

EUROPEAN UNION REFERENDUM ACT 2015

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the European Union Referendum Act 2015 (c. 36) which received Royal Assent on 17 December 2015.

- These Explanatory Notes have been prepared by the Foreign and Commonwealth Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Act

- 1 The European Union Referendum Act 2015 ("the Act") has 14 sections and 3 Schedules. A summary of, and background to, the Act is provided below.
- 2 The Act provides for the question of whether the United Kingdom should remain a member of the European Union or leave the European Union to be put to a referendum held in the United Kingdom and Gibraltar.

Policy background

- 3 During the Queen's Speech 2015 on 27 May 2015 it was announced that the Government would introduce a Bill to hold a referendum on whether the United Kingdom should remain a member of the European Union. The referendum must take place no later than 31 December 2017.

Legal background

- 4 Part 7 of the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") provides a framework that regulates national and regional referendums that take place pursuant to an Act of Parliament. However, in relation to a particular referendum, specific legislation is needed to set the date, the question and entitlement to vote at the referendum. The provisions of Part 7 of the 2000 Act apply to this referendum, subject to the additions and modifications made in Schedules 1 to 3 to the Act. Many of the provisions in Schedules 1 to 3 to the Act copy or draw from provisions in the Parliamentary Voting System and Constituencies Act 2011.

Territorial extent and application

- 5 Section 12 sets out the territorial extent of the Act, that is the jurisdictions in which the Act forms part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect. The Act, and Part 7 of the 2000 Act for the purposes of this referendum, apply to the whole of the United Kingdom and Gibraltar.
- 6 The Act does not contain any provision which gave rise to the need for a legislative consent motion in the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Commentary on provisions of Act

Section 1: The referendum

- 7 Section 1 provides that a referendum is to be held on whether the United Kingdom should remain a member of the European Union. The Secretary of State must set a date for the referendum, which must be no later than 31 December 2017, through regulations subject to the affirmative resolution procedure. The referendum will not be held on 5 May 2016 or 4 May 2017.
- 8 Subsection (4) sets out the question that is to appear on the ballot papers, which is "Should the United Kingdom remain a member of the European Union or leave the European Union?" Subsection (5) provides that the answers that are to appear on the ballot paper are: "Remain a member of the European Union" and "Leave the European Union".
- 9 Subsection (6) sets out the Welsh version of the question, which is "A ddylai'r Deyrnas Unedig aros yn aelod o'r Undeb Ewropeaidd neu adael yr Undeb Ewropeaidd?". The Welsh versions of the alternative answers are: "Aros yn aelod o'r Undeb Ewropeaidd" and "Gadael yr Undeb Ewropeaidd".

Section 2: Entitlement to vote in the referendum

- 10 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 at a parliamentary election. That is British, Irish and Commonwealth citizens over the age of 18 who are resident in the United Kingdom, and British nationals resident overseas for less than 15 years, provided they appear on the register of Parliamentary electors.
- 11 Subsection (1)(b) enables a peer, who is disqualified by common law from voting at Parliamentary elections, to vote in the referendum if, on the date of the referendum, he or she would be entitled to vote at a local government election.
- 12 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 United Kingdom.
- 13 Subsections (1)(c) and (2) further extend the franchise to include Commonwealth citizens and citizens of the Republic of Ireland who, on the date of the referendum, would be entitled to vote in Gibraltar at a European Parliamentary election.

Section 3: Further provision about the referendum

- 14 Section 3 establishes that Part 7 of the 2000 Act, as well as Schedule 1 (Campaigning and Financial Controls), Schedule 2 (Control of loans etc. to permitted participants) and Schedule 3 (Conduct of the referendum) to the Act apply to the referendum.

Section 4: Conduct regulations, etc

- 15 Section 4 provides for the making of regulations for the referendum. Subsection (1) provides that the Minister may by regulations make further provision about voting in the referendum and the conduct of the referendum; apply any provision of the Representation of the People Act 1983 ("the 1983 Act") or other enactments (as defined in section 11) relating to elections or referendums to the referendum; modify the 2000 Act for the purposes of this referendum; and

modify or exclude any provision of any other enactment (other than this Act) that applies to the referendum.

- 16 Subsection (2) provides that the Minister may, by regulations, make provisions in connection with the referendum being combined with the other polls.
- 17 Regulations under subsection (2) may amend or modify any enactment (but may not alter the date of the poll for any election or referendum). As regards the Act itself, under subsection (3), regulations under subsection (2) may only amend or modify the definition of "counting officer" in section 11(1); section 11(2), which defines the voting areas for the purposes of the referendum; or Schedule 3 which makes further provision about the referendum.
- 18 Subsection (4) provides that the Minister may, by regulations, make modifications or amendments to this Act or other legislation where necessary because the referendum is to be held in Gibraltar as well as the United Kingdom.
- 19 Subsection (5) makes further provision as to the regulations that may be made under this section.
- 20 Subsection (6) requires that that the Minister must consult with the Electoral Commission prior to making regulations under this section. This consultation may be undertaken prior to commencement (subsection (7)).

Section 5: Gibraltar

- 21 Section 5 provides further detail about what provision can be made in regulations under section 4 as regards Gibraltar. The section provides that the power to make regulations in relation to Gibraltar for the purposes of the referendum does not affect the capacity of the Gibraltar legislature to make law for Gibraltar. The section also provides that law made in Gibraltar for the purposes of the referendum is referred to in the Act as "Gibraltar conduct law" and that the operation of the Colonial Laws Validity Act 1865 in relation to Gibraltar conduct law is not affected by subsection (2).

Section 6: Duty to publish information on outcome of negotiations between member States

- 22 Section 6 creates a duty for the Secretary of State to publish a report which includes a statement setting out what has been agreed by member States following the renegotiation of the UK's membership of the European Union requested by the UK Government.
- 23 The report is also required to include the UK Government's opinion on what has been agreed. Under subsections (2) and (3), the report must be published before the period of 10 weeks ending with the date of the referendum. There is no restriction on what the report can contain: as well as the content required by the duty, it can contain other material.
- 24 The duty leaves discretion as to the manner of publication, but the Secretary of State is obliged by subsection (4) to lay a copy of the published report before Parliament.

Section 7: Duty to publish information about membership of the European Union etc

- 25 Section 7 creates a duty for the Secretary of State to publish a report which includes information about rights and obligations that arise under European Union law as a result of the UK's membership of the European Union.
- 26 "Rights" refers to rights that the United Kingdom has as a member State, and also rights that are granted to individuals and organisations under EU law. This could include, for example, access to the single market.

- 27 "Obligations" refers to obligations arising under EU law that apply to the UK as a member State, to organisations or to individuals. For example, this could include the obligation on the UK as a member state to amend national law to implement EU law in particular areas.
- 28 The duty does not require that every such right and obligation is detailed: the purpose of the reports under sections 6 and 7 is to provide information to the general public which is relevant and useful in the context of the referendum. There is no restriction on what the report can contain: as well as the content required by the duty, it can contain other material.
- 29 The duty also requires the Secretary of State to include in the report examples of arrangements that other countries have with the European Union where they are not members of the EU. The duty leaves discretion as to the number and identity of countries covered as examples.
- 30 Under subsections (2) and (3), the report must be published before the period of 10 weeks ending with the date of the referendum. The duty leaves discretion as to the manner of publication, but the Secretary of State is obliged by subsection (4) to lay a copy of the published report before Parliament.

Section 8: Power to modify section 125 of the 2000 Act

- 31 Section 8 provides a power for the Minister, by regulations, to modify section 125 of the 2000 Act (as modified by paragraph 38 of Schedule 1 to the Act) for the purposes of the referendum to exclude from the section material published in a way, or by a kind of communication, specified in the regulations (subsection (2)(a)).
- 32 Subsection (2)(b) provides that other conditions may also be prescribed. This could, for example, be used to specify that material which had been paid for is not exempt from section 125.
- 33 Subsection (3) clarifies that the kinds of communications that may be prescribed include oral communications and communications with the media.
- 34 Subsection (4) requires the Minister to consult with the Electoral Commission prior to making regulations under this section. This consultation may be undertaken prior to commencement (subsection (5)).

Section 9: Regulations

- 35 Section 9 sets out the process by which powers under this Act to make regulations can be exercised. All powers, other than those under paragraph 16(10) of Schedule 3, are exercisable by statutory instrument. Regulations under paragraph 16(10) of Schedule 3 are made by the Electoral Commission and concern the accounts to be rendered for the purposes of the payment of the charges of a counting officer, a Regional Counting Officer or the Chief Counting Officer.
- 36 Subsection (2) sets out that a statutory instrument containing regulations under the Act must be made by the affirmative resolution procedure, with the exception, as set out by subsections (3) and (4), of: regulations under section 13, which relate to commencement; or regulations made by the Minister under paragraph 16 of Schedule 3, which relate to the overall maximum recoverable amount which a counting officer or Regional Counting Officer is entitled to recover in respect of services rendered or expenses incurred in connection with the referendum.
- 37 Subsection (5) makes further provision with regard to regulations and subsection (6) provides that if a statutory instrument is made prescribing Welsh forms or forms of words for use in the referendum under the powers in the Welsh Language Act 1993, the instrument will only

need to be laid before Parliament after being made.

Section 10: Financial provisions

- 38 Section 10 recognises that, as matter of House of Commons procedure, a Money resolution needed to be agreed for the Bill from which the Act resulted.

Section 11: Definitions

- 39 Section 11(1) defines certain terms used in the Act. Subsection (2) specifies the voting areas for the purposes of the referendum. Subsection (3) provides that references in the Act to an Act (with no date) are to the Gibraltar Act of that name.

Section 12: Extent

- 40 Section 12 provides that the Act extends to the whole of the United Kingdom and to Gibraltar. It also provides that, for the purposes of this referendum, Part 7 of the 2000 Act extends to Gibraltar.

Section 13: Commencement

- 41 Section 13 sets out that sections 9 to 14 commence on Royal Assent. The remaining sections and Schedules 1 to 3 will come into force on the day appointed by regulations made by the Minister.

Section 14: Short title

- 42 Section 14 establishes that the short title of the Act is the European Union Referendum Act 2015.

Schedule 1: Campaigning and financial controls

- 43 Schedule 1 supplements Part 7 of the 2000 Act in relation to the campaigning and financial controls for the referendum.
- 44 Paragraph 1 of Schedule 1 sets out that the referendum period, during which the full campaigning and financial controls in the Act and Part 7 of the 2000 Act will have effect, is to be set by the Minister through regulations subject to the affirmative procedure. Sub-paragraph (2) provides that that the referendum period must not be less than 10 weeks ending with the date of the referendum.
- 45 Paragraph 2 modifies section 105(1) of the 2000 Act to extend the list of those eligible to become "permitted participants" at the referendum, to include a body incorporated by Royal Charter, a Charitable Incorporated Association, a Scottish or Northern Irish Charitable Incorporated Association, a Scottish Partnership, an individual who is resident in Gibraltar or is registered in Gibraltar for the purposes of European Parliamentary elections, and the Gibraltar-based bodies eligible to donate to political parties in the run up to European Parliamentary elections (as specified by section 54(2A)(b)-(g) of the 2000 Act). Gibraltar established political parties which are not registered in the UK (and therefore do not fall within section 54(2A)(c)), including the Gibraltar Social Democrats, the Gibraltar Socialist Labour Party and the Liberal Party of Gibraltar are eligible to become permitted participants by virtue of section 54(2A)(g) of the 2000 Act.
- 46 Paragraph 3 deals with the details that must be provided under section 106 of the 2000 Act by the new bodies eligible to become permitted participants by virtue of the modifications to section 105(1)(b). It also modifies section 106 to provide that any declarations or notifications under section 106 must be accompanied by a statement signed by the person who is the responsible person (under section 105(2)) confirming that he or she is willing to exercise the

- functions of a responsible person set out in the 2000 Act and the Act.
- 47 Paragraph 4 provides for additional information to be entered into the register maintained by the Electoral Commission under section 107 of the 2000 Act if a statement is given under section 106(6A).
 - 48 Paragraph 5 is consequential on paragraph 3(3) of Schedule 1 and takes account of the new bodies eligible to become permitted participants in relation to the meaning of "responsible person" under section 105(2) of the 2000 Act.
 - 49 Paragraph 6 makes provision to ensure that a person cannot be the "responsible person" for more than one permitted participant at the referendum.
 - 50 Paragraph 7 provides that the Electoral Commission may reject a permitted participant notification given by an unincorporated association with a name that is, in the opinion of the Commission, obscene, offensive or criminal. Paragraph 8 provides that where an unincorporated association seeks to change its name on the register to one that is, in the opinion of the Electoral Commission, obscene, offensive or criminal the Commission does not have to enter this name on the register, or make public any documents bearing that name.
 - 51 Paragraphs 9 and 10 enable the Electoral Commission to designate a lead campaigner for one side of the argument ("remain" or "leave") at the referendum without designating a lead campaigner for the other side. This would only be possible where, for a particular outcome, either there were no applications, or the Electoral Commission was not satisfied that there was an applicant who adequately represented those campaigning for that outcome.
 - 52 Paragraph 11 provides that where only one campaigner is designated, that campaigner is not entitled to a grant from the Electoral Commission of up to £600,000 (under section 110 of the 2000 Act) or to make a referendum broadcast (under section 127 of the 2000 Act).
 - 53 Paragraph 12 enables the start of the period for applications under section 109 of the 2000 Act for designation as a lead campaigner to be prescribed in regulations made by the Minister, subject to the affirmative resolution procedure.
 - 54 Paragraph 13 modifies section 110 of the 2000 Act regarding the payment of grants by the Electoral Commission to designated lead campaigners. The effect is that 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 a condition set by the Commission. Under the 2000 Act, the grant paid to each designated organisation must be of the same amount, but this need not be the case if the Commission has withheld any instalment from a designated organisation under this paragraph.
 - 55 Paragraph 14 modifies Schedule 12 to the 2000 Act (assistance to designated organisations) to take account of the referendum also taking place in Gibraltar.
 - 56 Paragraph 15 enables a permitted participant to appoint a referendum agent for any voting area. Paragraphs 16 and 17 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 16th working day before the date of the poll (paragraph 16(2)), and for the counting officer to give public notice of the appointment (paragraph 17).
 - 57 Paragraph 18 provides that that the exclusion of expenses (on property, services or facilities) met out of public funds from the list of qualifying expenses for referendum purposes in Schedule 13 to the 2000 Act also applies to expenses met out of Gibraltar public funds.
 - 58 Paragraph 19 provides that, for this referendum, the following are not "referendum expenses"

for the purposes of the Act or the 2000 Act:

- a. expenses incurred in the publication of non-advertising material in a newspaper or periodical, in a broadcast by the BBC, S4C, the Gibraltar Broadcasting Corporation or in a programme included in a service from another licensed broadcaster;
- b. expenses in respect of, or in consequence of, translating materials from English to Welsh or Welsh to English;
- c. reasonable expenses incurred that are reasonably attributable to an individual's disability ("disability" has the same meaning as in the Equality Act 2010);
- d. expenses incurred in providing for the protection of persons or property at rallies or other public events.

- 59 Paragraph 20 ensures that referendum expenses incurred before the commencement of section 3 of the Act are treated in the same way as other expenses incurred before the beginning of the referendum period. This means that expenses incurred before commencement can be treated as incurred during the referendum period, and therefore count towards spending limits, if the property, services or facilities in question were made use of during the referendum period.
- 60 Paragraph 21 protects the rights of a creditor in a case where a contract or expense contravenes a provision of Part 7 of the 2000 Act but the creditor was unaware of this.
- 61 Paragraph 22 makes provision about the aggregation of expenses by persons "acting in concert" at the proposed referendum. Sub-paragraph (1) sets out the circumstances in which persons will be regarded as having acted in concert. Sub-paragraph (2) has the effect that campaigners do not have to account for expenditure by other participants in the common plan which have been incurred independently of the common plan. Sub-paragraphs (3) to (6) provide 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, except where a person incurs referendum expenses while acting in concert with a designated organisation. In this event those expenses are treated as incurred by the designated organisation only (unless the other person is not a permitted participant but exceeds the expenses threshold above which registration as a permitted participant is required).
- 62 Paragraph 23 modifies section 120 of the 2000 Act for the purposes of the referendum. It requires permitted participants to include in their referendum expenses returns declarations as to a) whether any expenses of another individual or body are to be treated as having been incurred by or on behalf of the permitted participant (and if so, the details of any such expenses); and b) whether any expenses of the permitted participant are to be treated as having been incurred by or on behalf of another individual or body (and if so, the details of any such expenses).
- 63 Paragraph 24 makes consequential modifications to section 115(7) of the 2000 Act to account for bank holidays and public holidays in Gibraltar in relation to making claims in respect of referendum expenses.
- 64 Paragraph 25 provides that the limits of referendum expenses incurred by permitted participants as set by paragraph 1(2) of Schedule 14 to the 2000 Act apply to this referendum and therefore apply to spending in the United Kingdom and Gibraltar. Sub-paragraph (2) modifies the spending limits in paragraph 1(2) for the purposes of the referendum to uprate the figures by inflation since 2000.
- 65 Paragraph 26 provides that registered political parties (that are not minor parties) which

register as permitted participants are, during the referendum period, able to accept donations from the individuals and bodies that have been added to the list of permissible donors who may donate to other permitted participants by paragraph 31 of the Schedule., Such a party is also able to accept a bequest from an individual, where at any time within the period of 5 years ending with the date of the individual's death, they were on the electoral register for European Parliamentary elections in Gibraltar. This provision is necessary as registered political parties (that are not minor parties) are regulated separately under the 2000 Act and are therefore not subject to the donations controls on permitted participants under Schedule 15 to the 2000 Act.

- 66 Paragraph 27 sets out the information that must be provided by political parties (that are not minor parties) in relation to any reportable donations received from the categories of eligible donors that are not already covered by paragraph 2 of Schedule 6 to the 2000 Act.
- 67 Paragraph 28 applies where a registered political party (other than a minor party) registers as a permitted participant and accepts donations from, or enters into transactions which are "regulated transactions" for the purposes of Part 4A of the 2000 Act with, certain individuals or bodies. These are the individuals or bodies from whom the party could not ordinarily accept donations, but can do so by virtue of other provisions in this Act.
- 68 In this event, paragraph 28 sets a cap (the "permitted maximum") on the total value of donations from, and regulated transactions with, these individuals and bodies that the party can accept or enter into in the referendum period. The "permitted maximum" is equivalent to the maximum amount of referendum expenses that the party may incur during the referendum period. If the permitted maximum is exceeded, any excess is treated as having been received from an impermissible donor and must therefore be repaid.
- 69 Paragraph 29 ensures that Gibraltar political parties that are not registered under Part 2 of the 2000 Act may not make donations to permitted participants, except the designated lead campaigners. This brings the position of unregistered Gibraltar political parties into line with registered parties.
- 70 Paragraph 30 provides that any grant provided from Gibraltar public funds is not to be regarded as a donation to a permitted participant at the referendum. This is in line with the existing position for grants from UK public funds.
- 71 Paragraph 31 modifies paragraph 6 of Schedule 15 to the 2000 Act (which applies to donations to permitted participants who are not registered parties or are minor parties) to extend the list of permissible donors to include a body incorporated by Royal Charter, a Charitable Incorporated Association, a Scottish or Northern Irish Charitable Incorporated Association and a Scottish Partnership. It also includes individuals registered in Gibraltar for the purposes of European Parliamentary elections, and the Gibraltar-based bodies eligible to donate to political parties in the run up to European Parliamentary elections (as specified by section 54(2A)(b)-(g) of the 2000 Act). Schedule 15 to the 2000 Act is further modified to provide that donations to permitted participants in the form of bequests from individuals who were, at any time in the five years preceding their death, registered in the Gibraltar register are treated as donations from permissible donors.
- 72 Paragraph 32 is consequential to paragraph 31 of this Schedule and modifies paragraph 7(2) of Schedule 15 to the 2000 Act to take account of the extended list of permissible donors.
- 73 Paragraph 33 is consequential to paragraph 31 of this Schedule and has the effect that arrangements for facilitating the making of donations to permitted participants by individuals and bodies on the extended list of permissible donors are not unlawful.

- 74 Paragraph 34 establishes the details that must be provided under paragraph 10 of Schedule 15 to the 2000 Act (which deals with the reporting of donations after a referendum) with regards to donations received from the individuals and bodies on the extended list of permissible donors.
- 75 Paragraph 35 modifies the 2000 Act by treating new section 120A as having been inserted for the purposes of this referendum. New section 120A provides for circumstances where a permitted participant's expenses incurred during the referendum period do not exceed £10,000. In this event, the responsible person is not required to make a return under section 120 of the 2000 Act, but can, within 3 months of the end of the referendum period, make a declaration to the Electoral Commission that to the best of the person's knowledge and belief the total expenses incurred by or on behalf of the permitted participant during the referendum period do not exceed £10,000. Subsection (3) of new section 120A creates an offence of knowingly or recklessly making a false declaration and subsection (4) sets out the associated maximum penalties.
- 76 Paragraph 36 modifies the declaration required of a responsible person for a permitted participant (that is not a registered party or is a minor party) by section 123 of the 2000 Act in relation to relevant donations. The declaration is to include a statement that section 56(2) of the 2000 Act (which provides for the return of donations) was complied with in relation to donations from impermissible donors. Paragraph 36 further modifies section 123 to take account of the extended list of permissible donors provided for by paragraph 31 of Schedule 1.
- 77 Paragraph 37 modifies the 2000 Act by introducing a new section 124A which requires permitted participants who do not incur referendum expenses to submit a declaration of that fact to the Electoral Commission within three months of the end of the referendum period. The new section creates offences of failing to comply with its requirements, and of knowingly or recklessly making a false declaration, and provides for maximum penalties.
- 78 Paragraph 38 modifies section 125 of the 2000 Act to provide that the restrictions on the Government and publicly funded persons and bodies publishing material in the 28 days ending with the poll also apply to the Government of Gibraltar, a Gibraltar government department and any other body funded wholly or mainly out of Gibraltar public funds.
- 79 Paragraph 39 sets out a system for the reporting of donations received by a permitted participant (which is either not a registered party or is a minor party) in the run up to the referendum ("pre-poll reporting"). It requires that reports are prepared by the responsible person and must include details of any donation received with a value of more than £7,500 that is for the purpose of meeting referendum expenses incurred by or on behalf of the permitted participant. The first reporting period begins on commencement of paragraph 39(2)(a) and ends on the seventh day of the referendum period. The report for that period must be delivered to the Electoral Commission within a further period of seven days. Further reports must be prepared and delivered to the Electoral Commission at the times and in respect of other periods to be set by the Minister in regulations made under the affirmative procedure. If no relevant donations of more than £7,500 were received during a reporting period, this information must also be included in the report. Sub-paragraphs (9) to (12) create offences of failing to comply with these provisions and set out the associated maximum penalties.
- 80 Paragraph 40 requires each report under paragraph 39 to be accompanied by a declaration, signed by the responsible person, confirming that the report is complete. Knowingly or recklessly making a false declaration, or the failure by a responsible person to make a declaration, is an offence, and the paragraph sets out the maximum penalties.
- 81 Paragraph 41 requires the Electoral Commission to make reports under paragraph 39 publicly

available, for a period of two years beginning with the date any such report is received, as soon as reasonably practicable after receipt.

- 82 Paragraph 42 ensures that provisions in the 2000 Act (in section 149) about the inspection of registers and documents kept by the Electoral Commission apply to permitted participants' reports under paragraph 39 delivered to the Commission and available for public inspection under paragraph 41.
- 83 Paragraph 43 extends the controls in section 127 of the 2000 Act, in relation to referendum campaign broadcasts, to the Gibraltar Broadcasting Corporation.
- 84 Paragraph 44 establishes that certain other provisions in the 2000 Act, including provisions relating to functions of the Electoral Commission, offences, civil sanctions and legal proceedings, apply in relation to the requirements and offences in Schedule 1. Sub-paragraph (6) makes clear that Schedules 19B and 19C to the 2000 Act are not extended or applied to Gibraltar.
- 85 Paragraph 45 provides that that section 160 of the 2000 Act, which sets out a list of defined terms used in the 2000 Act, has effect for the purposes of the referendum with the addition of a definition of "Gibraltar public funds".

Schedule 2: Control of loans etc to permitted participants

- 86 Schedule 2 sets out in detail the arrangements that are to apply for the regulation of loans and other transactions involving permitted participants who are either not registered political parties or are minor parties. Part 4A of the 2000 Act already provides for the regulation of loans and other regulated transactions involving registered political parties who are not minor parties.
- 87 Paragraph 1 modifies the 2000 Act to treat as inserted a new Schedule 15A to the 2000 Act. Paragraph 2 of new Schedule 15A defines a regulated transaction as an agreement by someone to lend money or provide credit to a permitted participant, where the permitted participant intends to use all or part of the money to meet referendum expenses. An agreement of this type may also be supplemented by a "connected transaction", where a third party provides security to the lender. In this case the connected transaction is considered to be a regulated transaction. Under paragraph 2(12) of new Schedule 15A, agreements of a value of £500 or less or that are already covered by the donations provisions do not count as regulated transactions.
- 88 Paragraph 3 of new Schedule 15A concerns the value of regulated transactions. Where the transaction is a loan, the value is the total amount of the money to be lent under the loan agreement. Where the transaction is a credit facility, the value is the maximum credit limit. Both of these exclude any interest provisions in the agreement. Where the transaction is an arrangement to give any form of security, the value is the contingent liability under the security.
- 89 Paragraph 4 of new Schedule 15A prohibits a permitted participant from being party to a regulated transaction with anyone who is not a qualifying person. A qualifying person is a permissible donor falling within section 54(2) of the 2000 Act, a body incorporated by Royal Charter, a Charitable Incorporated Association, a Scottish or Northern Irish Charitable Incorporated Association, a Scottish Partnership, a Gibraltar elector, or an individual or body that is a permissible Gibraltar based donor within section 54(2A)(b)-(g) of the 2000 Act. However, a registered political party, or a political party established in Gibraltar which is not registered, is a qualifying person only in relation to a transaction entered into by a designated

lead campaigner.

- 90 Under paragraph 5 of new Schedule 15A, any regulated transaction between a permitted participant and a non-qualifying person is void. Any money received under the transaction must be repaid, along with any interest due. If the money is not repaid, the Electoral Commission may apply to the court to make an order to return the money or discharge any security, with the effect that both parties return to the position they would have been in if the transaction had never been entered into.
- 91 Paragraph 6 of new Schedule 15A provides that where a connected transaction involves a non-qualifying person providing security, both the regulated transaction and the connected transaction are void. If the lender is unable to recover the full amount owed by the permitted participant, they may recover such sums from the third party.
- 92 Paragraph 7 of new Schedule 15A provides that any attempt by a qualifying person to transfer their interest in a regulated transaction to a non-qualifying person is of no effect.
- 93 Paragraphs 8 to 12 of new Schedule 15A set out offences related to regulated transactions. Paragraph 13(1) of new Schedule 15A provides that references in Part 3 of the Schedule (Offences) to permitted participants entering into a regulated transaction includes circumstances where the terms of the regulated transaction change to increase the amount of money that can be received by the permitted participant. Paragraph 13(2) of new Schedule 15A has the effect that it is an offence for a permitted participant knowingly to receive money under a loan or other regulated transaction from a person who has ceased to be a qualifying person, or to fail to repay money received under a loan or other regulated transaction from a person who has ceased to be a qualifying person after becoming aware the person has so ceased. Paragraph 14 of new Schedule 15A sets out the associated penalties for the offences in paragraphs 8 to 12 of new Schedule 15A.
- 94 Paragraph 15 of new Schedule 15A sets out the requirement for permitted participants to include regulated transactions in the statements prepared for the Electoral Commission under section 120 of the 2000 Act. The transaction need only be included in the return (and is only a "recordable transaction") where the value exceeds £7,500, or where the aggregate value of the transaction and any other relevant benefits exceeds £7,500.
- 95 Paragraphs 16 and 17 of new Schedule 15A set out the information that must be recorded in the statement prepared under section 120 of the 2000 Act in relation to each recordable transaction to which a qualifying person (paragraph 16) and a non-qualifying person (paragraph 17) was a party. Paragraph 18 of new Schedule 15A establishes that the statement must also include details of the transaction in line with Schedule 6A to the 2000 Act (which deals with transaction reports prepared by registered political parties), subject to the modifications made under sub-paragraph (2) and any other necessary modifications.
- 96 Under paragraph 19 of new Schedule 15A, where there is any change to the agreement, such as another qualifying person becoming party to it, the information from before and after the change must be included in the statement, as well as the date the change was made. Where the loan has been repaid in full or the debt released this information must be included.
- 97 Paragraph 20 of new Schedule 15A requires that the statement required under section 120 of the 2000 Act also include the total value of regulated transactions that are not recordable.
- 98 Paragraph 21 of new Schedule 15A deals with a situation where the court, on application by the Commission, is satisfied that a failure to comply with any requirement under Part 4 of the Schedule (the reporting Part) was caused by a person attempting to conceal the existence of, or true value of, the transaction. In this case, the court may make an order which will return

the parties to the same position as if the transaction had never been entered into. Paragraph 22 of new Schedule 15A makes provision in relation to court proceedings under paragraph 5(4) or 21 of new Schedule 15A.

- 99 Paragraph 23 of new Schedule 15A establishes that the reporting requirements for permitted participants in relation to regulated transactions apply, if a permitted participant is party to a transaction under paragraph 2(3)(a) of new Schedule 15A, as if it were a party to the connected transaction.
- 100 Paragraph 2(1) of Schedule 2 modifies section 120 of the 2000 Act to require that the returns under that section include a statement of regulated transactions entered into. Paragraph 2(2) modifies section 123 of the 2000 Act to require the declaration by the responsible person to include information about regulated transactions entered into by the permitted participant. Paragraph 2(3) modifies section 124 of the 2000 Act so that a return in relation to a regulated transaction with an individual does not include the individual's address when published by the Electoral Commission. Paragraphs 2(4) and (5) make consequential modifications to Schedule 15 to the 2000 Act as a result of the inclusion of new Schedule 15A. Paragraph 2(6) ensures that loans to, or discharges of a liability of, permitted participants by unincorporated associations are treated as political contributions for the purposes of Schedule 19A to the 2000 Act. Paragraph 2(7) establishes that civil sanctions under Schedule 19C to the 2000 Act can be applied to the offences in paragraph 8 to 11 of new Schedule 15A. References in sub-paragraphs (6) or (7) in relation to Schedules 19A and 19C to the 2000 Act do not extend or apply those Schedules to Gibraltar (sub-paragraph (8)).
- 101 Paragraphs 3 and 4 provide for the reporting requirements of new Schedule 15A to apply to certain transactions entered into by a person before becoming a permitted participant (whether before or after commencement of paragraph 1 of Schedule 2) that are varied after they become a permitted participant to increase the amount of money under the transaction.
- 102 Paragraphs 5 to 8 provide for a pre-poll reporting regime for regulated transactions (including connected transactions) involving permitted participants (that are either not registered parties or are minor parties) in line with the regime for pre-poll reporting of donations as provided for by paragraphs 39 to 42 of Schedule 1.
- 103 Paragraph 9 establishes that certain other provisions in the 2000 Act apply in relation to the requirements and offences in Schedule 2. Sub-paragraph (6) makes clear that Schedules 19B and 19C to the 2000 Act are not extended or applied to Gibraltar.
- 104 Paragraphs 10 and 11 provide that a registered political party (other than a minor party) which registers as a permitted participant is able, during the referendum period, to enter into regulated transactions with the individuals and bodies who are eligible to donate to the party during that period under Schedule 1 to the Act. Without this provision, registered political parties (that are not minor parties) would not be able to enter into regulated transactions with these individuals or bodies, which would be in contrast to other permitted participants (because Schedule 2 to the Act does enable them to do so). Paragraphs 12 and 13 prohibit the terms of such a transaction being varied so as to increase in value.

Schedule 3: Further provision about the referendum

- 105 Paragraph 1 provides that a reference to a function in Schedule 3 includes functions under Gibraltar law (as well as functions under the law of the United Kingdom). This recognises that Gibraltar law may confer functions on officers in relation to the referendum.
- 106 Paragraph 2 sets out that section 128 of the 2000 Act applies for the purpose of the referendum

with certain modifications. The effect is that the Chair of the Electoral Commission is designated as the Chief Counting Officer for the referendum. The Chief Counting Officer will be responsible for certifying the total number of ballot papers counted and the total number of votes cast in favour of each answer to a question asked in the referendum for the whole referendum area. Paragraphs 4 and 6 contain additional modifications of section 128 for the purpose of the referendum.

- 107 Paragraph 3 designates returning officers as counting officers for voting areas for the purposes of the referendum. In practice this means that in England, Scotland and Wales counting officers will be the same individuals who are returning officers for the local government elections. 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. The counting officer for the Gibraltar voting area is the person who is the Clerk to the Gibraltar Parliament who by virtue of holding this post is the European electoral registration officer and local returning officer at European Parliamentary elections for Gibraltar.
- 108 Paragraph 4 contains some modifications to section 128 of the 2000 Act relating to counting officers and sets out that the referendum area means the United Kingdom and Gibraltar.
- 109 Paragraph 5 creates the role of Regional Counting Officers specifically for the referendum. Sub-paragraph (1) provides that the Chief Counting Officer may appoint a Regional Counting Officer for the regions listed in that sub-paragraph. The regions are the same as those used for European Parliamentary elections. For the purposes of the referendum, the South West region is renamed as the South West and Gibraltar region.
- 110 Paragraph 6(1)(a) imposes a duty on a local authority within a voting area (as defined in section 11(2)) to place the services of their officers at the disposal of the counting officer. As regards Regional Counting Officers, paragraph 6(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. Paragraph 6(3) imposes a duty on the Government of Gibraltar to place the services of its public officers at the disposal of the counting officer for Gibraltar and the Regional Counting Officer for the South West and Gibraltar region, if appointed.
- 111 Paragraph 7 relates to the role, duties and powers of the Chief Counting Officer, Regional Counting Officers and counting officers, 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 (including, for the officers with functions in relation to Gibraltar, Gibraltar conduct law).
- 112 Paragraph 7(2) sets out the responsibilities of a counting officer with respect to the voting area for which he or she is appointed.
- 113 Paragraph 7(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 7(2)(b)).
- 114 Paragraph 7(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 the Chief Counting Officer and

counting officers under section 128(5) and (6) of the 2000 Act.

- 115 Paragraph 7(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 7(6)), but only where this is authorised or required by the Chief Counting Officer (paragraph 7(7)). Under paragraph 7(8), a Regional Counting Officer or counting officer to whom a direction is given is required to comply with it.
- 116 Paragraph 8 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 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.
- 117 Paragraph 9 allows Regional Counting Officers and 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 Regional Counting Officer or 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.
- 118 Paragraph 10 relates to public notices that are required to be given by the Chief Counting Officer, a Regional Counting Officer or a counting officer. 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.
- 119 Paragraph 11 relates to the role of the Electoral Commission. Sub-paragraph (1) provides that the Electoral Commission has a duty to promote public awareness of the referendum and how to vote in it. Sub-paragraph (2) imposes a duty on the Electoral Commission to publish the most accurate estimate reasonably possible of the turnout in each of England, Wales, Scotland, Northern Ireland and Gibraltar, 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. Sub-paragraph (3) defines "turnout" as the percentage of those entitled to vote in the referendum who did so.
- 120 Paragraph 12 requires the Chief Counting Officer, Regional Counting Officers, counting officers and registration officers (including the registration officer for Gibraltar) 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.
- 121 Paragraphs 13, 14 and 15 amend existing legislation in England and Wales, Scotland and Northern Ireland, to enable permitted participants to use information in electoral registers for the purposes of complying with all of the relevant campaigning controls imposed by the 2000 Act (as modified by the Act) and the Act. Permitted participants are already entitled to access the registers; this provision allows them to use the information in the registers to comply with the new duties imposed on them. Existing legislation provides that it is a criminal offence to use information in the registers for a purpose other than one permitted by legislation.

- 122 Paragraph 16 makes provision for the funding of the referendum. Under sub-paragraph (1) Regional Counting Officers and 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 regulations made by the Minister. These regulations may also specify, or make provision for determining, the maximum amount which Regional Counting Officers or 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 these regulations.
- 123 Under paragraphs 16(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 the service rendered by a Regional Counting Officer or counting officer was, in the opinion of the Electoral Commission, inadequately performed. The level of reduction (which may reduce the fees to nil) is to be determined by what the Commission (or, in certain cases, a court or auditor) thinks is reasonable in all the circumstances. The power does not extend to allow the reduction of any sum payable for expenses.
- 124 The Electoral Commission is required to pay to Regional Counting Officers and counting officers the charges that they are entitled to recover (paragraph 16(8)). However, the Electoral Commission can apply for the account to be taxed under paragraph 17 before payment.
- 125 There is provision in paragraph 16(5) for the Electoral Commission, with the consent of Treasury, to authorise payment of more than the maximum recoverable amounts specified in the regulations if the conditions in paragraph 16(6) are satisfied.
- 126 The Electoral Commission is also empowered in paragraph 16(9) to pay advances to the Chief Counting Officer, Regional Counting Officers and counting officers upon request.
- 127 Under paragraph 16(7) there is provision for the Chief Counting Officer, who is the Chair of the Electoral Commission, to recover expenses for the effective conduct of the referendum in certain limited circumstances.
- 128 Under paragraph 16(10) 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 the Chief Counting Officer's or the Regional Counting Officers' or the counting officers' charges.
- 129 Paragraph 16(12) provides that any sums required by the Electoral Commission for making payments under paragraph 16 are to be charged on and paid out of the Consolidated Fund.
- 130 Paragraph 17 makes provision in respect of applications for a Regional Counting Officer's or 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 Regional Counting Officer or counting officer.
- 131 Where an application for taxation of a Regional Counting Officer's or counting officer's account has been made, paragraph 17(3) allows the Regional Counting Officer or 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 Regional Counting Officer or counting officer but must first give the claimant the opportunity to be heard and to tender evidence

(paragraph 17(4)).

132 Paragraph 18(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 (paragraph 18(2)); those directions might include the matters set out in paragraph 18(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 paragraph 18(1) (paragraph 18(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.

133 Paragraph 19 relates to how the 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.

Commencement

134 Section 13 sets out that sections 9 to 14 will commence on Royal Assent. The remaining sections and Schedules 1 to 3 will come into force on the day appointed by regulations made by the Minister.

Compatibility with the European Convention on Human Rights

135 It is considered that the provisions of the European Union Referendum Act 2015 are compatible with the Convention Rights.

Related documents

136 The following documents are relevant to the Act and can be read at the stated locations:

- Political Parties, Elections and Referendums Act 2000
<http://www.legislation.gov.uk/ukpga/2000/41/contents>
- Representation of the People Act 1983
<http://www.legislation.gov.uk/ukpga/1983/2>
- Memorandum of the Bill's compatibility with the European Convention on Human Rights
<https://www.gov.uk/government/publications>

Annex A - Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Sections 1 to 14	Yes	Yes	No	Yes	No	Yes	No
Schedules 1 to 3	Yes	Yes	No	Yes	No	Yes	No

Annex B - Hansard References

137 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	28 May 2015	Vol. [596] Col. [200]
Second Reading	9 June 2015	Vol. [596] Col. [1047]
Public Bill Committee (1 st Sitting)	16 June 2015	Vol. [597] Col. [186]
Public Bill Committee (2 nd Sitting)	18 June 2015	Vol. [597] Col. [494]
Report and Third Reading	7 September 2015	Vol. [599] Col. [71]
<i>House of Lords</i>		
Introduction	8 September 2015	Vol. [764] Col. [1317]
Second Reading	13 October 2015	Vol. [765] Col. [89]
Second Reading (<i>Continued</i>)	13 October 2015	Vol. [765] Col. [142]
Committee (1 st Sitting)	28 October 2015	Vol. [765] Col. [1178]
Committee (2 nd Sitting)	2 November 2015	Vol. [765] Col. [1406]
Committee (2 nd Sitting) (<i>Continued</i>)	2 November 2015	Vol. [765] Col. [1491]
Committee (3 rd Sitting)	4 November 2015	Vol. [765] Col. [1666]
Committee (3 rd Sitting) (<i>Continued</i>)	4 November 2015	Vol. [765] Col. [1731]
Report (1 st Sitting)	18 November 2015	Vol. [767] Col. [187]
Report (1 st Sitting) (<i>Continued</i>)	18 November 2015	Vol. [767] Col. [225]
Report (2 nd Sitting)	23 November 2015	Vol. [767] Col. [471]
Report (2 nd Sitting) (<i>Continued</i>)	23 November 2015	Vol. [767] Col. [521]
Third Reading	1 December 2015	Vol. [767] Col. [1036]
Commons Consideration of Lords Amendments	8 December 2015	Vol. [603] Col. [865]
Lords Consideration of Commons Reasons	14 December 2015	Vol. [767] Col. [1841]
Royal Assent	17 December 2015	House of Commons Vol. [603] Col. [1699]
		House of Lords Vol. [767] Col. [2179]

These Explanatory Notes relate to the European Union Referendum Act 2015 (c. 36) which received Royal Assent on 17 December 2015

Annex C - Progress of Bill Table

138 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6					Clause 6
Section 7					Clause 7
Section 8			Clause 6	Clause 6	Clause 8
Section 9	Clause 6	Clause 6	Clause 7	Clause 7	Clause 9
Section 10	Clause 7	Clause 7	Clause 8	Clause 8	Clause 10
Section 11	Clause 8	Clause 8	Clause 9	Clause 9	Clause 11
Section 12	Clause 9	Clause 9	Clause 10	Clause 10	Clause 12
Section 13	Clause 10	Clause 10	Clause 11	Clause 11	Clause 13
Section 14	Clause 11	Clause 11	Clause 12	Clause 12	Clause 14
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3

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