

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT EUROPEAN UNION REFERENDUM (CONDUCT) REGULATIONS 2016

Thursday 11 February 2016

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Monday 15 February 2016

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: STEVE McCABE

† Allan, Lucy (*Telford*) (Con)
 † Benyon, Richard (*Newbury*) (Con)
 † Berry, James (*Kingston and Surbiton*) (Con)
 † Cox, Jo (*Batley and Spen*) (Lab)
 † David, Wayne (*Caerphilly*) (Lab)
 † Field, Mark (*Cities of London and Westminster*) (Con)
 † Fitzpatrick, Jim (*Poplar and Limehouse*) (Lab)
 Gethins, Stephen (*North East Fife*) (SNP)
 † Grant, Peter (*Glenrothes*) (SNP)
 † Leslie, Chris (*Nottingham East*) (Lab/Co-op)
 † McFadden, Mr Pat (*Wolverhampton South East*) (Lab)

† Mercer, Johnny (*Plymouth, Moor View*) (Con)
 † Milling, Amanda (*Cannock Chase*) (Con)
 † Morris, Grahame M. (*Easington*) (Lab)
 † Penrose, John (*Parliamentary Secretary, Cabinet Office*)
 † Philp, Chris (*Croydon South*) (Con)
 † Stephenson, Andrew (*Pendle*) (Con)
 † Tomlinson, Michael (*Mid Dorset and North Poole*) (Con)

Clementine Brown, Helen Finlayson, *Committee Clerks*

† **attended the Committee**

Second Delegated Legislation Committee

Thursday 11 February 2016

[STEVE McCABE *in the Chair*]

Draft European Union Referendum (Conduct) Regulations 2016

11.30 am

The Parliamentary Secretary, Cabinet Office (John Penrose): I beg to move,

That the Committee has considered the draft European Union Referendum (Conduct) Regulations 2016.

It is a pleasure, as always, to have you looking after us during our deliberations, Mr McCabe. The draft regulations, which are largely procedural, set out the detailed framework for the administration of the referendum poll. They are a piece of vital, but generally ignored, electoral plumbing to set out how the polls should be run. In fact, we had a roughly equivalent discussion a couple of weeks ago about regulations setting out conduct in the process for the recall of MPs in perhaps this very room.

I thank members of the Joint Committee on Statutory Instruments, which approved the draft regulations on 5 February, and members of the Secondary Legislation Scrutiny Committee in the other place for their consideration of the measure. The regulations specify matters such as how ballot papers will be issued and how voting will take place in polling stations. They also specify the arrangements for absent voting, which provide for people to vote by post or by proxy if they do not want to vote in person. They cover arrangements for the count and the declaration of results, as well as how ballot papers and other referendum documents will be disposed of after the poll. They also apply existing electoral offences, such as double voting, to the referendum.

All elections have conduct rules, which are a routine but necessary part of every British poll. We have modelled these conduct regulations on the rules that were used to administer the parliamentary voting system—alternative vote—referendum in May 2011, which were themselves modelled on those used for ordinary UK parliamentary elections, so they will be relatively familiar to election administrators. The Parliament and Government of Gibraltar will make equivalent rules for the administration of the referendum there. In addition, minor changes to the UK rules have been needed to reflect the fact that the European Union referendum will take place in Gibraltar as well as the United Kingdom. We have also taken into account changes in electoral law since the 2011 referendum, as well as recommendations from the Electoral Commission. For example, in line with the Electoral Registration and Administration Act 2013, the regulations provide for people queuing at the point when a polling station closes to vote.

Hon. Members will recall that the conduct regulations were published in draft in July 2015 to give the Electoral Commission, Members of Parliament and any other interested parties an opportunity to review them. That gave electoral administrators significant advance notice,

thus allowing them to begin planning far in advance of the poll. The responses that we received, which were largely technical, were carefully considered before the regulations were finalised. I therefore commend the regulations to the Committee.

11.33 am

Wayne David (Caerphilly) (Lab): It is a pleasure to serve under your benign chairmanship, Mr McCabe. As the Minister indicated, the draft regulations are not particularly contentious, but they are nevertheless important for ensuring that the referendum, when it comes, is conducted efficiently and fairly. They are essentially, as he said, plumbing matters. Other regulations will deal with more contentious and important issues, such as the date of the referendum, how long the referendum period will last, referendum-related expenditure, and the process by which the Electoral Commission will designate the lead organisations for both campaigns. We hold our breath on that matter, because it will be interesting to see which organisation is given responsibility for conducting the no campaign. That is not a political point; I am saying this objectively.

The Opposition support the regulations. They are well worked through and there has been a great deal of consultation, but I do have a few questions for the Minister. I am glad to see the inclusion of the innovations, modest though they are, introduced by the ERA Act. Lessons have been learned from the conduct of the alternative vote referendum in 2011.

Police community support officers can now attend polling stations, and there is a great deal of sense behind that, because it will relieve pressure on the police, but of course PCSOs have limited powers. If there was a serious fracas or potential infringement of electoral law at a polling station, it would be embarrassing to say the least if a PCSO was not able to deal with the situation because his or her powers were limited. The situation would then have to continue while the PCSO called in the assistance of a properly designated police officer. I understand the practical benefits of having PCSOs as well as police officers, but I envisage a possible difficulty arising, too. Will the Minister comment on that?

I am pleased that the Government have largely taken the Electoral Commission's suggestions into account but, according to the Government's own explanatory memorandum, the suggestion on the extension of emergency proxy votes has not been accepted. The memorandum states:

“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.”

Will the Minister expand on that a little? I understand that proxy votes are being extended for people who are engaged in business activities or on military service. Why did he decide not to accept the Electoral Commission's advice to have a further extension of the proxy provisions?

My next question is about who is entitled to vote. The Minister specifically said that there are provisions in the regulations to allow citizens of Gibraltar to cast their votes, but if people in Gibraltar can vote, why not people in the Falkland Islands, too, and why not people who consider themselves to be British in the 11 other

overseas territories? The case can be made that the vote should be extended to all people who consider themselves to be British, because of course the Falkland Islands and the other overseas territories have some kind of relationship with the European Union as well as with Britain.

Mark Field (Cities of London and Westminster) (Con): Although the hon. Gentleman makes a moderately compelling case that other overseas territories should be considered in such a way, surely he recognises that Gibraltar is a unique case. Gibraltar is on the European mainland, so the question is whether it should be counted as part and parcel of Spain or part of the United Kingdom. As he is well aware, it obviously counts as part of the United Kingdom for European elections, so there is some sense in maintaining that slightly analogous situation specifically for Gibraltar while not extending it elsewhere.

Wayne David: I am not arguing against the case for Gibraltar, which I recognise has a unique relationship with Britain and the rest of the European Union. I am simply posing the question of whether there is an argument for extending votes in this referendum to people in the 12 overseas territories that belong to the United Kingdom. Those territories are referred to in annex IV of the treaty establishing the European Economic Community, so a legal relationship has been defined, albeit it is not the same kind of relationship as that of Gibraltar and the United Kingdom.

Let us not forget that there are 1,650 registered voters in the Falklands. They were registered for the 2013 referendum in which they almost unanimously—barring three voters—decided that they wanted to remain part of the United Kingdom, to all intents and purposes. I am sure that the people of Falkland Islands would consider that—morally at least, if not in terms of the technical specifics—they should be able to cast their votes. I am sure that they would point out that, in an equivalent French process, people in an overseas department, such as La Réunion or Guadeloupe, would be able to cast a vote, because those people were able to do so in the 2005 French referendum on the so-called constitutional treaty. Those overseas departments are, to all intents and purposes, very similar to our overseas territories. I will be intrigued to hear the Minister's response to those points because there is a case for treating everyone in the same way.

My final question is about the count and declaration, although I might be straying a little beyond the regulations. It was announced in December that the final declaration of the result would take place in Manchester, but why there? Why not London, Cardiff or wherever? I understand that there will be collation centres for the 12 regions, but have the Government made a decision about the venues for those centres? The natural place for the venue in Wales would be Cardiff, but it would be nice to know precisely which cities have been chosen, if that has been stipulated, and whether arrangements are in hand to ensure that there will be a smooth count. I also understand that there will be 382 counting officers who will operate locally and feed information to the regional centres before a national announcement is made. I know that regional declarations will be made—I am sure that many will watch with interest what happens in Wales and Scotland—but will the local results be announced to the public?

What will happen at a local count if an individual who is accredited to be there calls for a recount? Regulation 47(1) states:

“A person within paragraph (2) who is present at the completion of the counting (or any re-count) of the votes in a voting area may require the counting officer to have the votes for that area re-counted...but the counting officer may refuse to do so if in the officer's opinion the requirement is unreasonable.”

To ask the obvious question, what is the meaning of “unreasonable”? Surely there should be criteria to determine whether a vote is very close so that an officer is not in the invidious position of having to make a subjective decision about whether a recount is required. Will the Minister clarify the situation and explain why the imprecise word “unreasonable” has been used?

Labour Members will support the regulations, but I will be interested to hear the Minister's response to my comments.

11.44 am

Peter Grant (Glenrothes) (SNP): It is a pleasure to serve under your chairmanship, Mr McCabe. I am grateful to the Minister for his comments about the regulations.

I would not suggest that hon. Members should do anything other than approve the regulations, although it would create an interesting precedent if we had a referendum without any rules on its conduct. However, I wish to raise a few points, and I hope that the Minister will respond to them today or assure me that they will be taken into account as we get closer to the date of the referendum.

The hon. Member for Caerphilly asked why the declaration would take place in Manchester, but it has to happen somewhere. If it was in London, a lot of us, including many people in Wales, I suspect, would be asking, “Why always London?” The real reason for the decision is that when we see the size of the bill for repairing this place, we will all want to move to Manchester, because it will be the only place where we can afford to build a Parliament, and I suspect that a lot of people in the north of England would support that.

The hon. Gentleman also asked a question about the reasonableness, or otherwise, of a request for a recount, but it is impossible to predict every scenario for a referendum in which every vote in every ballot box is equally likely to be the decisive one that swings the entire result. In a parliamentary election, the returning officer and everyone else can see how close a result will be, and sometimes at an early stage in the process, so if someone who has clearly lost by 8,000 or 10,000 votes asks for a recount, that is unreasonable. However, although it might appear that there is a large majority on one side after the first few areas have declared, there is always the possibility of that position changing as more results come in. An area that declares with a majority of 10,000 might have a miscounted or misclassified bundle of 100 votes, but those 100 votes could be decisive in the event of a close overall result. In such circumstances, we must leave things to the professionalism of the counting officers and expect the chief counting officer to be prepared to say, “Do you know what? This is now so close that we need to look at every contested declaration, just to make sure.” We all agree that we cannot afford to

[Peter Grant]

have a result that people think is unfair or somehow fiddled, whether due to error or another aspect of the process.

Let me ask the Minister about various aspects of the regulations. On timetabling, I fully understand why bank holidays are not counted as working days when calculating the period of notice, but I ask the Minister to respect the fact that while we have things in Scotland called “bank holidays”, which are sometimes the same as those in England and sometimes not, no one in Scotland, apart from the banks, pays a blind bit of attention to them. Many places have traditions of local public holidays during which schools, and often public services and businesses, close. The dates of such holidays vary from place to place, are often based on long-standing traditions and are jealously guarded by local people. It would be unreasonable to ask that the Government try to avoid a clash with any local public holiday in Scotland, but I ask them to be aware of those holidays. It might be better for them to avoid the process affecting any time of the year when such public holidays tend to congregate, which is May and June, so perhaps the Minister will heed what I am saying about that.

Regulation 58, which deals with the public inspection of papers, has a link with the Data Protection Act and the question of who is allowed to see marked registers. I know personally of examples of when the availability of such registers to agents or political parties allowed a party to satisfy itself and its supporters that there had not been large-scale personation. On one occasion of an unexpectedly high turnout in an election, it transpired that the marked register for that election showed a significant number of people as having voted, despite the fact that previous registers showed that they had not voted for 10 or 15 years. As an agent was allowed to get the new information—he already had the historical information—he could make his own inquiries, and it turned out that those people had, for whatever reason, decided to vote. It could therefore be demonstrated that what appeared to be a highly suspicious pattern of voting was completely legitimate. Importantly, that allowed the candidate who lost the election to say to his supporters, who were claiming foul, to say, “We lost fair and square—live with it.” Such a statement by a candidate has a lot more power than one from the authorities. I therefore ask the Government to bear in mind that it is sometimes vital for the integrity of the entire process that such information is made as available as possible within the confines of data protection legislation.

As this is not clear from regulation 45(1), will the Minister confirm that the expectation is that, when possible, the count will begin at the close of poll so that results will start to be declared as quickly as possible? I know that there are some places where, because of their remoteness, the count is traditionally done the following day, but if the intention is that the count be carried out overnight on the Thursday, it will be useful for everyone to know that as soon as possible.

Anyone with experience of either working in a polling station or attending a count will have been greatly impressed by the dedication and professionalism of everyone who works in those places. Just look at the hours that the count staff have to put in before and after the count. They are a huge group of people to whom

democracy itself owes a great deal of gratitude. The Minister should be aware that it might be more difficult to recruit that army of people to spend all Thursday night carrying out an important part of the democratic process if they are expecting to take the kids who have finished school on their summer holiday on the Friday afternoon—the Minister will understand what I am saying. In my experience, a significant number of those who work at polling stations and at counts have children, and in some parts of these islands towards the end of June, a lot of families with children will be about to go on their summer holidays, so I ask the Minister to bear that in mind.

Although I can understand why we want to go through a process in which the regional draft declarations have to be agreed by the chief counting officer before being announced, that needs to be done in a way that does not lead to the pile-up of results that we have seen in other referendums. At the time of the devolution referendum in Scotland, there was a requirement for each local authority to get authorisation from the chief returning officer before announcing the result. Inevitably, two or three councils declared very quickly, and then about 15 were all ready to go within an hour. I was at the count in Fife—the third biggest count in Scotland.

Wayne David: I remember the devolution referendum in Wales, when the result was on a knife edge, with a mere 6,000 votes in it. It was suggested that the final information, which came through from Carmarthen, was held back deliberately to increase the drama and suspense before the final declaration. It really was on a knife edge: many people thought that there had been a small no vote, but because of Carmarthen, the result was a small yes vote. I was wondering whether this time there is a possibility—I do not say it is good or bad—of a similar control of results coming from different parts of the country, as happened in Wales in 1997.

Peter Grant: The hon. Gentleman makes a valid point. I remember watching the results coming in from Wales and seeing the face of the Labour leader in Wales when the decisive result came in. I have to say, he did not look delighted, but I am sure that things have moved on since then.

At the Fife count, we waited between an hour and an hour and a half after everybody knew the result there. At that time, Scotland’s vote on the first question—about having a Scottish Parliament—was 75% yes, so everybody knew the result on the straight yes/no decision, but the returning officer had to keep the staff there for more than an hour after they knew they had done their job and there was nothing more for them to do. That was not fair to them or to the returning officer.

The hon. Gentleman talked about the suggestion that results had deliberately been held back. In another, more recent, referendum, in which the vote did not quite go the way that I intended, I would have been quite happy if the result from Fife had been lost and no one had bothered to add it to final tally. However, we waited in the count hall for between an hour and an hour and a half, with nothing visibly happening, and that started a rumour that Gordon Brown was going to be paraded as the man who saved the Union. We were assured that that rumour was completely unfounded and that the sudden appearance of an intense police presence was pure coincidence.

I ask the Minister to ensure that a clear instruction is issued that no declaration is to be delayed unnecessarily, for any reason whatsoever, so that there can be no suggestion that any particular place has been chosen to make the decisive announcement—the one that guarantees victory for one side or the other. I understand why the chief counting officer will want to have oversight of the whole process, but we cannot allow that to delay the public's knowing the result of an important referendum.

Having stood outside local polling stations in every election since 1987 and been at every count as well, it is interesting to be part of the process of making the rules that those hard-working returning officers and their staff will have to work by. Despite the primary legislation's limitations, the regulations should give us a referendum after which the public will be as certain as they can be that, whether they like the result or not, it will have been the choice of the people.

11.55 am

John Penrose: I welcome the support in principle for the regulations expressed by the hon. Members for Caerphilly and for Glenrothes. They said that they were content that the regulations should go forward, although they had questions to ask, which I shall endeavour to answer. The hon. Member for Caerphilly said that we will consider perhaps more contentious statutory instruments in this referendum process, for example to set the date of the referendum and the designation period. Those are for another time, so I will not try your patience by talking about them, Mr McCabe; I will stick purely to what I hope is the relatively uncontentious piece of electoral plumbing before us.

The hon. Gentleman asked whether the police officers at polling stations should be warranted police officers or PCSOs. Ultimately, it is down to local police forces, in conjunction and discussion with local election administrators, to decide where possible flashpoints and hot spots, if any, might be. They will know from previous elections which polling stations might have problems and which are unlikely to, and they will need to distribute their resources appropriately to reflect that. One would hope and expect that they will have people on stand-by or already available there. The important thing, as the hon. Gentleman rightly observed, is that there is more potential for police involvement at polling stations, should that be necessary—we all hope that it will not—to ensure that an orderly and safe poll, and, most importantly of all, a secret ballot, is properly concluded.

The hon. Gentleman also asked about the extension of emergency proxy votes. We are trying to be a little careful because, as he will know, the report into electoral fraud that is being undertaken by my right hon. Friend the Member for Brentwood and Ongar (Sir Eric Pickles) is due shortly. We will have to wait and see what it says, but it might have recommendations about postal voting and proxy voting as part of the overall position on electoral reform, so we will probably want to wait until it is published before making any substantial changes either to relax or to tighten up those rules. Of course, when the report does come out, I am sure that we will scrutinise it carefully.

The hon. Gentleman also asked whether Gibraltarians should be treated the same as those in other overseas territories. I think he may be implicitly making common

cause with my hon. Friend the Member for Romford (Andrew Rosindell), who is very keen on ensuring that other overseas territories outside the continental mass of Europe have an opportunity for closer involvement in British democracy, and potentially to send MPs to Westminster. I encourage him to discuss that with my hon. Friend in detail, should he be so minded. Beyond that, I can add little to the elegant response to the hon. Gentleman's point that was made by my right hon. Friend the Member for Cities of London and Westminster, other than to say that our starting point was that the franchise—I think we covered this when we considered the primary legislation for the referendum—should be based on that for a UK parliamentary election. That explains why some of the other places around the globe that the hon. Member for Caerphilly cited are not part of the franchise. There have been limited changes, which we tried to minimise, but given Gibraltar's special status within the continent of Europe and the fact that Gibraltarians get to vote in European parliamentary elections, we felt that that was worthy of one of the very few alterations to the basic franchise.

The hon. Gentleman also asked why Manchester was to be used for the declarations. The hon. Member for Glenrothes said that many people in northern England would support the idea of Manchester, but I suggest gently that he might want to tread a bit carefully because, from what I understand of the local and regional rivalries between cities in the north of England, he might not find that there is quite such a degree of unanimity about Manchester being the right place when people start to consider competing bids from other cities.

Peter Grant: Would not the Minister accept that even Manchester and Leeds may be united in their opinion of London?

John Penrose: The hon. Gentleman might think that some of the rivalries between English cities outside London are strong; I think they could rival that between Celtic and Rangers.

Matters such as the location and distribution of the regional counting centres are primarily for the Electoral Commission, because it is effectively the chief counting officer for the referendum, unlike in a normal parliamentary or local election, when that is done by local councils. The Electoral Commission will be in charge of many of the decisions about where things can be efficiently done.

The hon. Member for Glenrothes asked when the counts will start and how long they will last. In general, they will start as soon as practicable after the close of poll, although there will be some geographical issues with transporting ballot boxes around and so on. They will continue overnight so that we have a prompt declaration. Beyond that, this is a matter for the Electoral Commission, but its guidance applies in a similar way as in parliamentary elections. It will realise that the country will not be particularly understanding of unreasonable delays. People will want an answer, and they will want it quickly. The commission will understand the importance of a prompt and efficient count.

The hon. Member for Caerphilly asked about recounts which, again, are covered by the usual rules. The situation is heavily dependent on the professional good judgment of local count administrators, who are well trained and

[John Penrose]

in most cases very experienced, because they handle many other elections. They are the people to whom we, as Members of Parliament, have spoken at our individual counts at parliamentary elections about bad and doubtful ballot papers, and whether there needs to be a bundle check of this or that part of the count. Those same rules will, broadly speaking, apply in the usual way to ensure the general level of good order we have all, rightly, come to expect in British elections, no matter what their purpose.

I hope that I have covered all the points raised and that we can move to approving these regulations, given the welcome cross-party support that has been evident today.

Question put and agreed to.

Resolved,

That the Committee has considered the draft European Union Referendum (Conduct) Regulations 2016.

12.2 pm

Committee rose.