

THE LAW ON THE SELF-DETERMINATION REFERENDUM

Explanatory memorandum

The International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, approved by the United Nations General Assembly on 19 December 1966, ratified and in force in the Kingdom of Spain since 1977—published in Spain's Official Gazette, the BOE, on 30 April 1977—recognise the right of all peoples to self-determination as the first human right. The Spanish Constitution of 1978 establishes, in Article 96, that international treaties ratified by Spain form part of its domestic legislation and, in Article 10.2, establishes that the rules on fundamental rights and public freedoms shall be interpreted in accordance with applicable international treaties on the matter.

The Parliament of Catalonia has continuously and unambiguously expressed Catalonia's right to self-determination. This was manifested in Resolution 98/III, on the Catalan nation's right to self-determination, adopted on 12 December 1989, and ratified in Resolution 679/V, adopted on 1 October 1998, in Resolution 631/VIII of the Parliament of Catalonia, on the right to self-determination and on the recognition of public referenda on independence, adopted on 10 March 2010. More recently, Resolution 5/X of the Parliament of Catalonia, which approved the Declaration of Sovereignty and the right to decide of the people of Catalonia and Resolution 306/XI, adopted on 6 October 2016, on the general political orientation of the Government of Catalonia, have asserted Catalonia's inalienable and indefeasible right to self-determination and have confirmed a parliamentary majority in favour of independence.

In parallel, Resolution 1999/57, on the Promotion of the right to democracy, of the United Nations Commission on Human Rights, proclaimed the indissoluble links between the principles enshrined in the Universal Declaration of Human Rights and the foundation of any democratic society. Within this context, democratic management of public affairs has been internationally accepted as one of the cornerstones of contemporary society and has been inextricably linked to, amongst other

rights, that of citizens' direct and indirect political participation and to the right to freedom and to human dignity, including freedom of expression and opinion, freedom of thought and freedom of association, rights recognised in the principal universal and European treaties on the protection of human rights. They therefore assert that the democratic management of any political discrepancy must take place with full respect for these fundamental human rights and freedoms.

In recent opinions, the International Court of Justice has stated that, during the second half of the 20th century, there have been cases of new states that have exercised the right to self-determination without the exercise of this right to decide being motivated by the end of imperialism. The Court notes that the right of peoples to decide has evolved, and that, to counter this evolution, no new rule or custom has arisen at an international level to prohibit these new practices. The only limitation on the right to decide that the Court regards as enforceable is the unlawful resorting to force or other serious violations of the rules of international law.

The passing of this Law is, then, the ultimate expression of the democratic mandate arising from the elections of 27 September 2015, in which, in the decision taken by the Parliament of Catalonia to culminate the process with the calling of the self-determination referendum, there is a confluence of the historical legitimacy and legal and institutional tradition of the Catalan people—interrupted, over the course of the centuries, only by force of arms—and the right of peoples to self-determination, enshrined in international legislation and jurisprudence and the principles of popular sovereignty and respect for human rights, as the basis for all legal systems.

The act of sovereignty entailed in the passing of this Law is the option necessary to be able to exercise the right of the Catalans to decide on the political future of Catalonia, particularly following the breaking of the Spanish constitutional pact of 1978 caused in 2006 by the partial revocation and complete denaturing of the Statute of Autonomy of Catalonia—approved by the Parliament of Catalonia and endorsed by the people of Catalonia—by means of Ruling 31/2010 of Spain's Constitutional Court. This Law represents the democratic response to the frustration

created by the final attempt, advocated by a very broad majority of this Parliament, to guarantee for the people of Catalonia full recognition, representation and participation in the political, social, economic and cultural life of the Spanish state without any form of discrimination.

In the previous process, every effort was made to find an agreed way for the people of Catalonia to freely decide upon its future. The Parliament, given the majority mandate from the people of Catalonia, assumes full sovereign representation of its citizens, after exhausting all forms of dialogue and negotiation with the Spanish State.

In taking the momentous decision to pass this Law, the Parliament of Catalonia is expressing the majority will of the people, from whom its powers stem, making use of its legal and democratic representative powers to place in the hands of the men and women of Catalonia the decision on the political future of the country, by means the most radically democratic tool in our possession: the vote.

TITLE I. Object

Article 1

This Law governs the holding of a binding self-determination referendum on the independence of Catalonia, whose consequences shall depend upon the given result, and the creation of the Electoral Commission of Catalonia.

TITLE II. On the sovereignty of Catalonia and its Parliament

Article 2

The people of Catalonia are a sovereign political subject and, as such, exercise their right to freely and democratically decide upon their political condition.

Article 3

1. The Parliament of Catalonia acts as the representative of the sovereignty of the people of Catalonia.

2. This Law establishes an exceptional legal regime aimed at governing and guaranteeing the self-determination referendum of Catalonia. It has hierarchical prevalence over any other regulations that may come into conflict with it, in that it governs the exercising of a fundamental and inalienable right of the people of Catalonia.

3. All and any authorities, natural or legal persons participating directly or indirectly in the preparation, holding and/or implementation of the result of the referendum shall be covered by this Law, which implements the right to self-determination that is part of the current legal system.

TITLE III. On the self-determination referendum

Article 4

1. The citizens of Catalonia are called upon to decide on the political future of Catalonia by means of the holding of the referendum, the terms of which are detailed below.

2. The question to be asked in the referendum is:

'Do you want Catalonia to be an independent state in the form of a republic?'

3. The result of the referendum shall be binding in nature.

4. If the count of votes validly cast gives a result of more affirmative than

negative votes, this shall mean the independence of Catalonia. To this end, the Parliament of Catalonia shall, within two days of the proclamation of the results by the Electoral Commission, hold an ordinary session to issue the formal declaration of independence of Catalonia and its effects and resolve upon the commencement of the constituent process.

5. If the counting of votes validly made gives a result of more negative than affirmative votes, it shall mean the immediate calling of elections for the Autonomous Community of Catalonia.

Article 5

1. Voting shall be direct, personal, free, secret, equal and universal.
2. The scope of the referendum is the entire territory of Catalonia.

Article 6

1. All those persons with the right to vote in the elections to the Parliament of Catalonia shall be able to vote. Those Catalans resident abroad whose most recent registration to vote was in Catalonia shall also be entitled to vote, provided that they comply with the legally stipulated requirements and have formally requested to take part in the vote.
2. Those declared incompetent or sentenced by final legal judgement to the principal or accessory penalty of privation of voting rights may not exercise the right to vote.

Article 7

1. The ballot papers shall contain the question established in Article 4.2. The question shall be worded in Catalan and Spanish, and also in Occitan in the territory of Aran.
2. There shall be a specimen ballot paper: a ballot paper with the question and the words 'Sí' and 'No' ('Yes' and 'No') in boxes.
3. Ballot papers shall be prepared for persons with visual impairment. In the absence of such papers, the Chair of the polling station committee or

person of trust chosen by the visually impaired voter shall assist in taking the necessary steps to vote.

Article 8

1. The vote may be affirmative (Sí/[Yes]), negative (No), depending upon the option marked by the voter, or blank if neither of the two options is chosen.
2. Any vote that does not fit the official form, or that contains amendments, nuances or any other contingency that raises doubts as to the sense of the vote shall be deemed null.
3. If one envelope contains more than one ballot paper, it shall be deemed a single vote, provided that all the papers show the same choice. If the papers conflict, the vote shall be deemed null.
4. If an envelope contains no ballot paper or a paper with no option chosen, it shall be regarded as a blank vote.

TITLE IV. On the date and calling of the referendum

Article 9

1. The referendum shall be held on Sunday 1 October 2017, pursuant to the Decree on the Calling of the Referendum to be signed subsequent to the entry into force of this Law.
2. The Government of Catalonia shall also issue a Decree of Complementary Regulations, which shall govern, at least, the official template for the ballot paper, the official template for the ballot envelope, for the electoral records and the remaining official material required for the holding of the self-determination referendum, the voting methods and procedures, the start date and duration of the election campaign, the electoral administration responsible, the provision of the necessary human and material resources, the procedure for accrediting the status of stakeholder organisations and the conditions and guarantees, as the case may be, for postal votes, as well as any remaining regulations that may be necessary.

Article 10

The Catalan public administrations must remain neutral in the electoral campaign and refrain from using their budgetary resources to favour any of the options in the referendum campaign.

Article 11

1. Political formations with representation in the Parliament of Catalonia have the right to use 70% of the public spaces set aside for the campaign, between whom it shall be allocated in proportion to the number of parliamentary seats obtained in the most recent elections to the Parliament of Catalonia. The remaining 30% of the space shall be allocated amongst the accredited stakeholder organisations, in accordance with the number of signatures submitted.

2. Political formations with parliamentary representation have the right to use 70% of the free public information spaces in the publicly owned media. The electoral administration shall allocate the use of the space between the political formations with representation in the Parliament of Catalonia in accordance with the results obtained in the most recent elections to Parliament. The remaining 30% shall be allocated amongst the accredited stakeholder organisations, in accordance with the number of signatures submitted.

Article 12

1. During the campaign, media outlets that are publicly owned or the majority of whose funding is public must guarantee the principles of political and social pluralism, editorial neutrality and equality of opportunity. These media outlets may neither express nor show support for any of the options to be chosen.

2. During the electoral period, privately owned media outlets must respect the principles of political and social pluralism, equality of opportunity, and of editorial proportionality and neutrality in electoral debates and interviews. These media outlets may express or show support

for an option, provided that they respect the aforementioned principles and that they treat the opposing option equitably and reasonably.

3. The Electoral Commission of Catalonia shall guarantee compliance with these principles. It shall issue the instructions it deems necessary and resolve complaints in accordance with the procedures it itself establishes. In the case of non-compliance, it may adopt compensatory measures to re-establish balance between the two options which are the subject of the referendum.

TITLE V. On the referendum guarantees

Article 13

1. The electoral administration governed in Title VI of this Law shall ensure that the referendum is carried out pursuant to this Law, its implementing regulation and the international provisions and documents on the matter.

2. For the purposes of the referendum, the electoral commissions and polling station committees are independent bodies and do not follow the instructions, orders or resolutions of any other body, except for those addressed by the electoral administration and the electoral commissions to the polling station committees, and those of the Electoral Commission of Catalonia addressed to the regional electoral commissions.

Article 14

1. Political parties, federations and coalitions with parliamentary representation may designate electoral representatives and observers in the electoral regions in which they have obtained representation.

2. Those social organisations interested in taking part in the referendum process may submit an application before the Electoral Commission of Catalonia between the second and fifth day following the passing of this Law.

3. Regional electoral committees shall accredit the electoral representatives and observers, who may not exceed, for each polling

station, the number of two observers from each political party, federation, coalition or stakeholder organisation.

4. Electoral representatives and observers may only cast their vote in the polling station assigned to them according to the electoral register.

Article 15

1. The Government of Catalonia and its electoral administration encourage the presence of international election monitors. To this end, they invite international organisations and monitors qualified in this type of task.

2. The Electoral Commission of Catalonia shall accredit international monitors and shall ensure the unfettered carrying out of their activities.

3. Accredited international electoral monitors may freely attend all processes associated with the holding of the referendum, including the draws for members of polling station committees, the preparation for the opening of polling stations, the voting process, the provisional count at polling stations and the official count at the headquarters of the Electoral Commission of Catalonia, the announcement of the results and the public appearances of the electoral authorities.

4. Accredited international election monitors may address queries, observations and recommendations to the Electoral Commission of Catalonia.

TITLE VI. On the electoral administration

Article 16

The electoral administration is made up of the Electoral Commission of Catalonia, the regional electoral commissions, the district and polling station committees and the Government of Catalonia.

Section I: The Electoral Commission of Catalonia

Article 17

1. The Electoral Commission of Catalonia is established as an independent, impartial and permanent body reporting to the Parliament of Catalonia.

2. The Electoral Commission of Catalonia, with powers throughout the territory of Catalonia, is the body responsible for guaranteeing the transparency and objectivity of the electoral process and the effective exercise of electoral rights.

3. The Electoral Commission of Catalonia has its institutional headquarters in the Parliament of Catalonia, without prejudice to its abilities to meet at other locations.

Article 18

With regard to the referendum, the Electoral Commission of Catalonia shall have the following powers:

- i. To appoint the members of the regional electoral commissions and to appoint their Chairs and Secretaries.
- ii. To validate the electoral register, whose preparation is the responsibility of the electoral administration of the Government of Catalonia.
- iii. To validate the process of updating the electoral map of Catalonia, the preparation of which is the responsibility of the electoral administration of the Government of Catalonia.
- iv. To validate the official templates for ballot papers, ballot envelopes, electoral records, polling station operating manuals, ballot boxes and the remaining official election documentation.
- v. To validate the advance voting procedure for voters resident abroad.
- vi. To coordinate regional electoral commissions and provide guidance on interpretative criteria for their decisions.
- vii. To resolve queries, complaints, claims and appeals in respect of

which it has powers.

- viii. To exercise disciplinary jurisdiction over all those persons officially involved in the referendum, correct any of their actions that contravene regulations and penalise, as the case may be, any administrative infringements that do not constitute criminal offences.
- ix. To supervise the institutional campaign for the self-determination referendum and dissemination in the media.
- x. To guarantee the conditions of impartiality and pluralism in public and private media outlets during the electoral campaign.
- xi. To accredit the international election monitors.
- xii. To carry out the general ballot count.
- xiii. To certify the official results and order their publication in the Official Journal of the Government of Catalonia, the *Diari Oficial de la Generalitat de Catalunya*.

Article 19

1. The Electoral Commission of Catalonia is a permanent body made up of five members, either jurists or political scientists, experts in electoral processes, appointed by an absolute majority of the Parliament of Catalonia at the proposal of the parties, federations, coalitions or voter groupings with representation in the Parliament of Catalonia. Whatever the case, the majority of members must be jurists.

2. Status as member of the Electoral Commission of Catalonia is compatible with any other activity in the public or private sector, except for those incompatibilities contemplated in law.

Article 20

1. The members of the Electoral Commission of Catalonia are irremovable.

2. The members of the Electoral Commission of Catalonia shall choose from amongst themselves those holding the offices of Chair and Secretary to the body.

3. The Chair of the Electoral Commission of Catalonia shall be named the 'Electoral Commissioner'.

4. The Secretary to the Electoral Commission of Catalonia shall be responsible for the keeping of records and for transferring them to the archive network of Catalonia, pursuant to the provisions of Law 10/2001, of 13 July, on archives and records.

Article 21

All public authorities have, within the scope of their respective powers, the duty to collaborate with the Electoral Commission of Catalonia for the proper carrying out of its duties. It may seek the advice of representatives of the administrations and bodies involved in the electoral process and, in general, of specialists and experts, and may demand that they take part in its meetings, with the right to speak but not to vote.

Article 22

1. Regional electoral commissions are temporary bodies made up of three members, renowned jurists or political scientists, experts in electoral processes, appointed by the Electoral Commission of Catalonia. Whatever the case, the majority of expert members must be jurists.

2. The Electoral Commission of Catalonia shall appoint from amongst the members the persons who shall perform the duties of Chair of each regional electoral commission, who shall be named the Electoral Commissioner for the relevant electoral region, as well as the member who shall perform the duties of secretary to the regional electoral commission.

3. The headquarters of each regional electoral commission shall be the headquarters of the local office of the Government of Catalonia for the associated electoral region.

4. The mandate of regional electoral commission members concludes with the proclamation of the definitive results. Office as member of a regional electoral commission is compatible with any other activity in the public or private sector, except for those incompatibilities contemplated in law.

Article 23

With regard to the referendum, within their territorial scope of action, the regional electoral commissions shall have the following powers:

- i. To oversee the transfer by the electoral administration of the electoral packages from the electoral logistic centres to the polling stations.
- ii. To receive information on the availability of public spaces for the placement of electoral advertising and for holding campaign events in the municipalities within their territorial scope of action, and to carry out the assignment thereof to the accredited actors pursuant to common practice.
- iii. Resolve any queries, complaints, claims and appeals forwarded to them.
- iv. To exercise disciplinary jurisdiction over all those persons officially involved in the referendum, correct any of their actions that contravene regulations and penalise, as the case may be, any administrative infringements that do not constitute criminal offences.

Article 24

1. Regional electoral commissions shall be appointed during the second day following the date of appointment of the Electoral Commission of Catalonia and shall be constituted on the second day following the date of appointment of the members.

2. Once appointed, the Electoral Commission of Catalonia shall insert a listing of all the members in the following day's Official Journal of the Government of Catalonia.

3. Notice of the inaugural meetings of the regional electoral commissions shall be issued by the secretaries, following the indications of the Electoral Commission of Catalonia.

Article 25

The Government of Catalonia shall make available to the Electoral Commission of Catalonia and to the regional electoral commissions the

material and human resources required for the performance of their duties. The payment of temporary remuneration is in all cases compatible with their income and control thereof shall be carried out pursuant to applicable legislation.

Article 26

1. Voters must formulate queries to the regional electoral commissions associated with their place of voting.

2. Political parties, federations, coalitions and stakeholder organisations may submit queries to the Electoral Commission of Catalonia when they concern general issues that may affect more than one regional electoral commission. In other cases, queries must be submitted before the relevant regional electoral commission, provided that the scope of competence of the party making the query relates to that jurisdiction.

3. Queries shall be made in writing and be resolved by the competent commission, except when, due to the importance of the issue, according to its criteria, or if it deems fit that it be resolved according to a general criterion, it decides to forward it to the Electoral Commission of Catalonia.

4. When the urgency of the query does not permit the calling of a meeting of the relevant regional electoral commission, and in all cases in which there are prior concordant resolutions of the relevant regional electoral commission or of the Electoral Commission of Catalonia, Commissioners may give a provisional response, without prejudice to its ratification or modification at the next meeting of the relevant regional electoral commission.

5. The Electoral Commission of Catalonia shall inform the regional electoral commissions of all the queries it resolves, for the purpose of standardising criteria.

6. The regional electoral commissions must publish in the Official Journal of the Government of Catalonia the resolutions or the content of the queries forwarded, by order of the Chair, when the general nature of the queries make so advisable. In all cases, those issued by the Electoral Commission of Catalonia and those notified to the regional electoral commissions shall be published.

Article 27

Those with subjective rights and legitimate interests may submit complaints, queries or incidents before the relevant regional electoral commission by reason of its territorial scope of action within two days of the facts upon which they are based taking place, becoming known or being made available.

Article 28

1. Those with subjective rights and legitimate interests may lodge an appeal before the Electoral Commission of Catalonia against any resolution of the regional electoral commissions.

2. The appeal must be lodged within two days of the occurrence, knowledge or availability of the originating resolution. It must be resolved as soon as possible, within a period that may not exceed five days. This resolution shall put an end to the making of challenges in all areas.

Section III: Electoral districts and polling stations

Article 29

1. The overall electoral constituency for the referendum is the territory of Catalonia, which is divided into four regions.

2. Each electoral region is divided into electoral districts.

3. Each district includes a maximum of two thousand voters and a minimum of five hundred. Each municipality has at least one district.

4. Each district comprises areas belonging to different municipalities.

5. Each district's voters are arranged alphabetically on the electoral rolls.

6. Each district has a polling station.

7. Nevertheless, when the number of voters in a district or the dispersion of the population makes it advisable to do so, the electoral administration of the Government of Catalonia may provide for the formation of other polling stations and allocate the district's voters to it. In the former case, the district's electorate shall be allocated by alphabetical order between the stations, which should preferably be located in separate spaces in the same polling place.

8. In selecting the premises for the polling places and the location of the polling stations, applicable provisions concerning architectural barriers must be taken into account.

Article 30

1. The electoral administration of the Government of Catalonia shall establish the limits of the electoral districts, premises and polling station committees for each of the demarcations.

2. Municipal councils shall make available to the electoral administration of the Government of Catalonia the premises to which they have title that are habitually used as polling stations. If they fail to do so, the Administration of the Government of Catalonia may enable alternative premises to guarantee the casting of votes by the voters of the associated constituency.

Article 31

1. Each polling station committee shall be made up of one Chair and two members.

2. Formation of the polling station committee is the responsibility of the electoral administration of the Government of Catalonia, under the supervision of the Electoral Commission of Catalonia.

3. The Chair and members of each committee are chosen by draw from amongst all those on the electoral register in the associated district under the age of sixty.

4. Appointment of two substitutes for each of the members of the committees shall be carried out in the same manner.

Article 32

1. The offices of Chair and member of polling station committees are obligatory.

2. Appointment to the offices of Chair and member of polling station committees must be notified to the interested parties within two days. Together with the notification, committee members shall be provided with an instruction manual on their duties, overseen by the Electoral Commission of Catalonia.

3. Those appointed to the office of Chair or member of polling station committees have a deadline of three days to claim before the relevant regional electoral commission justified and documented cause for preventing them from accepting office. The commission shall resolve upon this claim, with no further recourse, within two days and shall notify, if applicable, the first substitute of the replacement arising.

4. If, subsequently, any of the appointees finds it impossible to be in attendance to carry out their office, he or she must notify the relevant regional electoral commission of the fact at least seventy-two hours in advance of the event to be attended, furnishing due justification thereof. If the impediment arises within this period, the regional electoral commission must be notified immediately, and in all cases before the time of the constitution of the polling station committee. In these cases, the regional electoral commission shall notify the relevant replacement of the substitution, if there is time to do so, and shall proceed to appoint another, in case this is necessary.

5. If the Chair fails to report for duty, he or she must be replaced in accordance with the following order:

- a) By the first substitute.
- b) If the first substitute is not present, by the second substitute.
- c) If there is no substitute, the first member shall act as Chair, and
- d) If the first member is not present, the second member.

If members do not report to the polling place, or take office as Chair, they shall be replaced by the respective substitutes. If, despite this, it is not

possible to constitute the polling station committee, the members present, or if there are none, the representative of the administration, must inform the regional electoral commission of what has happened, by telephone or any other means that enables immediate notification, and must send by recorded delivery a written declaration of what has happened. Should it not be possible to make the aforementioned substitutions, the relevant regional electoral commission shall immediately appoint the persons who shall make up the committee, and may order that the required number of voters present on the premises form part of it, in whatever order they are arranged to cast their vote.

Section III: The electoral administration of the Government of Catalonia

Article 33

With regard to the referendum, the electoral administration of the Government of Catalonia shall have the following powers:

- i. To furnish the electoral register and provisional and definitive rolls in accordance with Article 34 hereto.
- ii. To collaborate with the competent Catalan ministry to guarantee the right to vote for Catalans resident abroad.
- iii. To draw up, update and make the relevant changes to the electoral map of Catalonia, defining the districts and the location of polling stations.
- iv. To carry out the draw of members of the polling station committees and notify them personally of the result.
- v. To select, accredit and train those persons carrying out the duties of representatives of the administration and of election officers.
- vi. To design the official templates for electoral documents.
- vii. To do everything necessary to guarantee the availability of all the elements required for the casting of votes and the counting of votes cast.

Article 34

1. The electoral register contains the record of people meeting the requirements to be voters and who are not deprived, permanently or temporarily, of their voting rights.

2. The electoral register is made up of voters resident in Catalonia and of voters resident abroad who meet the legally stipulated requirements for exercising the right to vote. No voter may be included on both registers at the same time.

3. Inclusion on the register does not require the prior consent of the citizen in question.

4. The electoral register is arranged by register sections and each voter is recorded in a register section. Nobody may be registered in more than one section or more than once in the same section.

Additional provision

With regard to everything that does not contradict this Law and the Decree of Complementary Rules, Organic Law 2/1980, of 18 January, on the regulations of different forms of referenda, and Organic Law 5/1985, of 19 June, on the general electoral system, shall be applicable on a supplementary basis, interpreted in a manner that is in accordance with this Law.

Final provision

One. The provisions of local, autonomous community and Spanish State law in force in Catalonia at the time of the passing of this Law shall continue to be applicable in every regard that does not contravene it. Pursuant to this Law, the provisions of European Union law, general international law and international treaties shall also continue to be applicable.

Two. Pursuant to the stipulations of Article 3.2, the provisions of this Law shall cease to be applicable upon proclamation of the referendum results, except for the provisions of Article 4 with regard to the implementation of the result.

Entry into force

This Law shall enter into force on the day of its official publication.