when voting at the referendum.
- 8.4 In response to the draft conduct rules, the Electoral Commission made recommendations about the form of the ballot paper and other forms for use at the referendum. Subsequently, the Electoral Commission published a report of its assessment of the proposed referendum question, which also included a recommended form of ballot paper for the referendum. We have amended the form of the ballot paper set out in Schedule 4 to the instrument in line with the Commission’s recommendations. The ballot paper now shows the revised versions of the referendum question and answers recommended by the Commission (which were inserted into section 1 of the 2015 Act during its passage through Parliament). The heading used on the ballot paper and other forms – Referendum on the United Kingdom’s membership of the European Union – is also consistent with the Electoral Commission’s recommendation.
- 8.5 The Electoral Commission recommended that the emergency proxy vote facility in the draft rules should be extended at the referendum to those who have unforeseen caring responsibilities or who have experienced the death of a close relative. The Government understands that this recommendation seeks to facilitate participation at the poll. There is already provision in the instrument for electors to apply for an emergency proxy in the event of a medical emergency. As for other polls, the instrument also enables persons absent on business or military service to apply for an emergency proxy vote. In order to maintain the integrity of the electoral process, the Government considers that the emergency proxy provision should not be drawn too widely and therefore has not included the provision recommended by the Electoral Commission in the instrument.
- 8.6 We received comments from other stakeholders which were of a largely technical nature and have made changes to the instrument in light of them. For example, we have clarified the provisions that allow police officers, police community support officers and employees of counting officers who are unable to vote at their allocated polling station (because they are working at the referendum) to vote at an alternative polling station. The provisions make clear that such people may only vote at another polling station in the same voting area, not a polling station outside the area (see regulations 60(5) and (6) and 71(5) and (6) of the instrument). This is consistent with the position at parliamentary elections.

9. Guidance

- 9.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of elections and referendums. It will issue guidance on the conduct of the European Union referendum which will reflect the provisions set out in the instrument.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The instrument will impact on the public sector in that it sets out rules that the Chief Counting Officer, Regional Counting Officers, Counting Officers and electoral registration officers will be required to implement and follow in conducting the European Union referendum. The instrument will have no impact on the public sector beyond the referendum.
- 10.3 An Impact Assessment has not been prepared for this instrument as no impact on business is foreseen.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Under section 5 of the Political Parties, Elections and Referendums Act 2000, the Electoral Commission will, following the European Union referendum, be required to prepare and publish a report on the administration the referendum. The Cabinet Office will consider any findings or recommendations made by the Commission, including about the provisions in the instrument as applied at the poll. The Cabinet Office will continue to keep all electoral legislation under review to ensure it continues to support electors' participation in elections and referendums, and effective electoral administration. In addition, as noted above, the Law Commission is currently undertaking a review of electoral law in the United Kingdom and expects to present its recommendations to Government in 2016.

13. Contact

- 13.1 Peter Richardson at the Cabinet Office, Telephone: 020 7271 6433 or email: peter.richardson@cabinetoffice.gov.uk can answer any queries regarding this instrument.