



PRESS RELEASE

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Bill for the Referendum Act 2015

Chief Minister, the Hon Fabian Picardo QC MP

Mr Speaker, I have the honour to move that the Bill for the Referendum Act 2015 be read a second time.

Mr Speaker, this Bill provides a legal basis for the holding of referenda in Gibraltar. Mr Speaker, Honourable Members will know that the thinking behind the Bill relates to the situation which manifested itself at the time of the atrocious Joint Sovereignty negotiations between the United Kingdom and Spain. At that time ill-informed and badly advised commentators in the UK and Spain started to suggest that a Referendum in Gibraltar which was not organised by the UK would not have any legal validity.

That this is utter nonsense was and, I trust, still is, common ground across the floor of the House.

Indeed Mr Speaker, I want to refer the House to Question 706 of 2002 where the subject was ventilated in the exchanges on that question between the then Chief Minister, now the Hon Backbencher, and the then Leader of the Opposition, then and now as in the future for many years we hope, father of the House.

Let me highlight some parts of that exchange....

[Refer to 706 of 2002]

Mr Speaker as a result, we committed ourselves in our manifesto for the General Election, to bring a Bill for a Referendum Act.

What we set out we would do Mr Speaker is as follows:

REFERENDUM LAW

As became apparent at the time of the referendum on the 2006 Constitution the legal base for consulting citizens through a referendum does not exist in Gibraltar, as was confirmed by the



Attorney General. This does not mean that the referendum was illegal, as Spain has argued, but that the legal basis for it is not as strong as it could be. We will therefore introduce an Act of Parliament in our first year in office to cure this problem to provide the legal basis for holding referenda and the procedure to be followed. We will make provision for non-Gibraltarian British nationals resident in Gibraltar for over 10 years to be eligible to apply for Gibraltarian status and vote in referenda.

Mr Speaker, that is therefore what this Bills provides for.

Part 1 of the Bill is concerned with the usual preliminary matters such as title, commencement and interpretation.

Part 2 of the Bill contains the mechanism for the calling of a referendum.

A referendum will be held when the Chief Minister makes an Order pursuant to clause 3.

An Order under clause 3 is made either after this House has read a Government Bill for a second time (with the other stages then being adjourned to a later date) or where this House has approved a Government Motion calling for a referendum.

Clause 4 of the Bill sets out the contents of the Order, and this includes the day itself, the question to be put and also the percentage of votes that will be required to carry the vote.

Clauses 5 and 6 are concerned with the appointment of the Referendum Administrator and related administrative issues.

Part 3 of the Bill contains clauses 7 to 9 and relates to qualifications for participation. Clause 7 sets out the criteria for eligibility by reference to the voter's nexus with Gibraltar, as is the case in elections. In very general terms, persons will become eligible if they meet the nationality criteria and have lived in Gibraltar during the qualifying period of 10 years.

Clause 8 is not replicated in elections legislation and allows for a change to the minimum age. If it is decided to change the minimum age for voting, such change will only apply to that particular referendum.

Part 4 of the Bill contains the procedural requirements necessary to establish a list of eligible voters, and to provide for challenges, where appropriate.

By clause 13 provision is made for the creation of a register of voters, which must be published prior to the holding of the referendum.

Part 5 of the Bill, comprising clauses 14 to 38 replicates in large measure the provisions in elections legislation regarding polling stations, manning of the same and those provisions that allow for a secret ballot to be undertaken.

Unlike in the elections legislation, a polling station is referred to as a voting station.



Part 6 of the Bill relates to absentee voting and Part 7 to postal voting. Again these provisions are largely a replica of existing legislation.

Part 8 deals with the business end of the referendum and contains the procedural matters relating to the counting of voting papers, the verification and the count itself, in addition to the declaration of the result.

Offences that may be committed in connection with the holding of a referendum are set out in Part 9 of the Bill.

The penalty if a person has committed an offence is provided for in clause 79.

Part 10 of the Bill, headed Miscellaneous, contains clauses 80 to 83. Clause 80 allows for the destruction of papers at least 12 months after a referendum has been held.

Clause 81 saves the validity of actions taken in the referendum process if observers are not present when they are undertaken.

Clause 82 gives the final say to the Referendum Administrator in respect of organisational, administrative or procedural matter or in respect of any voting paper.

Clause 83 is a wide regulation making power that will allow for subsidiary legislation to be made. In clause 83(2)(d) such a power extends to making regulations that may alter the application of the Act for the purpose of enabling the participation of voters who are unable to attend and vote in person.

In a letter I have circulated to members Mr Speaker, a new Part 11 is to be introduced at Committee Stage with just one new clause, Clause 84, which will provide that where a result has been declared in a referendum conducted in accordance with this Act, that result shall be recognised and given effect to until the result of a subsequent referendum requiring otherwise.

Mr Speaker, before I sit to allow others to speak on the Bill, I should add that the making of this Act for future referenda which a Gibraltar Government may organise after motion in this Parliament, does not in any way call into question the validity if any earlier referenda and does not give any evidence or credibility to the ridiculous and undemocratic statements of those who so disgracefully wanted to silence the voice and thwart the will and the expression of the wishes of the People of Gibraltar back in 2002

Mr Speaker, I commend this Bill to the House.