Passage of the

Scottish Independence Referendum Bill 2013

SPPB 193
Passage of the

Scottish Independence Referendum Bill 2013

SP Bill 25 (Session 4), subsequently 2013 asp 14

SPPB 193

EDINBURGH: APS GROUP SCOTLAND
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Bill (As Passed) (SP Bill 25B)
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
Introduction, followed by publication of the Bill and its accompanying documents;
Stage 1: the Bill is first referred to a relevant committee, which produces a report
informed by evidence from interested parties, then the Parliament debates the Bill
and decides whether to agree to its general principles;
Stage 2: the Bill returns to a committee for detailed consideration of
amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further
amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of
four weeks within which they may challenge the Bill under sections 33 and 35 of the
Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which
point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases.
For example, Bills may be referred back to a committee during Stage 3 for further
Stage 2 consideration. In addition, the procedures vary for certain categories of
Bills, such as Committee Bills or Emergency Bills. For some volumes in the series,
relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft
Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of
legislation more generally, is advised to consult in the first instance the Guidance on
Public Bills published by the Parliament. That Guidance, and the Standing Orders,
are available for sale from Stationery Office bookshops or free of charge on the
Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber
Office. Comments on this volume or on the series as a whole may be sent to the
Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process
described above.

The Referendum (Scotland) Bill Committee’s Stage 1 Report did not include the oral
and written evidence received by the Committee. This material was originally
published on the web only, and is now included in full in this volume.

The Finance Committee’s letter to the lead committee at Stage 1 did not include the
oral evidence received by the Committee. This material was originally published on
the web only, and is now included in this volume.

The Subordinate Legislation Committee’s report at Stage 1 is included at Annex A
of the lead committee’s report. The Subordinate Legislation Committee did not take
oral evidence on the Bill and agreed its report without debate. No extracts from the
minutes or the Official Reports of the relevant meetings of the Committee are,
therefore, included in this volume.
Scottish Independence Referendum Bill
[AS INTRODUCED]

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Scottish Independence Referendum Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision, in accordance with paragraph 5A of Part 1 of Schedule 5 to the Scotland Act 1998, for the holding of a referendum in Scotland on a question about the independence of Scotland.

Referendum

1 Referendum on Scottish independence

(1) A referendum is to be held in Scotland on a question about the independence of Scotland.

(2) The question is—

“Should Scotland be an independent country?”. 

(3) The ballot paper to be used for the purpose of the referendum is to be printed—

(a) in the form set out in schedule 1, and

(b) according to the directions set out in that schedule.

(4) The date on which the poll at the referendum is to be held is 18 September 2014, unless before then an order is made under subsection (6).

(5) Subsection (6) applies if the Scottish Ministers are satisfied—

(a) that it is impossible or impracticable for the poll at the referendum to be held on 18 September 2014, or

(b) that it cannot be conducted properly if held on that date.

(6) The Scottish Ministers may by order appoint a later day (being no later than 31 December 2014) as the day on which the poll at the referendum is to be held.

(7) An order under subsection (6)—

(a) may include supplementary or consequential provision,

(b) may modify any enactment (including this Act), and

(c) is subject to the affirmative procedure.
Franchise

2 Those who are entitled to vote
Provision about who is entitled to vote in the referendum is made by the Scottish Independence Referendum (Franchise) Act 2013.

Voting etc.

3 Provision about voting etc.
Schedule 2 makes provision about voting in the referendum, including—
   (a) provision about the manner of voting (including provision for absent voting),
   (b) provision about the register of electors,
   (c) provision about postal voting, and
   (d) provision about the supply of certain documents.

Conduct

4 Chief Counting Officer
   (1) The Scottish Ministers must, in writing, appoint a Chief Counting Officer for the referendum.
   (2) The Chief Counting Officer is to be the person who, immediately before this section comes into force, is the person appointed as the convener of the Electoral Management Board for Scotland by virtue of section 2 of the Local Electoral Administration (Scotland) Act 2011.
   (3) But subsection (2) does not apply if—
       (a) there is no person appointed as convener at that time, or
       (b) that person is unable or unwilling to be appointed as the Chief Counting Officer.
   (4) The Chief Counting Officer may resign by giving notice in writing to the Scottish Ministers.
   (5) The Scottish Ministers may, by notice in writing, remove the Chief Counting Officer from office if they are satisfied that the Chief Counting Officer is unable to perform the Chief Counting Officer’s functions by reason of any physical or mental illness or disability.
   (6) If the Chief Counting Officer dies, resigns or is removed from office, the Scottish Ministers must appoint another person to be the Chief Counting Officer.
   (7) The Chief Counting Officer may, in writing, appoint deputies to carry out some or all of the officer’s functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to the Chief Counting Officer is to be read as including a deputy.
   (8) A person may be appointed to be—
       (a) the Chief Counting Officer,
       (b) a deputy of the Chief Counting Officer,
       only if the person is or has been a returning officer appointed under section 41(1) of the 1983 Act.
5 Other counting officers

(1) The Chief Counting Officer must, in writing, appoint a counting officer for each local government area.

(2) The Chief Counting Officer must notify the Scottish Ministers of each appointment made under subsection (1).

(3) A counting officer may resign by giving notice in writing to the Chief Counting Officer.

(4) The Chief Counting Officer may, by notice in writing, remove a counting officer from office if—

(a) the Chief Counting Officer is satisfied that the counting officer is for any reason unable to perform the counting officer’s functions, or

(b) the counting officer fails to comply with a direction given or requirement imposed by the Chief Counting Officer.

(5) If the counting officer for an area dies, resigns or is removed from office, the Chief Counting Officer must appoint another person to be the counting officer for the area.

(6) A counting officer may, in writing, appoint deputies to carry out some or all of the officer’s functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to a counting officer is to be read as including a deputy.

6 Functions of the Chief Counting Officer and other counting officers

(1) The Chief Counting Officer is responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of votes, in accordance with this Act.

(2) Each counting officer must—

(a) conduct the poll and the counting of votes cast in the local government area for which the officer is appointed in accordance with this Act, and

(b) certify—

(i) the number of ballot papers counted by the officer,

(ii) the number of votes cast in the area in favour of each answer to the referendum question, and

(iii) the number of rejected ballot papers.

(3) A counting officer—

(a) must consult the Chief Counting Officer before making a certification under subsection (2)(b), and

(b) must not make the certification or any public announcement of the result of the count until authorised to do so by the Chief Counting Officer.

(4) The Chief Counting Officer must, for the whole of Scotland, certify—

(a) the total number of ballot papers counted,

(b) the total number of votes cast in favour of each answer to the referendum question, and

(c) the total number of rejected ballot papers.
A counting officer must give the Chief Counting Officer any information which the Chief Counting Officer requires for the carrying out of the Chief Counting Officer’s functions.

A counting officer must carry out the counting officer’s functions under this Act in accordance with any directions given by the Chief Counting Officer.

The Chief Counting Officer must not impose a requirement or give a direction that is inconsistent with this Act.

The Chief Counting Officer may—

(a) appoint such staff,

(b) require a council to provide, or ensure the provision of, such property, staff and services,

as may be required by the Chief Counting Officer for the carrying out of the Chief Counting Officer’s functions.

The council for the local government area for which a counting officer is appointed must provide, or ensure the provision of, such property, staff and services as may be required by the counting officer for the carrying out of the counting officer’s functions.

Correction of procedural errors

(1) The Chief Counting Officer or a counting officer may take such steps as the officer thinks appropriate to remedy any act or omission on the officer’s part, or on the part of a relevant person, which—

(a) arises in connection with any function the Chief Counting Officer, counting officer or relevant person (as the case may be) has in relation to the referendum, and

(b) is not in accordance with the requirements of this Act relating to the conduct of the referendum.

(2) But the Chief Counting Officer or a counting officer may not under subsection (1) recount the votes cast in the referendum after the result has been declared.

(3) For the purposes of subsection (1), each of the following is a relevant person—

(a) in relation to the Chief Counting Officer, a counting officer,

(b) a registration officer,

(c) a presiding officer,

(d) a person providing goods or services to the counting officer,

(e) a deputy of any registration officer or presiding officer,

(f) a person appointed to assist or, in the course of the person’s employment, assisting any person mentioned in paragraphs (b) to (d) in connection with any function that person has in relation to the referendum.

(4) The Chief Counting Officer or a counting officer does not commit an offence under paragraph 5 of schedule 7 by virtue of an act or omission in breach of the officer’s official duty if the officer remedies that act or omission in full by taking steps under subsection (1).

(5) Subsection (4) does not affect any conviction, or any penalty imposed, before the date on which the act or omission is remedied in full.
8 Expenses of counting officers

(1) The Chief Counting Officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the Chief Counting Officer of functions under this Act.

(2) A counting officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the counting officer of functions under this Act.

(3) The amount of charges and expenses recoverable under this section is not to exceed such maximum amount as is specified in, or determined under, an order made by the Scottish Ministers.

(4) An order under subsection (3)—
   (a) may make different provision for different functions, cases or areas,
   (b) may include incidental and supplementary provision.

(5) If the Chief Counting Officer or a counting officer requests from the Scottish Ministers an advance on account of any charges or expenses recoverable by the officer from the Scottish Ministers under this section, the Scottish Ministers may make such advance on such terms as they think fit.

9 Conduct rules

Schedule 3 makes provision about the conduct of the referendum.

Campaign

10 Campaign rules

Schedule 4 makes provision about the conduct of campaigning in the referendum, including provision—

(a) limiting the amount of expenses that can be incurred by those campaigning in the referendum,

(b) restricting the publication of certain material,

(c) controlling donations, and the provision of loans and credit, to those campaigning in the referendum.

11 Monitoring and securing compliance with the campaign rules

(1) The Electoral Commission must—
   (a) monitor compliance with the restrictions and other requirements imposed by schedule 4, and
   (b) take such steps as they consider appropriate with a view to securing compliance with those restrictions and requirements.

(2) The Electoral Commission may prepare and publish guidance setting out, in relation to any restriction or requirement imposed by schedule 4, their opinion on any of the following matters—
   (a) what it is necessary, or is sufficient, to do (or avoid doing) in order to comply with the restriction or requirement,
(b) what it is desirable to do (or avoid doing) in view of the purpose of the restriction or requirement.

(3) Subsection (2) does not affect the generality of section 22(3).

(4) Schedule 5 makes provision about the investigatory powers of the Electoral Commission for the purpose of subsection (1).

(5) Schedule 6 makes provision for civil sanctions in relation to—

(a) the commission of campaign offences,
(b) the contravention of restrictions or other requirements imposed by schedule 4.

(6) In this section—

“contravention” includes a failure to comply,

“restriction” includes a prohibition.

12 Inspection of Electoral Commission’s registers etc.

(1) This section applies to any register kept by the Electoral Commission under paragraph 4 of schedule 4.

(2) The Commission must make a copy of the register available for public inspection during ordinary office hours, either at the Commission’s offices or at some convenient place appointed by them.

(3) The Commission may make other arrangements for members of the public to have access to the contents of the register.

(4) If requested to do so by any person, the Commission must supply the person with a copy of the register or any part of it.

(5) The Commission may charge such reasonable fee as they may determine in respect of—

(a) any inspection or access allowed under subsection (2) or (3), or
(b) any copy supplied under subsection (4).

(6) Subsections (2) to (5) apply in relation to any document a copy of which the Commission are for the time being required to make available for public inspection by virtue of paragraph 24 of schedule 4 as they apply in relation to any register falling within subsection (1).

(7) Where any register falling within subsection (1) or any document falling within subsection (6) is held by the Commission in electronic form, any copy—

(a) made available for public inspection under subsection (2), or
(b) supplied under subsection (4),
must be made available, or (as the case may be) supplied, in a legible form.

13 Campaign rules: general offences

(1) A person commits an offence if—

(a) the person—

(i) alters, suppresses, conceals or destroys any document to which this subsection applies, or
(ii) causes or permits the alteration, suppression, concealment or destruction of any such document, and

(b) the person does so with the intention of falsifying the document or enabling any person to evade any of the provisions of schedules 4 to 6.

(2) Subsection (1) applies to any book, record or other document which is or is liable to be required to be produced for inspection under paragraph 1 or 3 of schedule 5.

(3) Subsection (4) applies where the relevant person in the case of a supervised organisation, or a person acting on behalf of the relevant person, requests a person holding an office in any such organisation ("the office-holder") to supply the relevant person with any information which the relevant person reasonably requires for the purposes of any of the provisions of schedules 4 to 6.

(4) The office-holder commits an offence if—

(a) without reasonable excuse, the office-holder fails to supply the relevant person with that information as soon as is reasonably practicable, or

(b) in purporting to comply with the request, the office-holder knowingly supplies the relevant person with any information which is false in a material particular.

(5) A person commits an offence if, with intent to deceive, the person withholds—

(a) from the relevant person in the case of a supervised organisation, or

(b) from a supervised individual,

any information required by the relevant person or that individual for the purposes of any of the provisions of schedules 4 to 6.

(6) In subsections (1) to (5) any reference to a supervised organisation or individual includes a reference to a former supervised organisation or individual.

(7) A person who commits an offence under subsection (1), (4)(b) or (5) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(8) A person who commits an offence under subsection (4)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) In this section—

"supervised individual" means an individual who is a permitted participant,

"supervised organisation" means a permitted participant other than an individual,

"relevant person" means a person who is (or has been), in relation to a permitted participant, the responsible person for the purposes of this Act.

14 Campaign offences: summary proceedings

(1) Summary proceedings for a campaign offence may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken—

(a) against any body, including an unincorporated association, at any place at which it has a place of business, and

(b) against an individual at any place at which the individual is for the time being.
(2) Despite anything in section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences), summary proceedings for a campaign offence may be commenced at any time within 3 years after the commission of the offence and within 6 months after the relevant date; and subsection (3) of that section applies for the purposes of this subsection as it applies for the purposes of that section.

(3) In this section “the relevant date” means the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the prosecutor’s knowledge.

(4) For the purposes of subsection (3) a certificate of any prosecutor as to the date on which such evidence as is there mentioned came to the prosecutor’s knowledge is conclusive evidence of that fact.

15 Duty of court to report convictions to the Electoral Commission

The court by or before which a person is convicted of a campaign offence must notify the Electoral Commission of the conviction as soon as is practicable.

Referendum agents

16 Referendum agents

(1) A permitted participant may, for any local government area, appoint an individual (who may be the responsible person) to be the permitted participant’s agent (“referendum agent”).

(2) If a permitted participant appoints a referendum agent for a local government area, the responsible person must give the counting officer for that area notification of the name and address of—

(a) the permitted participant, and
(b) the referendum agent.

(3) The notification must be—

(a) in writing,
(b) signed by the responsible person, and
(c) given before noon on the twenty-fifth day before the date of the referendum.

(4) For the purpose of subsection (3)(c), the following days are to be disregarded—

(a) a Saturday or Sunday,
(b) Christmas Eve or Christmas Day,
(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(5) The duties imposed on a responsible person by this section may be discharged by any person authorised in writing by the responsible person.

(6) A counting officer who receives a notification under subsection (2) must, as soon as practicable, publish notice of—

(a) the name of the permitted participant, and
(b) the name and address of the referendum agent.

(7) If—
(a) a permitted participant revokes the appointment of a referendum agent or a referendum agent dies, and
(b) the permitted participant has notified the counting officer of the appointment of a polling or counting agent under rule 14 of the conduct rules,

the permitted participant must, as soon as practicable, appoint another referendum agent under subsection (1).

(8) The notification under subsection (2) must be made as soon as practicable after the appointment of the new referendum agent (and subsection (3)(c) does not apply to that notification).

Observers

17 Attendance of Electoral Commission at proceedings and observation of working practices

(1) A representative of the Electoral Commission may attend proceedings relating to the referendum that are the responsibility of—

(a) the Chief Counting Officer, or
(b) a counting officer.

(2) The right conferred by subsection (1) is subject to any other provision of this Act which regulates attendance at the proceedings in question.

(3) A representative of the Electoral Commission may observe the working practices of each of the following in carrying out functions under this Act—

(a) a registration officer,
(b) the Chief Counting Officer,
(c) a counting officer,
(d) any person acting under the direction of a person mentioned in paragraphs (a) to (c).

(4) In this section, “representative of the Electoral Commission” means any of the following—

(a) a member of the Electoral Commission,
(b) a member of staff of the Electoral Commission,
(c) a person appointed by the Electoral Commission for the purposes of this section.

18 Accredited observers: individuals

(1) A person who is aged 16 or over may apply to the Electoral Commission to be an accredited observer at any of the following proceedings relating to the referendum—

(a) proceedings at the issue or receipt of postal ballot papers,
(b) proceedings at the poll,
(c) proceedings at the counting of votes.

(2) If the Commission grant the application, the accredited observer may attend the proceedings in question.
(3) An application under subsection (1) must be made in the manner specified by the Commission.

(4) The Commission may at any time revoke the grant of an application under subsection (1).

(5) If the Commission—
   (a) refuse an application under subsection (1), or
   (b) revoke the grant of any such application,

   they must give their decision in writing and must, when doing so, give reasons for the refusal or revocation.

(6) The right conferred on an accredited observer by this section is subject to any provision of this Act which regulates attendance at the proceedings in question.

19 Accredited observers: organisations

(1) An organisation may apply to the Electoral Commission to be accredited for the purpose of nominating observers at any of the following proceedings relating to the referendum—
   (a) proceedings at the issue or receipt of postal ballot papers,
   (b) proceedings at the poll,
   (c) proceedings at the counting of votes.

(2) If the Commission grant the application the organisation may nominate members who may attend the proceedings in question.

(3) The Commission, in granting the application, may specify a limit on the number of observers nominated by the organisation who may attend, at the same time, specified proceedings by virtue of this section.

(4) An application under subsection (1) must be made in the manner specified by the Commission.

(5) The Commission may at any time revoke the grant of an application under subsection (1).

(6) If the Commission—
   (a) refuse an application under subsection (1), or
   (b) revoke the grant of any such application,

   they must give their decision in writing and must, when doing so, give reasons for the refusal or revocation.

(7) The right conferred by this section is subject to any provision of this Act which regulates attendance at the proceedings in question.

20 Attendance and conduct of accredited observers

(1) A relevant officer may limit the number of persons who may be present at any proceedings at the same time by virtue of section 18 or 19.

(2) If a person who is entitled to attend any proceedings by virtue of section 18 or 19 commits misconduct while attending the proceedings, the relevant officer may cancel the person’s entitlement.
(3) Subsection (2) does not affect any power that a relevant officer has by virtue of any enactment or rule of law to remove a person from any place.

(4) A relevant officer is—
(a) in the case of proceedings at a polling station, the presiding officer,
(b) in the case of any other proceedings at a referendum, the Chief Counting Officer or a counting officer,
(c) any other person authorised by a person mentioned in paragraph (a) or (b) for the purposes of the proceedings mentioned in that paragraph.

Information, guidance and advice

21 Information for voters

The Electoral Commission must take such steps as they consider appropriate to promote public awareness and understanding in Scotland about—
(a) the referendum,
(b) the referendum question, and
(c) voting in the referendum.

22 Guidance

(1) The Electoral Commission may issue guidance to the Chief Counting Officer about the exercise of the Chief Counting Officer’s functions under this Act.
(2) The Electoral Commission may, with the consent of the Chief Counting Officer, issue guidance to counting officers about the exercise of their functions under this Act.
(3) The Electoral Commission may issue guidance to permitted participants and persons who may become permitted participants about the provisions set out in schedule 4 to this Act.

23 Advice

The Electoral Commission may, if asked to do so by any person, provide the person with advice about—
(a) the application of this Act,
(b) any other matter relating to the referendum.

Report on referendum

24 Report on the conduct of the referendum

(1) As soon as reasonably practicable after the referendum, the Electoral Commission must prepare and lay before the Scottish Parliament a report on the conduct of the referendum.
(2) The report must include a summary of—
(a) how the Commission have carried out their functions under this Act,
(b) the expenditure incurred by the Commission in carrying out those functions.
(3) The Chief Counting Officer must provide the Commission with such information as they may require for the purposes of the report.

(4) On laying the report, the Commission must publish the report in such manner as they may determine.

(5) In the 2000 Act, in Schedule 1, in paragraph 20(1) (report on Electoral Commission’s functions), the reference to the Commission’s functions does not include a reference to the Commission’s functions under this Act.

Electoral Commission: administrative provision

25 Reimbursement of Commission’s costs

(1) The SPCB must reimburse the Electoral Commission for any expenditure incurred by the Commission that is attributable to the carrying out of the Commission’s functions under this Act.

(2) In the 2000 Act, in Schedule 1, paragraph 14(1) (financing of the Electoral Commission) has effect as if paragraph (a) included a reference to expenditure reimbursed under subsection (1) of this section.

26 Estimates of expenditure

(1) The Electoral Commission must, before the start of each financial year—

(a) prepare an estimate of the Commission’s expenditure for the year that is attributable to the carrying out of their functions under this Act, and

(b) send the estimate to the SPCB for approval.

(2) The Commission may, in the course of a financial year, prepare a revised estimate for the remainder of the year and send it to the SPCB for approval.

(3) The period from the commencement of this Act until the following 31 March is treated, for the purposes of this section, as the first financial year.

(4) Subsection (1) has effect in relation to the first financial year as if the reference to the start of the financial year were a reference to the end of the period of one month beginning with the date of the commencement of this Act.

(5) In the 2000 Act, in Schedule 1, paragraph 14(2) (Commission to prepare estimates of income and expenditure) does not apply in relation to income and expenditure of the Commission that is attributable to the exercise of their functions under this Act.

27 Maladministration

In the Scottish Public Services Ombudsman Act 2002, in section 7 (restrictions on investigations), subsection (6D) does not prevent the investigation under that Act of action taken by or on behalf of the Electoral Commission in the exercise of the Commission’s functions under this Act.

Offences

28 Offences

Schedule 7 makes provision about offences in or in connection with the referendum.
29 Offences by bodies corporate etc.

(1) Subsection (2) applies where—

(a) an offence under this Act has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, a member,

(b) in relation to a limited liability partnership, a member,

(c) in relation to a Scottish partnership, a partner,

(d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

30 Power to make supplementary etc. provision and modifications

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) The power in subsection (1) includes power to make provision in consequence of, or in connection with, any modification or proposed modification, of any enactment relating to—

(a) the conduct of any referendum or campaigning in any referendum,

(b) the conduct of elections or campaigning in elections.

(3) An order under subsection (1) may—

(a) modify any enactment (including this Act),

(b) apply any provision of any enactment (either with or without modifications),

(c) include supplementary, incidental, consequential, transitory or transitional provision or savings.

(4) An order under subsection (1) is subject to the affirmative procedure.
Legal proceedings

31 Restriction on legal challenge to referendum result

(1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast as certified by a counting officer or by the Chief Counting Officer under section 6(2)(b) or (as the case may be) (4) unless—

(a) the proceedings are brought by way of a petition for judicial review, and

(b) the petition is lodged before the end of the permitted period.

(2) In subsection (1)(b) “the permitted period” means the period of 6 weeks beginning with—

(a) the day on which the officer in question makes the certification as to the number of ballot papers counted and votes cast in the referendum, or

(b) if the officer makes more than one such certification, the day on which the last is made.

(3) In subsection (1), references to a petition for judicial review are references to an application to the supervisory jurisdiction of the Court of Session.

Final provisions

32 Interpretation

Schedule 8 provides definitions for words and expressions used in this Act.

33 Commencement

This Act comes into force on the day after Royal Assent.

34 Short title

The short title of this Act is the Scottish Independence Referendum Act 2013.
SCHEDULE 1
(introduced by section 1(3))

FORM OF BALLOT PAPER

Front of ballot paper

<table>
<thead>
<tr>
<th>BALLOT PAPER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote (X) ONLY ONCE</td>
</tr>
<tr>
<td>Should Scotland be an independent country?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>YES</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>NO</th>
</tr>
</thead>
</table>

Back of ballot paper

[Unique identifying number]

[Official mark]

Area of [insert council name].

Referendum on 18 September 2014.

Directions as to printing the ballot paper

1. Nothing is to be printed on the ballot paper except as set out in this schedule.

2. So far as practicable, the instructions specified in paragraphs 3 to 6 must be observed in printing the ballot paper.

3. Words printed on the ballot paper must be printed—
   (a) in a sans serif font (for example, Arial), and
   (b) in characters of at least 14 point size.

4. The direction to “VOTE (X) ONLY ONCE” and the “YES” and “NO” options must be printed in bold capital letters.
The ballot paper must be at least 180mm wide.
The voting boxes where the vote is to be marked must each be 21mm square.

SCHEDULE 2
(introduced by section 3)

FURTHER PROVISION ABOUT VOTING IN THE REFERENDUM

PART 1
MANNER OF VOTING

Manner of voting

1 (1) This paragraph applies to determine the manner of voting of a voter.

(2) A voter may vote in person at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules unless the voter is entitled to an absent vote in the referendum.

(3) A voter may vote by post if the voter is entitled to vote by post in the referendum.

(4) If a voter is entitled to vote by proxy in the referendum, the voter may so vote unless, before a ballot paper is issued for the voter to vote by proxy, the voter applies at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules for a ballot paper for the purpose of voting in person, in which case the voter may vote in person there.

(5) If a voter—

(a) is not entitled to an absent vote in the referendum, and

(b) cannot reasonably be expected to go in person to the polling station allotted to the voter under rule 9(1)(b) of the conduct rules because of the particular circumstances of the voter’s employment, either as a constable or by the counting officer, on the date of the referendum for a purpose connected with the referendum,

the voter may vote in person at any polling station in the local government area in which the polling station allotted to the voter is situated.

(6) Nothing in the preceding provisions of this paragraph applies to—

(a) a voter to whom section 7 of the 1983 Act (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, whether the voter is registered by virtue of that provision or not, and such a voter may vote—

(i) in person at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules (if granted permission to be absent from the hospital and voting in person does not breach any condition attached to the permission), or

(ii) by post or by proxy (if entitled so to vote in the referendum), or

(b) a voter to whom section 7A of that Act (person remanded in custody) applies, whether the voter is registered by virtue of that provision or not, and such a voter may only vote by post or by proxy (if entitled so to vote in the referendum).
(7) Sub-paragraph (2) does not prevent a voter, at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules, marking a tendered ballot paper in pursuance of rule 24 of those rules.

(8) For the purposes of this Act—

(a) references to a voter being entitled to an absent vote in the referendum are references to the voter being entitled to vote by post or by proxy in the referendum, and

(b) a voter is entitled to vote—

(i) by post in the referendum if the voter is shown in the postal voters list (see paragraph 4(2)) for the referendum as so entitled,

(ii) by proxy in the referendum if the voter is shown in the list of proxies (see paragraph 4(3)) for the referendum as so entitled.

Existing absent voters

(1) A person is taken to have been granted a vote by post in the referendum if, at the cut-off date, the person is—

(a) shown in the record maintained under paragraph 3(4) of Schedule 4 to the Representation of the People Act 2000 as voting by post at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained under article 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by post at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

Such a person is referred to in this schedule as an “existing postal voter”.

(2) A person is taken to have been granted a vote by proxy in the referendum if, at the cut-off date, the person is—

(a) shown in the record maintained under paragraph 3(4) of Schedule 4 to the Representation of the People Act 2000 as voting by proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained under article 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

Such a person is referred to in this schedule as an “existing proxy voter”.

(3) Sub-paragraph (1) does not apply to a person if the person is granted a vote by proxy by virtue of an application under paragraph 3.

(4) Sub-paragraph (3) does not apply to a person if the person is granted a vote by post by virtue of an application under paragraph 3.
Applications for absent vote

3 (1) Where a person applies to the registration officer to vote by post in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum, and

(b) the application meets the requirements set out in paragraph 7.

(2) Where a person applies to the registration officer to vote by proxy at the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted, or likely to be allotted, to the applicant under rule 9(1)(b) of the conduct rules,

(b) the registration officer is satisfied that the applicant is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum, and

(c) the application meets the requirements set out in paragraph 7.

(3) Where a person who has an anonymous entry in the register of electors maintained by a registration officer applies to the registration officer to vote by proxy in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(4) Sub-paragraphs (1) and (2) do not apply to a person who is an existing postal voter or an existing proxy voter.

(5) If an existing postal voter applies to the appropriate registration officer for the person’s ballot paper to be sent to a different address from that shown in the record referred to in paragraph 2(1) in relation to that existing postal voter, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(6) If an existing postal voter applies to the appropriate registration officer to vote by proxy in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the person cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the person under rule 9(1)(b) of the conduct rules, and

(b) the application meets the requirements set out in paragraph 7.

(7) If an existing proxy voter applies to the appropriate registration officer to vote by post in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(8) In sub-paragraphs (5) to (7), “appropriate registration officer” means, in relation to an existing postal voter or an existing proxy voter, the registration officer responsible for keeping the record mentioned in paragraph 2(1) or (3) by virtue of which the person is such a voter.
Absent voters lists

4 (1) Each registration officer must keep the 2 lists mentioned in sub-paragraphs (2) and (3).

(2) The first list (the “postal voters list”) is a list of—

(a) those who are existing postal voters by reason of an entry in a record mentioned in paragraph 2(1) kept by the registration officer, together with the addresses—

(i) shown in the record mentioned in that paragraph, or

(ii) provided in any application by them under paragraph 3(5), as the addresses to which their ballot papers are to be sent, and

(b) those granted a vote by post in the referendum by the registration officer by virtue of an application under paragraph 3 together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(3) The second list (the “list of proxies”) is a list of—

(a) those who are existing proxy voters by reason of an entry in a record mentioned in paragraph 2(3) kept by the registration officer, and

(b) those granted a vote by proxy in the referendum by the registration officer by virtue of an application under paragraph 3, together (in each case) with the names and addresses of those appointed as their proxies.

(4) In the case of a person who has an anonymous entry in the register of electors, any entry in the postal voters list or list of proxies must show in relation to the person only the person’s voter number.

(5) Where a person is removed from the postal voters list or the list of proxies, the registration officer must, where practicable, notify the person of the removal and the reason for it.

Proxies

5 (1) Subject to the provisions of this paragraph, any person is capable of being appointed as proxy to vote for another in the referendum and may vote in pursuance of the appointment.

(2) A person (“A”) cannot have more than one person at a time appointed as proxy to vote for A in the referendum.

(3) A person is not capable of being appointed to vote, or of voting, as proxy at the referendum—

(a) if the person is subject to any legal incapacity (age apart) to vote in the referendum, or

(b) if the person is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union.

(4) A person is not capable of voting as a proxy in the referendum unless, on the date of the referendum, the person is of voting age.

(5) A person is not entitled to vote as proxy in the referendum on behalf of more than 2 others of whom that person is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
(6) If there is an existing proxy for an existing proxy voter, the existing proxy is taken to have been appointed as proxy to vote for the existing proxy voter in the referendum.

(7) In sub-paragraph (6), “existing proxy” means, in relation to an existing proxy voter—
   (a) a person appointed under paragraph 6(7) of Schedule 4 to the Representation of the People Act 2000 as proxy to vote for the existing proxy voter at local government elections, or
   (b) if there is no such person, a person appointed under article 10(6) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as proxy to vote for the existing proxy voter at Scottish parliamentary elections.

(8) Where a person applies to the registration officer for the appointment of a proxy to vote for the person in the referendum, the registration officer must make the appointment if—
   (a) the registration officer is satisfied that the applicant is or will be—
       (i) registered in the register of electors maintained by the officer, and
       (ii) entitled to vote by proxy in the referendum by virtue of paragraph 2(3) or an application under paragraph 3,
   (b) the registration officer is satisfied that the proxy is capable of being and willing to be appointed, and
   (c) the application meets the requirements in paragraph 7.

(9) The appointment of a proxy under this paragraph is to be made by means of a proxy paper issued by the registration officer.

(10) The appointment of a proxy to vote for a person (“A”) in the referendum—
    (a) may be cancelled by A by giving notice to the registration officer, and
    (b) ceases to have effect on the issue of a proxy paper appointing a different person to vote for A in the referendum.

Voting as proxy

6 (1) A person entitled to vote as proxy for another (“A”) in the referendum may do so in person at the polling station allotted to A under rule 9(1)(b) of the conduct rules unless the person is entitled to vote by post as proxy in the referendum, in which case the person may vote by post.

(2) Where a person is entitled to vote by post as proxy for another (“A”) in the referendum, A may not apply for a ballot paper for the purpose of voting in person at the referendum.

(3) For the purposes of this schedule, a person entitled to vote as proxy for another in the referendum is entitled so to vote by post if the person is included in the proxy postal voters list (see sub-paragraph (7)).

(4) An existing proxy is taken to have been granted a vote by post as proxy if the existing proxy is, at the cut-off date—
    (a) shown in the record kept under paragraph 7(6) of Schedule 4 to the Representation of the People Act 2000 as voting by post as proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or
(b) shown in the record kept under article 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by post as proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

5 (5) In sub-paragraph (4), “existing proxy” means a person who is taken to have been appointed as proxy by virtue of paragraph 5(6).

6 (6) Where a person applies to the registration officer to vote by post as proxy for another (“A”) in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that A is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum,

(b) there is in force an appointment of the applicant as A’s proxy to vote for A in the referendum, and

(c) the application meets the requirements in paragraph 7.

15 (7) The registration officer must keep a special list (the “proxy postal voters list”) of—

(a) those taken to have been granted a vote by post as proxy by virtue of sub-paragraph (4) by reason of an entry in a record mentioned in that sub-paragraph kept by the registration officer, together with the addresses shown in the record as the addresses to which their ballot papers are to be sent, and

(b) those whose applications under sub-paragraph (6) have been granted by the registration officer, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

20 (8) Where a person to be included in the proxy postal voters list applies to the registration officer for the person’s ballot paper to be sent to a different address, the registration officer must grant the application if it meets the requirements in paragraph 7.

25 (9) In the case of a person who has an anonymous entry in the register of electors, the proxy postal voters list must contain only the person’s voter number.

10 (10) The registration officer must keep a record in relation to those whose applications under sub-paragraph (6) have been granted showing—

(a) their dates of birth, and

(b) except in cases where the registration officer in pursuance of paragraph 7(5) (or other provision to like effect) has dispensed with the requirement to provide a signature, their signatures.

30 (11) The registration officer must retain the record kept under sub-paragraph (10) for the period of one year following the date of the referendum.

35 (12) Sub-paragraph (2) does not prevent a person (“A”), at the polling station allotted to A under rule 9(1)(b) of the conduct rules, from marking a tendered ballot paper in pursuance of rule 24 of those rules.

Requirements as to applications

7 (1) This paragraph applies in relation to applications under paragraph 3, 5(8) or 6(6) or (8).

(2) An application must—
(a) be made in writing,
(b) state the date on which it is made, and
(c) be made before the cut-off date.

(3) An application to vote by post (including an application to vote by post as a proxy) must contain—

(a) the applicant’s full name and date of birth,
(b) the applicant’s signature, and
(c) the address to which the ballot paper is to be sent.

(4) An application to vote by proxy must contain—

(a) the applicant’s full name and date of birth,
(b) the applicant’s signature,
(c) a statement of the reasons why the applicant’s circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant under rule 9(1)(b) of the conduct rules, and
(d) an application under paragraph 5(8) for the appointment of a proxy.

(5) The registration officer may, in relation to any application to which sub-paragraph (3) or (4) applies, dispense with the requirement to include the applicant’s signature if the officer is satisfied that the applicant is unable—

(a) to provide a signature because—

(i) of any disability that the applicant has, or
(ii) the applicant is unable to read or write, or
(b) to sign in a consistent and distinctive way because of any such disability or inability.

(6) For the purposes of sub-paragraphs (3)(a) and (b) and (4)(a) and (b), the applicant’s date of birth and signature must be set out in a manner that is sufficiently clear and unambiguous as to be capable of electronic scanning and, in particular—

(a) the date of birth must be set out numerically in the sequence day, month, year (for example, the date 30 July 1965 must be set out 30071965),

(b) the signature—

(i) must be written within an area of white, unlined paper no smaller than 5 centimetres by 2 centimetres,
(ii) must not exceed 5 centimetres by 2 centimetres.

(7) An application for the appointment of a proxy must state the full name and address of the person whom the applicant wishes to appoint as proxy, together with that person’s family relationship, if any, with the applicant and—

(a) if the application is signed only by the applicant, the application must contain a statement signed by the applicant that the applicant has consulted the person so named and that that person is capable of being and willing to be appointed to vote as the applicant’s proxy, or
(b) if the application is signed also by the person to be appointed as proxy, must contain a statement by that person that the person is capable of being and willing to be appointed to vote as the applicant’s proxy.

(8) Sub-paragraph (9) applies in relation to an application to vote by proxy (and an application under paragraph 5(8) for the appointment of a proxy contained in such an application to vote by proxy)—

(a) made after the cut-off date and on the grounds that the applicant cannot reasonably be expected to vote in person at the polling station allotted under rule 9(1)(b) of the conduct rules because of a disability suffered after that date, or

(b) by a person to whom paragraph 1(6)(a) applies.

(9) Sub-paragraph (2)(c) does not apply in relation to the application and instead the application must be made before 5pm on the date of the referendum.

(10) Sub-paragraph (11) applies in relation to an application under paragraph 3(5) or 6(8) for the person’s ballot paper to be sent to a different address.

(11) Subject to sub-paragraph (12), the application must set out why the applicant’s circumstances will be or are likely to be such that the applicant requires the ballot paper to be sent to that address.

(12) The requirement in sub-paragraph (11) does not apply where an applicant has, or has applied for, an anonymous entry.

**Grant or refusal of applications**

8 (1) This paragraph applies in relation to applications under paragraph 3, 5(8) or 6(6) or (8).

(2) Where the registration officer grants an application, the officer must notify the applicant.

(3) Where the registration officer refuses an application, the officer must notify the applicant of the decision and of the reason for it.

25 (4) Where an application under paragraphs 3(2) and 5(8) is granted, the registration officer must, where practicable, notify the voter of—

(a) the appointment of the proxy, and

(b) the name and address of the proxy.

**Forms**

9 (1) The registration officer must provide free of charge to any person who satisfies the officer of the person’s intention to use the forms in connection with the referendum as many forms for use in connection with—

(a) applications to register as a voter at the referendum, and

(b) applications for an absent vote at the referendum,

as appear to the registration officer to be reasonable in the circumstances.

(2) The forms provided under sub-paragraph (1) are to be in the form prescribed.
**Personal identifiers record**

10 (1) Each registration officer must keep a record in relation to persons granted applications to which paragraph 7(3) or (4) applies showing—
   (a) their dates of birth, and
   (b) except in cases where the officer has under paragraph 7(5) dispensed with the requirement for a signature, their signatures.

(2) The registration officer must, as soon as possible after the cut-off date, either—
   (a) provide the relevant counting officer with a copy of the information contained in the record, or
   (b) give the relevant counting officer access to the information.

(3) A registration officer may disclose information contained in the record to any other registration officer if the registration officer disclosing it thinks that to do so would assist the other registration officer in the carrying out of the other officer’s functions.

(4) A counting officer may disclose information contained in the record to any other person if the counting officer thinks that to do so would assist the other person in ascertaining whether postal ballot papers have been returned in accordance with rule 30(4) of the conduct rules.

**Marked lists for polling stations**

11 To indicate that a voter or a voter’s proxy is entitled to vote by post and is for that reason not entitled to vote in person, the letter “A” is to be placed against the entry of that voter in any list of voters (or any part of a list) provided for a polling station.

**Appeals**

12 (1) Where appeal under section 56 of the 1983 Act (registration appeals) is pending when notice of the referendum is given—
   (a) the appeal does not prejudice the operation as respects the referendum of the decision appealed against, and
   (b) anything done in pursuance of the decision is as good as if no such appeal had been brought and is not affected by the decision on the appeal.

(2) Where, as a result of the decision on an appeal under section 56 of the 1983 Act, an alteration in the register of electors is made which takes effect under section 13(5), 13A(2), 13B(3) or (3B) or 13BB(4) or (5) of the 1983 Act on or before the date of the referendum, sub-paragraph (1) does not apply to the appeal.

**PART 2**

**REGISTRATION**

**Effect of register**

13 (1) A person registered in the register of electors or entered in the list of proxies is not to be excluded from voting in the referendum on any of the grounds set out in sub-paragraph (2), but this does not affect the person’s liability to any penalty for voting.
(2) The grounds referred to in sub-paragraph (1) are—
   (a) that the person is not of voting age,
   (b) that the person is not or was not at any particular time—
      (i) a Commonwealth citizen,
      (ii) a citizen of the Republic of Ireland, or
      (iii) a relevant citizen of the European Union,
   (c) that the person is or was at any particular time otherwise subject to any other legal
capacity to vote in the referendum.

Effect of misdescription

14 No misnomer or inaccurate description of any person or place named—
   (a) in the register of electors, or
   (b) in any list, proxy paper, ballot paper, notice or other document required for the
purposes of this Act,
affects the full operation of the document with respect to that person or place in any case
where the description of the person or place is such as to be commonly understood.

Carrying out of registration functions

15 (1) A registration officer must carry out the registration officer’s functions under this Act in
accordance with any directions given by the Chief Counting Officer.

   (2) The Chief Counting Officer must not give a direction that is inconsistent with this Act or
any other enactment under which a registration officer exercises functions.

   (3) Any of the functions of a registration officer under this Act may be carried out by a
deputy for the time being approved by the council which appointed the registration
officer, and the provisions of this Act apply to any such deputy so far as respects any
functions to be carried out by the deputy as they apply to the registration officer.

   (4) Each council must assign such officers to assist the registration officer appointed by the
council as may be required for carrying out the registration officer’s functions under this
Act.

Alterations in the register of electors

16 (1) An alteration in the register of electors under section 13A(2) (alteration of registers) or
56 (registration appeals) of the 1983 Act which is to take effect after the fifth day before
the date of the referendum does not have effect for the purposes of the referendum.

   (2) For the purposes of sub-paragraph (1), the following days are to be disregarded—
      (a) a Saturday or Sunday,
      (b) Christmas Eve or Christmas Day,
      (c) a day which is a bank holiday in Scotland under the Banking and Financial
Dealings Act 1971.
(3) Section 13B(2) to (6) of the 1983 Act applies in relation to the referendum as it applies in relation to an election to which that section applies but as if—

(a) any reference to the appropriate publication date were a reference to the fifth day before the date of the referendum,

(b) any reference to the date of the poll at such an election were a reference to the date of the referendum,

(c) any reference to the relevant election area were a reference to the area for which the registration officer acts,

(d) any reference to the prescribed time on the day of the poll were a reference to 9pm on the date of the referendum,

(e) any reference to the issuing of a notice in the prescribed manner were a reference to the issuing of the notice in such manner and form as the registration officer may determine.

(4) Section 13BB of the 1983 Act applies in relation to the referendum as it applies in relation to an election mentioned in subsection (1)(b) of that section but as if—

(a) any reference to notice of such an election were a reference to notice of the referendum,

(b) any reference to the appropriate publication date for such an election were a reference to the fifth day before the date of the referendum,

(c) any reference to the issuing of a notice in the prescribed manner were a reference to the issuing of the notice in such manner and form as the registration officer may determine,

(d) subsection (2)(c) were omitted.

Preparation of the Polling List

17 (1) Each registration officer must prepare, in accordance with this paragraph, a list merging all of the entries contained in—

(a) the register of local government electors for the registration officer’s area, and

(b) the register of young voters for that area.

(2) The list is referred to in this Act as the “Polling List”.

(3) The entries in the Polling List must be arranged in such a way that it is not possible from reading the List to distinguish between those entries that are drawn from the register of local government electors, on the one hand, and those drawn from the register of young voters on the other.

(4) Each entry in the Polling List is to contain the same information as the entry in the register from which it is drawn, except that any dates of birth are to be omitted.

(5) No person to whom this sub-paragraph applies may—

(a) supply to any person a copy of the Polling List, or

(b) disclose any information contained in the List (that is not also contained in the edited version of the register of local government electors),

otherwise than in accordance with this Act.
(6) Sub-paragraph (5) applies to—
   (a) a registration officer, and
   (b) any person appointed to assist a registration officer, or who in the course of the
       person’s employment is assigned to assist a registration officer, in the officer’s
       registration functions.

(7) Nothing in sub-paragraph (5) applies to the supply or disclosure by a person to whom
that sub-paragraph applies to another such person in the connection with the person’s
registration functions for the purposes of the referendum.

(8) The registration officer must ensure that the Polling List is securely destroyed no later
than one year after the date of the referendum, unless otherwise directed by an order of
the Court of Session or a sheriff principal.

The cut-off date

18 (1) In this Act, the cut-off date means 5pm on the eleventh day before the date of the
referendum.

(2) For the purpose of ascertaining the cut-off date, the following days are to be
disregarded—
   (a) a Saturday or Sunday,
   (b) Christmas Eve or Christmas Day,
   (c) a day which is a bank holiday in Scotland under the Banking and Financial
       Dealings Act 1971.

PART 3

POSTAL VOTING: ISSUE AND RECEIPT OF BALLOT PAPERS

Persons entitled to be present at issue and receipt of postal ballot papers

19 (1) Without prejudice to sections 17 to 19, no person may be present at the proceedings on
the issue of postal ballot papers other than the counting officer and the counting officer’s
staff.

(2) Without prejudice to sections 17 to 19, no person may be present at the proceedings on
the receipt of postal ballot papers other than—
   (a) the counting officer and the counting officer’s staff,
   (b) a referendum agent or any person appointed by a referendum agent to attend in
       such referendum agent’s place,
   (c) any agents appointed under sub-paragraph (3).

(3) Each referendum agent may appoint one or more agents to attend the proceedings on the
receipt of the postal ballot papers (“postal ballot agents”).

(4) The number of postal ballot agents that may be appointed under sub-paragraph (3)—
   (a) is to be determined by the counting officer, and
   (b) is to be the same for each referendum agent.
(5) A referendum agent who appoints postal ballot agents must give the counting officer notice of the appointment no later than the time fixed for the opening of the postal voters box.

(6) If a postal ballot agent dies or becomes unable to perform the agent’s functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.

(7) A notice under sub-paragraph (5) or (6)—
   (a) must be given in writing, and
   (b) must give the names and addresses of the persons appointed.

(8) In this Part of this schedule, references to postal ballot agents are to agents appointed under sub-paragraph (3) or (6)—
   (a) whose appointments have been duly made and notified, and
   (b) who are within the number authorised by the counting officer.

(9) Where in this Part of this schedule anything is required or authorised to be done in the presence of postal ballot agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

Notification of requirement of secrecy

20 The counting officer must make such arrangements as are reasonably practicable to ensure that every person attending the proceedings in connection with the issue or receipt of postal ballot papers has been given a copy of sub-paragraphs (6), (8) and (9) of paragraph 7 of schedule 7.

Time when postal ballot papers are to be issued

21 (1) In the case of a person shown in the postal voters list or the proxy postal voters list, no postal ballot paper (and postal voting statement) may be issued until after 5pm on the cut-off date.

(2) In the case of any other person, the postal ballot paper (and postal voting statement) is to be issued by the counting officer as soon as practicable after the application to vote by post has been granted.

Issue of postal ballot papers

22 (1) The number of the voter as stated in the Polling List must be marked on the corresponding number list, next to the unique identifying number of the ballot paper issued to that voter.

(2) A mark is to be placed in the postal voters list or the proxy postal voters list against the number of the voter to denote that a ballot paper has been issued to the voter or the voter’s proxy, but without showing the particular ballot paper issued.

(3) The number of a postal ballot paper must be marked on the postal voting statement sent with that paper.
(4) Subject to sub-paragraph (5), the address to which the postal ballot paper, postal voting statement and the envelopes referred to in paragraph 24 are to be sent is—

(a) in the case of a voter, the address shown in the postal voters list,
(b) in the case of a proxy, the address shown in the proxy postal voters list.

(5) Where a person has an anonymous entry in the register of electors, the items specified in sub-paragraph (4) are to be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry to the address to which postal ballot papers should be sent—

(a) as shown in the record of anonymous entries, or
(b) as given in pursuance of an application made under paragraph 3(1) or (5) or 6(6) or (8).

Refusal to issue postal ballot paper

23 Where a counting officer is satisfied that two or more entries in the postal voters list, or the proxy postal voters list or in each of those lists relate to the same voter, the counting officer may not issue more than one ballot paper in respect of that voter.

Envelopes

24 (1) The envelope which the counting officer is required by rule 8(1) of the conduct rules to issue to a postal voter is to be marked with the letter “B”.

(2) The counting officer must also issue to a postal voter a smaller envelope which is to be marked with—

(a) the letter “A”,
(b) the words “ballot paper envelope”, and
(c) the number of the ballot paper.

Sealing up of completed corresponding number lists and security of special lists

25 (1) As soon as practicable after the issue of each batch of postal ballot papers, the counting officer must make up into a packet the completed corresponding number lists for those ballot papers which have been issued and must seal that packet.

(2) Until the counting officer has sealed the packet as described in paragraph 33(11), the counting officer must take proper precautions for the security of the marked copy of the postal voters list and the proxy postal voters list.

Payment of postage on postal ballot papers

26 (1) Where ballot papers are posted to postal voters, postage must be prepaid.

(2) Return postage must be prepaid where the address provided by the postal voter for the receipt of the postal ballot paper is within the United Kingdom.
Spoilt postal ballot papers

27 (1) If a postal voter has inadvertently dealt with a postal ballot paper or postal voting statement in such manner that it cannot be conveniently used as a ballot paper (a “spoilt ballot paper”) or a postal voting statement (a “spoilt postal voting statement”) the postal voter may return the spoilt ballot paper or (as the case may be) the spoilt postal voting statement to the counting officer (either by hand or by post).

(2) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter must also return—
   (a) the postal ballot paper or (as the case may be) the postal voting statement (whether spoilt or not), and
   (b) the envelopes supplied for their return.

(3) Subject to sub-paragraph (4), on receipt of the documents referred to in sub-paragraphs (1) and (2), the counting officer must issue another postal ballot paper except where those documents are received after 5pm on the date of the referendum.

(4) Where the counting officer receives the documents referred to in sub-paragraphs (1) and (2) after 5pm on the day before the date of the referendum, the counting officer may only issue another postal ballot paper if the postal voter returns the documents by hand.

(5) The following provisions apply in relation to a replacement postal ballot paper under sub-paragraph (3) as they apply in relation to a ballot paper—
   (a) paragraph 22 (except sub-paragraph (2)),
   (b) paragraphs 24 and 25, and
   (c) subject to sub-paragraph (8), paragraph 26.

(6) Any postal ballot paper or postal voting statement (whether spoilt or not) returned in accordance with sub-paragraphs (1) and (2) must be immediately cancelled.

(7) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (6), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(8) Where a postal voter applies in person after 5pm on the day before the date of the referendum, the counting officer may only issue a replacement postal ballot paper by handing it to the postal voter.

(9) The counting officer must enter in a list kept for the purpose (“the list of spoilt postal ballot papers”)—
   (a) the name and number of the postal voter as stated in the Polling List (or, in the case of a postal voter who has an anonymous entry, that person’s voter number alone),
   (b) the number of the postal ballot paper (or papers) issued under this paragraph, and
   (c) where the postal voter whose ballot paper is spoilt is a proxy, the name and address of the proxy.
Lost postal ballot papers

28 (1) Where a postal voter claims either to have lost or not to have received—
   (a) the postal ballot paper (a “lost postal ballot paper”),
   (b) the postal voting statement, or
   (c) one or more of the envelopes supplied for their return,
by the fourth day before the date of the referendum, the postal voter may apply (whether or not in person) to the counting officer for a replacement ballot paper.

(2) For the purposes of sub-paragraph (1), the following days are to be disregarded—
   (a) a Saturday or Sunday,
   (b) Christmas Eve or Christmas Day,
   (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(3) An application under sub-paragraph (1) must include evidence of the postal voter’s identity.

(4) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter must return any of the documents referred to in sub-paragraph (1)(a) to (c) which the postal voter has received and which have not been lost.

(5) Any postal ballot paper or postal voting statement returned in accordance with sub-paragraph (4) must be immediately cancelled.

(6) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (5), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(7) Subject to sub-paragraph (8), where the application referred to in sub-paragraph (1) is received by the counting officer before 5pm on the date of the referendum and the counting officer—
   (a) is satisfied as to the postal voter’s identity, and
   (b) has no reason to doubt that the postal voter has either lost or has not received a document referred to in sub-paragraph (1)(a) to (c),
the counting officer may issue another postal ballot paper.

(8) Where the application referred to in sub-paragraph (1) is received by the counting officer after 5pm on the day before the date of the referendum, the counting officer may only issue another postal ballot paper if the postal voter applies in person.

(9) The counting officer must enter in a list kept for the purpose (“the list of lost postal ballot papers”)—
   (a) the name and number of the postal voter as stated in the Polling List (or, in the case of a postal voter who has an anonymous entry, that person’s voter number alone),
   (b) the number of the lost postal ballot paper and of its replacement issued under this paragraph, and
(c) where the postal voter is a proxy, the name and address of the proxy.

(10) The following provisions apply in relation to a replacement postal ballot paper under sub-paragraph (7) as they apply in relation to a ballot paper—

(a) paragraph 22 (except sub-paragraph (2)),

(b) paragraphs 24 and 25, and

(c) subject to sub-paragraph (11), paragraph 26.

(11) Where a postal voter applies in person after 5pm on the day before the date of the referendum, the counting officer may only issue a replacement postal ballot paper by handing it to the postal voter.

(12) Where the counting officer issues another postal ballot paper under sub-paragraph (7), the lost postal ballot paper is void and of no effect.

Notice of opening of postal ballot paper envelopes

29 (1) The counting officer must give to each referendum agent not less than 48 hours’ notice in writing of each occasion on which a postal voters’ box and the envelopes contained in it are to be opened.

(2) That notice must specify—

(a) the time and place at which such an opening is to take place, and

(b) the number of postal ballot agents that may be appointed to attend each opening.

Boxes and receptacles

30 (1) The counting officer must provide a separate box for the reception of—

(a) the covering envelopes when returned by the postal voters, and

(b) postal ballot papers.

(2) Each such box must be marked “postal voters box” or “postal ballot box” (as the case may be) and with the name of the local government area.

(3) The postal ballot box must be shown as being empty to any postal ballot agents present on the occasion of opening the first postal voters box.

(4) The counting officer must then—

(a) lock the postal ballot box,

(b) apply the counting officer’s seal in such manner as to prevent the box being opened without breaking the seal, and

(c) allow any postal ballot agent present who wishes to affix the agent’s seal to do so.

(5) The counting officer must provide separate receptacles for—

(a) rejected votes,

(b) postal voting statements,

(c) ballot paper envelopes,

(d) rejected ballot paper envelopes,
(e) rejected votes (verification procedure), and
(f) postal voting statements (verification procedure).

(6) The counting officer must take proper precautions for the safe custody of every box and receptacle referred to in this paragraph.

5 Receipt of covering envelopes and collection of postal votes

31 (1) The counting officer must, immediately on receipt (whether by hand or by post) of a covering envelope (or an envelope which is stated to include a postal vote) before the close of the poll, place it unopened in a postal voters box.

(2) Where an envelope, other than a covering envelope issued by the counting officer—

(a) has been opened, and

(b) contains a ballot paper envelope, postal voting statement or ballot paper, the envelope, together with its contents, is to be placed in a postal voters box.

(3) The counting officer may collect (or arrange to be collected) any postal ballot paper or postal voting statement which by virtue of rule 28(2)(g) of the conduct rules the presiding officer of a polling station would otherwise be required to deliver (or arrange to be delivered) to the counting officer.

(4) Where the counting officer collects (or arranges to be collected) any postal ballot paper or postal voting statement in accordance with sub-paragraph (3), the presiding officer must first make it (or them) up into a packet (or packets) sealed with the presiding officer’s seal and the seal of any polling agent present who wishes to affix the agent’s seal.

Opening of postal voters box

32 (1) Each postal voters box must be opened by the counting officer in the presence of any postal ballot agents who are present.

(2) So long as the counting officer ensures that there is at least one sealed postal voters box for the reception of covering envelopes up to the time of the close of the poll, the other postal voters boxes may be opened by the counting officer.

(3) The last postal voters box and the postal ballot box must be opened at the counting of the votes under rule 30 of the conduct rules.

Opening of covering envelopes

33 (1) When a postal voters box is opened, the counting officer must count and record the number of covering envelopes (including any envelope which is stated to include a postal vote and any envelope described in paragraph 31(2)).

(2) The counting officer must set aside for personal identifier verification not less than 20 percent of the envelopes recorded on that occasion.

(3) The counting officer must open separately each covering envelope that is not set aside (including an envelope described in paragraph 31(2)).

(4) The procedure in paragraph 35 or 36 applies where a covering envelope (including an envelope to which paragraph 31(2) applies) contains both—
(a) a postal voting statement, and
(b) a ballot paper envelope, or if there is no ballot paper envelope, a ballot paper.

(5) Where the covering envelope does not contain the postal voting statement separately, the counting officer must open the ballot paper envelope to ascertain whether the postal voting statement is inside.

(6) Where a covering envelope does not contain both—
(a) a postal voting statement (whether separately or not), and
(b) a ballot paper envelope or, if there is no ballot paper envelope, a ballot paper,
the counting officer must mark the covering envelope “provisionally rejected”, attach its contents (if any) and place it in the receptacle for rejected votes.

(7) Where—
(a) an envelope contains the postal voting statement of a voter with an anonymous entry, and
(b) sub-paragraph (6) does not apply,
the counting officer must set aside that envelope and its contents for personal identifier verification in accordance with paragraph 36.

(8) In carrying out the procedures in this paragraph and paragraphs 35 to 41, the counting officer—
(a) must keep the ballot papers face downwards and must take proper precautions for preventing any person from seeing the votes made on the ballot papers, and
(b) must not be permitted to view the corresponding number list used at the issue of postal ballot papers.

(9) Where an envelope opened in accordance with sub-paragraph (3) contains a postal voting statement, the counting officer must place a mark in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned.

(10) A mark made under sub-paragraph (9) must be distinguishable from and must not obscure the mark made under paragraph 22(2).

(11) As soon as practicable after the last covering envelope has been opened, the counting officer must make up into a packet the copy of the marked postal voters list and proxy postal voters list that have been marked in accordance with sub-paragraph (9) and must seal that packet.

Confirmation of receipt of postal voting statement

A voter or a voter’s proxy who is shown in the postal voters list or proxy postal voters list may make a request, at any time between the first issue of postal ballots under paragraph 22 and the close of the poll, that the counting officer confirm—
(a) whether a mark is shown in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned, and
(b) whether the number of the ballot paper issued to the voter or the voter’s proxy has been recorded on either of the lists of provisionally rejected postal ballot papers kept by the counting officer under sub-paragraphs (2) and (3) of paragraph 40.

(2) Where a request is received in accordance with sub-paragraph (1) the counting officer must, if satisfied that the request has been made by the voter or the voter’s proxy, provide confirmation of the matters mentioned in sub-paragraph (1).

Procedure in relation to postal voting statements

35 (1) This paragraph applies to any postal voting statement contained in an envelope that has not been set aside for personal identifier verification in accordance with paragraph 33(2) or (7).

(2) The counting officer must determine whether the postal voting statement is duly completed.

(3) Where the counting officer determines that the postal voting statement is not duly completed, the counting officer must mark the statement “rejected”, attach to it the ballot paper envelope, or if there is no such envelope, the ballot paper, and, subject to sub-paragraph (4), place it in the receptacle for rejected votes.

(4) Before placing the statement in the receptacle for rejected votes, the counting officer must—

(a) show it to the postal ballot agents, and

(b) if any agent objects to the counting officer’s decision, add the words “rejection objected to”.

(5) The counting officer must then examine the number on the postal voting statement against the number on the ballot paper envelope and, where they are the same, must place the statement and the ballot paper envelope respectively in the receptacle for postal voting statements and the receptacle for ballot paper envelopes.

(6) Where—

(a) the number on a valid postal voting statement is not the same as the number on the ballot paper envelope, or

(b) that envelope has no number on it,

the counting officer must open the envelope.

(7) Sub-paragraph (8) applies where—

(a) there is a valid postal voting statement but no ballot paper envelope, or

(b) the ballot paper envelope has been opened under paragraph 33(5) or sub-paragraph (6).

(8) The counting officer must place—

(a) in the postal ballot box, any postal ballot paper the number on which is the same as the number on the valid postal voting statement,

(b) in the receptacle for rejected votes, any other postal ballot paper, with the valid postal voting statement attached and marked “provisionally rejected”,

(c) in the receptacle for rejected votes, any valid postal voting statement marked “provisionally rejected” where there is no postal ballot paper, and
(d) in the receptacle for postal voting statements, any valid statement not disposed of under sub-paragraph (b) or (c).

Procedure in relation to postal voting statements: personal identifier verification

36 (1) This paragraph applies to any postal voting statement contained in an envelope that has been set aside for personal identifier verification in accordance with paragraph 33(2) or (7).

(2) The counting officer must open the envelope and determine whether the postal voting statement is duly completed and, as part of that process, must compare the date of birth and the signature on the postal voting statement against the date of birth and the signature contained in the personal identifiers record relating to the person to whom the postal ballot paper was addressed.

(3) Where the counting officer determines that the statement is not duly completed, the counting officer must mark the statement “rejected”, attach it to the ballot paper envelope, or if there is no such envelope, the ballot paper, and, subject to sub-paragraph (4), place it in the receptacle for rejected votes (verification procedure).

(4) Before placing a postal voting statement in the receptacle for rejected votes (verification procedure), the counting officer must—
   (a) show it to the postal ballot agents,
   (b) permit the agents to view the entries in the personal identifiers record relating to the person to whom the postal ballot paper was addressed, and
   (c) if any agent objects to the counting officer’s decision, add the words “rejection objected to”.

(5) The counting officer must then examine the number on the postal voting statement against the number on the ballot paper envelope and, where they are the same, the counting officer must place the statement and the ballot paper envelope respectively in the receptacle for postal voting statements (verification procedure) and the receptacle for ballot paper envelopes.

(6) Where—
   (a) the number on a valid postal voting statement is not the same as the number on the ballot paper envelope, or
   (b) that envelope has no number on it,
the counting officer must open the envelope.

(7) Sub-paragraph (8) applies where—
   (a) there is a valid postal voting statement but no ballot paper envelope, or
   (b) the ballot paper envelope has been opened under paragraph 33(5) or sub-paragraph (6).

(8) The counting officer must place—
   (a) in the postal ballot box, any postal ballot paper the number on which is the same as the number on the valid postal voting statement,
Postal voting statements: additional personal identifier verification

37 (1) A counting officer may on any occasion on which a postal voters box is opened in accordance with paragraph 32 undertake verification of the personal identifiers on any postal voting statement that has on a prior occasion been placed in the receptacle for postal voting statements.

(2) Where a counting officer undertakes additional verification of personal identifiers, the officer must—

(a) remove as many postal voting statements from the receptacle for postal voting statements as the officer wishes to subject to additional verification, and

(b) compare the date of birth and the signature on each such postal voting statement against the date of birth and the signature contained in the personal identifiers record relating to the person to whom the postal ballot paper was addressed.

(3) Where the counting officer is no longer satisfied that the postal voting statement has been duly completed, the officer must mark the statement “rejected” and, before placing the postal voting statement in the receptacle for rejected votes (verification procedure), must—

(a) show it to the postal ballot agents and permit them to view the entries in the personal identifiers record which relate to the person to whom the postal ballot paper was addressed, and, if any agent objects to the counting officer’s decision, add the words “rejection objected to”,

(b) open any postal ballot box and retrieve the ballot paper corresponding to the ballot paper number on the postal voting statement,

(c) show the ballot paper number on the retrieved ballot paper to the agents, and

(d) attach the ballot paper to the postal voting statement.

(4) Following the removal of a postal ballot paper from a postal ballot box the counting officer must lock and reseal the postal ballot box in the presence of the postal ballot agents.

(5) Whilst retrieving a ballot paper in accordance with sub-paragraph (3), the counting officer and the counting officer’s staff—

(a) must keep the ballot papers face downwards and take proper precautions for preventing any person from seeing the votes made on the ballot papers, and

(b) must not look at the corresponding number list used at the issue of postal ballot papers.
Opening of ballot paper envelopes

38 (1) The counting officer must open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

(2) The counting officer must place—

(a) in the postal ballot box, any postal ballot paper the number on which is the same as the number on the ballot paper envelope,

(b) in the receptacle for rejected votes, any other postal ballot paper, which is to be marked “provisionally rejected” and to which is to be attached the ballot paper envelope, and

(c) in the receptacle for rejected ballot paper envelopes, any ballot paper envelope which is to be marked “provisionally rejected” because it does not contain a postal ballot paper.

Retrieval of cancelled postal ballot papers

39 (1) Where it appears to the counting officer that a cancelled postal ballot paper has been placed—

(a) in a postal voters box,

(b) in the receptacle for ballot paper envelopes, or

(c) in a postal ballot box,

the counting officer must proceed as set out in sub-paragraphs (2) and (3).

(2) The counting officer must on the next occasion on which a postal voters box is opened in accordance with paragraph 32, also open any postal ballot box and the receptacle for ballot paper envelopes and—

(a) retrieve the cancelled postal ballot paper,

(b) show the ballot paper number on the cancelled postal ballot paper to the postal ballot agents,

(c) retrieve the postal voting statement that relates to a cancelled paper from the receptacle for postal voting statements,

(d) attach any cancelled postal ballot paper to the postal voting statement to which it relates,

(e) place the cancelled documents in a separate packet and deal with that packet in the manner provided for in paragraph 27(7), and

(f) unless the postal ballot box has been opened for the purposes of the counting of votes under rule 30 of the conduct rules, seal the postal ballot box in the presence of the agents.

(3) Whilst retrieving a cancelled postal ballot paper in accordance with sub-paragraph (2), the counting officer and the counting officer’s staff—

(a) must keep the ballot papers face downwards and take proper precautions for preventing any person from seeing the votes made on the ballot papers, and

(b) must not look at the corresponding number list used at the issue of postal ballot papers.
Lists of provisionally rejected postal ballot papers

40 (1) The counting officer must keep two separate lists of provisionally rejected postal ballot papers.

(2) In the first list, the counting officer must record the ballot paper number of any postal ballot paper for which no valid postal voting statement was received with it.

(3) In the second list, the counting officer must record the ballot paper number of any postal ballot paper which is entered on a valid postal voting statement where that postal ballot paper is not received with the postal voting statement.

Checking of lists kept under paragraph 40

41 (1) Where the counting officer receives a valid postal voting statement without the postal ballot paper to which it relates, the counting officer may, at any time prior to the close of the poll, check the list kept under paragraph 40(2) to see whether the number of any postal ballot paper to which the statement relates is entered in the list.

(2) Where the counting officer receives a postal ballot paper without the postal voting statement to which it relates, the counting officer may, at any time prior to the close of the poll, check the list kept under paragraph 40(3) to see whether the number of the postal ballot paper is entered in the list.

(3) The counting officer must conduct the checks required by sub-paragraphs (1) and (2) as soon as practicable after the receipt, under rule 28(1)(c) of the conduct rules, of packets from every polling station in the local government area.

(4) Where the ballot paper number in the list matches that number on a valid postal voting statement or (as the case may be) the postal ballot paper, the counting officer must retrieve that statement or paper.

(5) The counting officer must then take the appropriate steps under this Part of this schedule as though any document earlier marked “provisionally rejected” had not been so marked and must amend the document accordingly.

Sealing of receptacles

42 (1) As soon as practicable after the completion of the procedure under paragraph 41(3) and (4), the counting officer must make up into separate packets the contents of—

(a) the receptacle for rejected votes,

(b) the receptacle for postal voting statements,

(c) the receptacle for rejected ballot paper envelopes,

(d) the lists of spoilt and lost postal ballot papers,

(e) the receptacle for rejected votes (verification procedure), and

(f) the receptacle for postal voting statements (verification procedure), and must seal up such packets.

(2) Any document in those packets marked “provisionally rejected” is to be deemed to be marked “rejected”.
Forwarding of documents

43 (1) The counting officer must, at the same time as sending the documents mentioned in rule 37 of the conduct rules, send to the proper officer—

(a) any packets referred to in paragraphs 25, 27(7), 28(6), 33(11) and 42, endorsing on each packet a description of its contents and the date of the referendum, and

(b) a completed statement giving details of postal ballot papers issued, received, counted and rejected in the form prescribed.

(2) Where—

(a) any covering envelopes are received by the counting officer after the close of the poll (apart from those delivered in accordance with the provisions of rule 28 of the conduct rules),

(b) any envelopes addressed to postal voters are returned as undelivered too late to be re-addressed, or

(c) any spoilt postal ballot papers are returned too late to enable other postal ballot papers to be issued,

the counting officer must put them unopened in a separate packet, seal up that packet and endorse and send it at a subsequent date in the manner described in sub-paragraph (1).

(3) Rules 38 and 40 of the conduct rules apply to any packet or document sent under this paragraph as they apply for the purposes of the documents referred to in those rules.

(4) A copy of the statement referred to in sub-paragraph (1)(b) is to be provided by the counting officer to the Electoral Commission.

Power of Chief Counting Officer to prescribe

44 (1) In paragraphs 9(2) and 43(1)(b), “prescribed” means prescribed by the Chief Counting Officer.

(2) Where a form is prescribed under sub-paragraph (1), the form may be used with such variations as the circumstances may require.

Interpretation of Part

45 In this Part—

“postal ballot paper” means a ballot paper issued to a postal voter,

“postal voter” means a voter or a voter’s proxy who is entitled to vote by post.

PART 4

SUPPLY OF POLLING LIST ETC.

Supply of free copy of Polling List etc. to counting officers

46 (1) Each registration officer must, at the request of the relevant counting officer, supply free of charge to the counting officer as many printed copies of—
(a) the latest version of the Polling List,
(b) any notice setting out an alteration to the register of electors issued under—
   (i) section 13A(2) of the 1983 Act,
   (ii) section 13B(3), (3B) or (3D) of that Act, or
   (iii) section 13BB(4) or (5) of that Act, and
(c) any record of anonymous entries,
as the counting officer may reasonably require for the purposes of the referendum.

(2) Each registration officer must, as soon as practicable, supply free of charge to the
relevant counting officer as many printed copies of—

   (a) the postal voters list,
   (b) the list of proxies, and
   (c) the proxy postal voters list,
as the counting officer may reasonably require for the purposes of the referendum.

(3) If, after supplying copies of the Polling List and notices in accordance with sub-
paragraph (1), any further notices of the kind referred to in paragraph (b) of that sub-
paragraph are issued by a registration officer, the registration officer must, as soon as
reasonably practicable after issuing the notices, supply the relevant counting officer with
as many printed copies as the counting officer may reasonably require for the purposes
of the referendum.

(4) The duty under sub-paragraph (1) to supply as many printed copies of the Polling List
and notices as the counting officer may reasonably require includes a duty to supply one
copy in data form.

(5) No person to whom a copy of a document has been supplied under this paragraph may, except for the purposes of the referendum—

   (a) supply a copy of the document,
   (b) disclose any information contained in it (that is not also contained in the edited
       version of the register of local government electors), or
   (c) make use of any such information.

Supply of free copy of Polling List etc. to Electoral Commission

(1) Each registration officer must supply free of charge to the Electoral Commission one
copy of—

   (a) the Polling List,
   (b) any notice setting out an alteration of the register of electors issued under—
       (i) section 13A(2) of the 1983 Act,
       (ii) section 13B(3), (3B) or (3D) of that Act, or
       (iii) section 13BB(4) or (5) of that Act,
   (c) the postal voters list,
   (d) the list of proxies, and
(e) the proxy postal voters list.

(2) The duty to supply under sub-paragraph (1) is a duty to supply in data form unless the Commission have, prior to the supply, requested in writing a printed copy instead.

(3) Neither an Electoral Commissioner nor any person employed by the Commission may—

(a) supply a copy of any document supplied under sub-paragraph (1) otherwise than to another Electoral Commissioner or another such person,

(b) disclose any information contained in any such document otherwise than in accordance with sub-paragraph (5) below,

(c) make use of any such information otherwise than in connection with the Commissioner’s or the person’s functions under, or by virtue of, this Act.

(4) In sub-paragraph (3), “Electoral Commissioner” includes a Deputy Electoral Commissioner and an Assistant Electoral Commissioner.

(5) A document supplied under sub-paragraph (1), or any information contained in it, may not be disclosed otherwise than—

(a) where necessary to carry out the Commission’s functions under this Act in relation to permissible donors,

(b) by publishing information about voters which does not include the name or address of any voter.

Supply of free copy of edited Polling List etc. to designated organisations

48 (1) If a designated organisation so requests, the registration officer must supply free of charge to the organisation one copy of an edited version of—

(a) the Polling List,

(b) any notice setting out an alteration of the register of electors issued under—

(i) section 13A(2) of the 1983 Act,

(ii) section 13B(3), (3B) or (3D) of that Act, or

(iii) section 13BB(4) or (5) of that Act,

(c) the postal voters list,

(d) the list of proxies, and

(e) the proxy postal voters list.

(2) For the purposes of this paragraph, an “edited version” of a document is a version of the document with—

(a) all voter numbers removed, and

(b) all anonymous entries removed.

(3) A request under sub-paragraph (1) must—

(a) be made in writing,

(b) specify the documents requested,

(c) state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any further documents issued, and
(d) state whether a printed copy of any of the documents is requested instead of a version in data form.

(4) Unless a request has been made in advance of supply under sub-paragraph (3)(d), the copy of a document supplied under sub-paragraph (1) is to be in data form.

(5) No person employed by, or assisting (whether or not for reward) a designated organisation to which a document has been supplied under this paragraph may, except for a purpose set out in sub-paragraph (6)—

(a) supply a copy of the document to any person,

(b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or

(c) make use of any such information.

(6) The purposes are—

(a) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the organisation under paragraph 2 of schedule 4, and

(b) the purposes of complying with the controls on donations and regulated transactions in that schedule.

Supply of free copy of register of local government electors etc. to permitted participants

49 (1) If a permitted participant so requests, the registration officer must supply free of charge to the participant one copy of—

(a) the full, latest version of the register of local government electors published under section 13(1) or (3) of the 1983 Act,

(b) any notice setting out an alteration of that version of the register issued under—

(i) section 13A(2) of the 1983 Act,

(ii) section 13B(3), (3B) or (3D) of that Act, or

(iii) section 13BB(4) or (5) of that Act,

(c) the postal voters list kept by the officer under paragraph 5(2) of Schedule 4 (absent voting at parliamentary and local government elections) to the Representation of the People Act 2000,

(d) the list of proxies kept by the officer under paragraph 5(3) of that Schedule, and

(e) the proxy postal voters list kept by the officer under paragraph 7(8) of that Schedule.

(2) A request under sub-paragraph (1) must—

(a) be made in writing,

(b) specify the documents requested,

(c) state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any further documents issued, and

(d) state whether a printed copy of any of the documents is requested instead of a version in data form.
(3) Unless a request has been made in advance of supply under sub-paragraph (2)(d), the copy of a document supplied under sub-paragraph (1) is to be in data form.

(4) No person employed by, or assisting (whether or not for reward) a permitted participant to which a document has been supplied under this paragraph may, except for a purpose set out in sub-paragraph (5)—

(a) supply a copy of the document to any person,

(b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or

(c) make use of any such information.

(5) The purposes are—

(a) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the permitted participant under paragraph 2 of schedule 4, and

(b) the purposes of complying with the controls on donations and regulated transactions in that schedule.

Supply of data

A duty of a registration officer to supply data under this Part of this schedule is a duty only to supply the data in the form in which the officer holds it.

General restriction on use of registration documents and information contained in them

(1) This paragraph applies to—

(a) any person to whom a copy of a registration document is supplied under any enactment other than paragraphs 46 to 49,

(b) any person to whom information contained in a registration document has been disclosed,

(c) any person to whom a person referred to in paragraph (a) or (b) has supplied a copy of a registration document or information contained in it, and

(d) any person who has obtained access to a copy of a registration document or information contained in it by any other means.

(2) No person to whom this paragraph applies may, except for the purposes of the referendum—

(a) supply a copy of a registration document,

(b) disclose any information contained in a registration document (that is not also contained in the edited version of the register of local government electors), or

(c) make use of any such information.

(3) In this paragraph, “registration document” means a document referred to in paragraphs 46(1) and (2) and 48(1).

Offence in relation to disclosure of registration documents

(1) A person (“A”) commits an offence—
(a) if A contravenes any of paragraphs 17(5), 46(5), 47(3) or (5), 48(5), 49(4) or 51(2), or
(b) if A is an appropriate supervisor of another person (“B”) who contravenes any of those paragraphs and A failed to take appropriate steps.

5 (2) B does not commit an offence under sub-paragraph (1) if—
(a) B has an appropriate supervisor, and
(b) B complied with all the requirements imposed on B by the appropriate supervisor.

(3) A does not commit an offence under sub-paragraph (1) if—
(a) A is not, and does not have, an appropriate supervisor, and
(b) A took all reasonable steps to ensure that A did not contravene a provision specified in sub-paragraph (1)(a).

(4) In this paragraph—
“appropriate supervisor” means a person who is a director of a company, or concerned in the management of an organisation, in which B is employed or under whose direction or control B is,
“appropriate steps” are such steps as it was reasonable for the appropriate supervisor to take to secure the operation of procedures designed to prevent, so far as reasonably practicable, any contravention of a provision specified in sub-paragraph (1)(a).

(5) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Destruction of copies of the Polling List etc.

53 (1) This section applies to any person holding a copy of any registration document (within the meaning of paragraph 51(3)).

25 (2) The person must ensure that the document is securely destroyed no later than one year after the date of the referendum, unless otherwise directed by an order of the Court of Session or a sheriff principal.

(3) A person who fails to comply with sub-paragraph (2) commits an offence.

(4) A person who commits an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 5

SUPPLY OF MARKED POLLING LIST ETC.

Supply of marked Polling List etc. to designated organisations

54 (1) A designated organisation may request that a counting officer supply the organisation with copies of—
(a) the marked copy of the Polling List,
(b) the marked copy of any notice setting out an alteration of the register of electors issued under—
(i) section 13B(3B) or (3D) of the 1983 Act, or
(ii) section 13BB(4) of that Act,
(c) the marked copy of the postal voters list,
(d) the marked copy of the list of proxies, and
(e) the marked copy of proxy postal voters list.

(2) A request under sub-paragraph (1) must—
(a) be made in writing,
(b) specify the documents requested,
(c) state whether a printed copy of the documents is requested or a copy in data form,
(d) state the purposes for which the documents will be used and why the supply of the unmarked copies of the documents would not be sufficient to achieve those purposes.

(3) Where a request is duly made by a designated organisation under sub-paragraph (1), the counting officer must supply the documents requested if—
(a) the officer is satisfied that the organisation needs to see the marks on the marked copies of the documents in order to achieve the purpose for which they are requested, and
(b) the officer has received payment of a fee calculated in accordance with paragraph 55.

(4) A designated organisation that obtains a copy of any document referred to in sub-paragraph (1) may use it—
(a) only for—
(i) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the organisation under paragraph 2 of schedule 4, or
(ii) the purposes of complying with the controls on donations and regulated transactions in that schedule, and
(b) subject to any conditions that would apply to the use of the unmarked copies of the documents by virtue of paragraph 48.

(5) Where a person (“A”) has been supplied with a copy of a document referred to in sub-paragraph (1), or information contained in such a document, by a person (“B”) to whom paragraph 48(5) applies, the restrictions in that paragraph also apply to A as they apply to B.

(6) A designated organisation may—
(a) supply a copy of a document referred to in sub-paragraph (1) to a processor for the purpose of processing the information contained in it, or
(b) procure that a processor processes and supplies to the organisation any copy of the information in such a document that the processor has obtained under this paragraph,
for use in respect of the purposes for which the designated organisation is entitled to obtain such document or information.

(7) A duty of a counting officer to supply data under this paragraph is a duty only to supply the data in the form in which the officer holds it.

(8) Paragraph 53 applies to a person holding a copy of a document supplied under this paragraph as it applies to a person holding a copy of any registration document (and the reference in paragraph 53(2) to the document is to be construed accordingly).

(9) In sub-paragraph (6) “processor” means a person who provides a service which consists of putting information into data form and includes an employee of such a person.

(10) In this Act, “marked copy” means—

(a) in relation to the Polling List, the copy marked as mentioned in rule 21(2)(c) of the conduct rules,

(b) in relation to a notice issued under section 13B(3B) or (3D) or 13BB(4), the copy marked as mentioned in that rule as modified by rule 21(4),

(c) in relation to the list of proxies, the copy marked as mentioned in rule 21(2)(d),

(d) in relation to the postal voters list or proxy postal voters list, the copy marked as mentioned in paragraph 22(2) of this schedule.

Fee for supply of marked Polling List etc.

55 (1) The fee to be paid in accordance with sub-paragraph (3)(b) of paragraph 54 by a designated organisation requesting the supply of a document referred to in sub-paragraph (1) of that paragraph is set out in sub-paragraph (2).

(2) The fee is £10 plus—

(a) for a copy in printed form, £2 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request,

(b) for a copy in data form, £1 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request.

(3) For the purposes of this paragraph, a request for a copy of the whole or the same part of a document in both printed and data form may be treated as two separate requests.

SCHEDULE 3
(introduced by section 9)

CONDUCT RULES

Publication of notice of the referendum

1 (1) The counting officer must publish notice of the referendum not later than the twenty-fifth day before the date of the referendum.

(2) For the purposes of paragraph (1), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.
(3) The notice must—
   (a) be in the form prescribed, and
   (b) set out—
      (i) the date of the referendum,
      (ii) the hours of polling,
      (iii) a description of who is entitled to vote at each polling station, and
      (iv) the situation of each polling station in the local government area.

(4) The notice must also state the day by which—
   (a) applications to register to vote,
   (b) applications to vote by post or by proxy,
   (c) other applications and notices about postal or proxy voting,
must reach the registration officer in order that they may be effective for the referendum.

(5) As soon as practicable after publishing the notice under paragraph (1), the counting officer must give a copy of it to each of the referendum agents appointed for the area.

**Hours of polling**

2 The hours of polling are between 7am and 10pm.

**The ballot**

3 (1) The votes at the referendum are to be given by ballot.

20 (2) The ballot of every voter consists of a ballot paper.

(3) The ballot paper is to be of the prescribed colour.

**Printing of ballot papers**

4 The counting officer must arrange for the printing of the ballot papers for the counting officer’s area unless the Chief Counting Officer takes responsibility for doing so.

**The corresponding number list**

5 (1) The counting officer must prepare a list (the “corresponding number list”) which complies with paragraph (2).

25 (2) The corresponding number list must—
   (a) contain the unique identifying numbers of all ballot papers to be issued in accordance with rule 8(1) or provided in accordance with rule 13(1), and
   (b) be in the form prescribed.

**Security marking**

6 (1) Every ballot paper must bear or contain on the back of the ballot paper—
   (a) a unique identifying number, and
(b) an official mark.

(2) The counting officer may use a different official mark for ballot papers issued for the purpose of voting by post from the official mark used for ballot papers issued for the purpose of voting in person.

(3) The counting officer may use a different official mark for different purposes.

(4) The official mark must be kept secret.

Use of schools and public rooms for polling and counting votes

7 (1) The counting officer may use, free of charge, for the purpose of taking the poll or counting the votes—

(a) a suitable room in the premises of a school to which this rule applies in accordance with paragraph (2), and

(b) any meeting room to which this rule applies in accordance with paragraph (3).

(2) This rule applies to any school maintained by an education authority.

(3) This rule applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—

(a) the Scottish Ministers or any other part of the Scottish Administration, or

(b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(4) The counting officer—

(a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and restoring the room to its usual condition after use for the referendum, and

(b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises by reason of its being used for the purposes of taking the poll or counting the votes.

(5) For the purposes of this rule (except those of paragraph (4)(b)), the premises of a school are not to be taken to include any private dwelling.

(6) In this rule—

“dwelling” includes any part of a building where that part is occupied separately as a dwelling,

“meeting room” means any room which it is the practice to let for public meetings, and

“room” includes a hall, gallery or gymnasium.

Postal ballot papers

8 (1) Subject to paragraph 21(1) of schedule 2, the counting officer must, as soon as reasonably practicable, issue to those entitled to vote by post—

(a) a ballot paper,

(b) a postal voting statement in the form prescribed, and

(c) an envelope for their return.
(2) The counting officer must also, as soon as reasonably practicable, issue to those entitled to vote by post information about how to obtain—

(a) translations into languages other than English of any directions to or guidance for voters sent with the ballot paper,

(b) a translation into Braille of such directions or guidance,

(c) a graphical representation of such directions or guidance, and

(d) the directions or guidance in any other form (including in audible form).

Provision of polling stations

9 (1) The counting officer must—

(a) provide a sufficient number of polling stations, and

(b) allot the voters to the polling stations.

(2) One or more polling stations may be provided in the same room.

(3) The counting officer must provide each polling station with such number of compartments as may be necessary in which the voters can mark their votes screened from observation.

Appointment of presiding officers and clerks

10 (1) The counting officer must appoint and pay—

(a) a presiding officer to attend at each polling station, and

(b) such clerks as may be necessary for the purposes of the referendum.

(2) The counting officer may not appoint any person who is or has been involved in campaigning for a particular outcome in the referendum.

(3) The counting officer may preside at a polling station and the provisions of these rules relating to a presiding officer apply to a counting officer who so presides with the necessary modifications as to things done by the counting officer to the presiding officer or by the presiding officer to the counting officer.

(4) A presiding officer may authorise a clerk appointed under paragraph (1)(b) to do any act which the presiding officer is required or authorised by these rules to do at a polling station, except ordering the removal and exclusion of any person from the polling station.

Issue of poll cards

11 (1) The counting officer must, as soon as reasonably practicable after publishing the notice of the referendum under rule 1, send to voters whichever of the following is appropriate—

(a) an official poll card,

(b) an official postal poll card,

(c) an official poll card issued to the proxy of a voter, or

(d) an official postal poll card issued to the proxy of a voter.

(2) A voter’s official poll card is to be sent or delivered to the voter’s qualifying address.
(3) A voter’s official postal poll card is to be sent or delivered to the address to which the voter has stated that the ballot paper is to be sent.

(4) A proxy’s official poll card or official postal poll card is to be sent or delivered to the proxy’s address as shown in the list of proxies.

(5) The cards mentioned in paragraph (1) are to be in the form prescribed.

(6) The cards must set out—

(a) the voter’s name, qualifying address and number in the Polling List (unless the voter has an anonymous entry),

(b) the date of the referendum,

(c) the hours of polling, and

(d) the situation of the polling station allotted to the voter under rule 9(1)(b) (in the case of the cards mentioned in paragraph (1)(a) and (c)).

(7) Where a poll card is sent to a voter who has appointed a proxy, the card must also notify the voter of the appointment of the proxy.

(8) In the case of a voter who has an anonymous entry, the card must be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry.

Loan of equipment for referendum

12 (1) A council must, if requested to do so by a counting officer, loan to the counting officer any ballot boxes, fittings and compartments provided by or belonging to the council.

(2) Paragraph (1) does not apply if the council requires the equipment for immediate use by that council.

(3) A loan under paragraph (1) is to be on such terms and conditions as the council and the counting officer may agree.

Equipment of polling stations

13 (1) The counting officer must provide each presiding officer with such number of ballot boxes and ballot papers as the counting officer considers necessary.

(2) Each ballot box is to be constructed so that the ballot papers can be put in, but cannot be withdrawn from it, without the box being opened.

(3) The counting officer must provide each polling station with—

(a) materials to enable voters to mark the ballot papers,

(b) copies of the Polling List or such part of it as contains the entries relating to the voters allotted to the station,

(c) the parts of any lists of persons entitled to vote by post or by proxy prepared for the referendum corresponding to the Polling List or the part of it provided under sub-paragraph (b),

(d) copies of forms of declarations and other documents required for the purpose of the poll, and
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(c) the part of the corresponding number list which contains the numbers corresponding to those on the ballot papers provided to the presiding officer of the polling station.

(4) The reference in paragraph (3)(b) to the copies of the Polling List includes a reference to copies of any notices issued under section 13B(3B) or (3D) or 13BB(4) or (5) of the 1983 Act in respect of alterations to the register of electors.

(5) A notice giving directions for the guidance of voters in voting is to be displayed—
   (a) inside and outside every polling station, and
   (b) in every compartment of every polling station.

(6) The notice under paragraph (5) is to be in the form prescribed.

(7) The counting officer must also provide each polling station with—
   (a) an enlarged hand-held sample copy of the ballot paper for the assistance of voters who are partially-sighted, and
   (b) a device for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion.

(8) The counting officer may cause to be displayed at every polling station an enlarged sample copy of the ballot paper and may include a translation of it into such other languages as the counting officer considers appropriate.

(9) The sample copy mentioned in paragraphs (7)(a) and (8) must be clearly marked as a specimen provided only for the guidance of voters in voting.

Appointmen of polling and counting agents

14 (1) A referendum agent may appoint—
   (a) polling agents to attend at polling stations for the purpose of detecting personation,
   (b) counting agents to attend at the counting of the votes.

(2) The counting officer may limit the number of counting agents that may be appointed, so long as—
   (a) the number that may be appointed by each referendum agent is the same, and
   (b) the number that may be appointed by each referendum agent is not less than the number obtained by dividing the number of clerks employed on the counting by the number of referendum agents.

(3) For the purposes of paragraph (2)(b), a counting agent appointed by more than one referendum agent is to be treated as a separate agent for each of them.

(4) A referendum agent who appoints a polling or counting agent must give the counting officer notice of the appointment no later than the fifth day before the date of the referendum.

(5) For the purposes of paragraph (4), the following days are to be disregarded—
   (a) a Saturday or Sunday,
   (b) Christmas Eve or Christmas Day,
(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(6) If a polling agent or counting agent dies or becomes unable to perform the agent’s functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.

(7) A notice under paragraph (4) or (6)—
(a) must be given in writing,
(b) must give the name and address of the person appointed,
(c) in the case of a polling agent, must set out which polling stations the agent may attend,
(d) in the case of a counting agent, must set out which counts the agent may attend.

(8) In schedule 2 and these conduct rules, references to polling agents and counting agents are to agents appointed under paragraph (1) or (6)—
(a) whose appointments have been duly made and notified, and
(b) where the number of agents is restricted, who are within the permitted numbers.

(9) Any notice required to be given to a counting agent by the counting officer may be delivered at, or sent by post to, the address stated in the notice under paragraph (4) or (6).

(10) A referendum agent may do (or assist in doing) anything that a polling or counting agent appointed by that referendum agent is authorised to do.

(11) Anything required or authorised by schedule 2 or these conduct rules to be done in the presence of polling or counting agents may be done instead in the presence of the referendum agent who appointed the polling or counting agents.

(12) Where in schedule 2 or these conduct rules anything is required or authorised to be done in the presence of polling or counting agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

Admission to polling station

15 (1) No person other than the presiding officer and the persons mentioned in paragraph (2) may attend a polling station.

(2) Those persons are—
(a) voters,
(b) persons under the age of 16 accompanying voters,
(c) the companions of voters with disabilities,
(d) the Member of Parliament for the constituency in which the polling station is situated,
(e) the member of the Scottish Parliament for the constituency in which the polling station is situated,
(f) members of the Scottish Parliament for the region in which the polling station is situated,
(g) members of the council for the electoral ward in which the polling station is situated,
(h) members of the European Parliament for the electoral region of Scotland,
(i) the clerks appointed to attend at the polling station,
(j) the Chief Counting Officer and members of the Chief Counting Officer’s staff,
(k) the counting officer and members of the counting officer’s staff,
(l) constables on duty,
(m) persons entitled to attend by virtue of section 17, 18 or 19,
(n) referendum agents,
(o) polling agents appointed to attend at the polling station, and
(p) any other person the presiding officer permits to attend.

3 In paragraph (2)(g), “electoral ward” has the meaning given by section 1 of the Local Governance (Scotland) Act 2004.

4 The presiding officer may regulate the total number of voters and persons under the age of 16 accompanying voters who may be admitted to the polling station at the same time.

5 Not more than one polling agent is to be admitted at the same time to a polling station on behalf of the same permitted participant.

6 A constable or a member of the counting officer’s staff may only be admitted to vote in person elsewhere than at the polling station allotted under rule 9(1)(b), in accordance with paragraph 1(5) of schedule 2, on production of a certificate which satisfies the requirements set out in paragraph (7).

7 A certificate must—
   (a) be signed by—
      (i) in the case of a constable, an officer of police of the rank of inspector or above, or
      (ii) in the case of a member of the counting officer’s staff, the counting officer,
   (b) be in the form prescribed.

8 A certificate produced under paragraph (6) must be immediately cancelled.

Notification of requirement of secrecy

16 (1) The counting officer must make such arrangements as are reasonably practicable to ensure that—
   (a) every person attending at a polling station has been given a copy of the provisions of sub-paragraphs (1), (3), (5), (7), (8) and (9) of paragraph 7 of schedule 7,
   (b) every person attending at the counting of the votes has been given a copy of sub-paragraphs (4), (8) and (9) of that paragraph.

2 Paragraph (1) does not require the provision of that information to—
   (a) a person attending the polling station for the purpose of voting,
   (b) a person under the age of 16 accompanying a voter,
(c) a companion of a voter with disabilities, or
(d) a constable on duty at a polling station or at the count.

**Keeping of order in polling station**

17 (1) The presiding officer must keep order at the polling station.

(2) If a person—

(a) obstructs the operation of the polling station,
(b) obstructs any voter in polling, or
(c) does anything else which the presiding officer considers may adversely affect proceedings at the polling station,

the presiding officer may order the person to be removed from the polling station.

(3) A person may be removed—

(a) by a constable, or
(b) by the presiding officer.

(4) A person removed under paragraph (2) must not enter the polling station again during that day without the presiding officer’s permission.

(5) A person removed under paragraph (2) may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a constable for an offence without a warrant.

(6) The power to remove a person from the polling station is not to be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

**Sealing of ballot boxes**

18 (1) Immediately before the commencement of the poll, the presiding officer must—

(a) show each ballot box proposed to be used for the purposes of the poll to such persons (if any) who are present in the polling station so that they may see that each box is empty,
(b) place the presiding officer’s seal on each box in such a manner as to prevent it being opened without breaking the seal, and
(c) place each box in the presiding officer’s view for the receipt of ballot papers.

(2) The presiding officer must ensure that each box remains sealed until the close of the poll.

**Questions to be put to voters**

19 (1) At the time a voter applies for a ballot paper (but not afterwards), the presiding officer—

(a) must put the questions mentioned in paragraph (2) to the voter if required to do so by a referendum agent or polling agent,
(b) may put the questions mentioned in paragraph (2) to the voter if the presiding officer considers it appropriate to do so.
(2) The questions referred to in paragraph (1) are—

<table>
<thead>
<tr>
<th>Type of person applying for ballot paper</th>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A person applying as a voter</td>
<td></td>
</tr>
<tr>
<td>(a)“Are you the person named in the Polling List as follows?” <em>(read the whole entry from the Polling List)</em></td>
<td></td>
</tr>
<tr>
<td>(b)“Have you already voted in this referendum otherwise than as proxy for some other person?”</td>
<td></td>
</tr>
<tr>
<td>2. A person applying as proxy</td>
<td></td>
</tr>
<tr>
<td>(a)“Are you the person whose name appears as A.B. in the list of proxies for this referendum as entitled to vote as proxy on behalf of C.D.?”</td>
<td></td>
</tr>
<tr>
<td>(b)“Have you already voted in this referendum as proxy on behalf of C.D.?”</td>
<td></td>
</tr>
<tr>
<td>(c)“Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of C.D.?”</td>
<td></td>
</tr>
<tr>
<td>3. A person applying as proxy for a voter with an anonymous entry (instead of the questions in entry 2)</td>
<td>(a)“Are you the person entitled to vote as proxy on behalf of the voter whose number on the Polling List is <em>(read out the number from the Polling List)</em>?”</td>
</tr>
<tr>
<td></td>
<td>(b)“Have you already voted in this referendum as proxy on behalf of the voter whose number on the Polling List is <em>(read out the number from the Polling List)</em>?”</td>
</tr>
<tr>
<td></td>
<td>(c)“Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the person whose number on the Polling List is <em>(read out the number from the Polling List)</em>?”</td>
</tr>
<tr>
<td>4. A person applying as proxy if the answer to the question at 2(c) or 3(c) is not “yes”</td>
<td>“Have you already voted in this referendum on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild?”</td>
</tr>
<tr>
<td>5. A person applying as a voter in relation to whom there is an entry in the postal voters list</td>
<td>(a)“Did you apply to vote by post?”</td>
</tr>
<tr>
<td></td>
<td>(b)“Why have you not voted by post?”</td>
</tr>
<tr>
<td>6. A person applying as proxy who is named in the proxy postal voters list</td>
<td>(a)“Did you apply to vote by post as proxy?”</td>
</tr>
<tr>
<td></td>
<td>(b)“Why have you not voted by post as proxy?”</td>
</tr>
</tbody>
</table>

(3) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, the reference in the question in entry 1(a) to reading from the Polling List is to be read as a reference to reading from the notice issued under that section.
(4) A ballot paper must not be delivered to any person required to answer a question under this rule unless the person answers the question satisfactorily.

(5) Except as authorised by this rule, no enquiry is permitted as to the right of any person to vote.

5 Challenge of voter

20 (1) A person is not to be prevented from voting by reason only that—

   (a) a referendum agent or polling agent—
       (i) has reasonable cause to believe that the person has committed an offence of
           personation, and
       (ii) the agent makes a declaration to that effect, or

   (b) the person is arrested on the grounds of being suspected of committing or of being
       about to commit such an offence.

(2) Paragraph (1) does not affect the person’s liability to any penalty for voting.

Voting procedure

21 (1) Subject to rule 19(4), a ballot paper must be delivered to a voter who applies for one.

(2) Immediately before delivering the ballot paper to the voter—

   (a) the number and (unless paragraph (3) applies) name of the voter as stated in the
       Polling List is to be called out,

   (b) the number of the voter is to be marked on the list mentioned in rule 13(3)(e) beside
       the number of the ballot paper to be delivered to the voter,

   (c) a mark is to be placed in the Polling List against the number of the voter to note
       that a ballot paper has been received but without showing the particular ballot
       paper which has been received, and

   (d) in the case of a person applying for a ballot paper as proxy, a mark is also to be
       placed against that person’s name in the list of proxies.

(3) In the case of a voter who has an anonymous entry, the voter’s official poll card must be
    shown to the presiding officer and only the voter’s number is to be called out in pursuance of paragraph (2)(a).

(4) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (2) is modified as follows—

   (a) in sub-paragraph (a), for “Polling List” substitute “copy of the notice issued under
       section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”,

   (b) in sub-paragraph (c), for “in the Polling List” substitute “on the copy of the notice
       issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

(5) On receiving the ballot paper, the voter must without delay—

   (a) proceed into a compartment in the polling station,

   (b) there secretly mark the voter’s ballot paper,

   (c) show the unique identifying number on the ballot paper to the presiding officer, and
(d) put the ballot paper into the ballot box in the presiding officer’s presence.

(6) Where—
   (a) a voter attends the polling station before 10pm, and
   (b) the voter is still waiting to vote at 10pm,

the presiding officer must permit the voter to vote without delay after 10pm and must close the poll immediately after the last such voter has voted.

(7) The voter must leave the polling station as soon as the voter has put the ballot paper into the ballot box.

**Votes marked by presiding officer**

22 (1) On the application of a voter—
   (a) who is incapacitated by blindness or other disability from voting in the manner required by rule 21, or
   (b) who declares orally an inability to read,

the presiding officer must, in the presence of any polling agents, cause the voter’s vote to be marked on a ballot paper in the manner directed by the voter and the ballot paper to be put into the ballot box.

(2) The name and number in the Polling List of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, is to be entered on a list (the “marked votes list”) and in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.

(3) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (2) applies as if for “in the Polling List of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

**Voting by persons with disabilities**

23 (1) If a voter applies to the presiding officer to be allowed to vote with the assistance of another person by whom the voter is accompanied (the “companion”), on the ground of—
   (a) blindness or other physical disability, or
   (b) inability to read,

the presiding officer must require the voter to declare (orally or in writing) whether the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance.

(2) The presiding officer must grant the application if the presiding officer—
   (a) is satisfied that the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance, and
   (b) is also satisfied, by a declaration made by the companion (a “companion declaration”) which complies with paragraph (3), that the companion—
      (i) meets the requirements set out in paragraph (3)(c)(i) or (ii), and
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(ii) has not previously assisted more than one voter with disabilities to vote at the referendum.

(3) A companion declaration must—
   (a) be in the form prescribed,
   (b) be made before the presiding officer at the time when the voter applies to vote with the assistance of the companion, and
   (c) state that the companion—
       (i) is a person who is entitled to vote as a voter at the referendum, or
       (ii) is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the voter with disabilities, and has attained the age of 16.

(4) The presiding officer must sign the companion declaration and keep it.

(5) No fee or other payment may be charged in respect of the declaration.

(6) A person is a “voter with disabilities” for the purposes of paragraph (2)(b)(ii) if the person has made a declaration mentioned in paragraph (1).

(7) Where an application is granted under paragraph (2), anything which is required by these rules to be done to or by the voter in connection with the giving of that voter’s vote may be done to, or by, or with the assistance of, the companion.

(8) The name and number in the Polling List of every voter whose vote is given in accordance with this rule and the name and address of the companion is to be entered on a list (the “assisted voters list”) and, in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.

(9) Where the voter being assisted by a companion has an anonymous entry, only the voter’s number in the Polling List is to be entered on the assisted voters list.

(10) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (8) applies as if for “in the Polling List of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

Tendered ballot papers

24 (1) Paragraph (6) applies if any of situations A to D exist.

(2) Situation A exists if a person, claiming to be—
   (a) a particular voter named on the Polling List and not named in the postal voters list or the list of proxies, or
   (b) a particular person named in the list of proxies as proxy for a voter and not entitled to vote by post as proxy,

applies for a ballot paper after another person has voted in person either as the voter or the voter’s proxy.

(3) Situation B exists if—
   (a) a person applies for a ballot paper claiming that the person is a particular voter named on the Polling List,
   (b) the person is also named in the postal voters list, and
(c) the person claims that—
   (i) no application to vote by post in the referendum was made by that person, or
   (ii) the person is not an existing postal voter within the meaning of paragraph 2(2) of schedule 2.

(4) Situation C exists if—
   (a) a person applies for a ballot paper claiming that the person is a particular person named as a proxy in the list of proxies,
   (b) the person is also named in the proxy postal voters list, and
   (c) the person claims that—
      (i) no application to vote by post as proxy was made by that person, or
      (ii) the person is not an existing proxy to whom paragraph 6(4) of schedule 2 applies.

(5) Situation D exists if, before the close of the poll but after the last time at which a person may apply for a replacement postal ballot paper—
   (a) a person claims that the person is—
      (i) a particular voter named on the Polling List who is also named in the postal voters list, or
      (ii) a particular person named as proxy in the list of proxies who is also named in the proxy postal voters list, and
   (b) the person claims that the person has lost or has not received a postal ballot paper.

(6) Where this paragraph applies, the person is entitled, on satisfactorily answering the questions permitted by rule 19 to be asked at the poll, to mark a tendered ballot paper in the same manner as any other voter.

(7) A tendered ballot paper must—
   (a) be of a prescribed colour differing from that of the ballot paper issued in accordance with rule 8(1) or provided in accordance with rule 13(1),
   (b) instead of being put into the ballot box, be given to the presiding officer and endorsed by the presiding officer with the name of the voter and the voter’s number in the Polling List, and
   (c) be set aside in a separate packet.

(8) The name of the voter and the voter’s number in the Polling List is to be entered on a list (the “tendered votes list”).

(9) In the case of a person voting as proxy for a voter, the number to be endorsed or entered is to be the voter’s number.

(10) This rule applies to a voter who has an anonymous entry subject to the following modifications—
    (a) in paragraphs (7)(b) and (8), the references to the voter’s name are to be ignored, and
    (b) otherwise, a reference to a person named on the Polling List or other list is to be construed as a reference to a person whose number appears on the Polling List or other list (as the case may be).
(11) This rule applies in the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act as if—

(a) in paragraphs (2)(a), (3)(a) or (5)(a)(i), for “named on the Polling List” there were substituted “in respect of whom a notice under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act has been issued”, and

(b) in paragraphs (7)(b) and (8), for “the voter’s number in the Polling List” there were substituted “the number relating to that person on a notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

Spoilt ballot papers

25 (1) A voter who has inadvertently dealt with a ballot paper in such manner that it cannot be conveniently used as a ballot paper may—

(a) by returning it to the presiding officer, and

(b) proving to the presiding officer’s satisfaction the fact of the inadvertence, obtain another ballot paper in the place of the returned ballot paper (the “spoilt ballot paper”).

(2) The spoilt ballot paper must be immediately cancelled.

Correction of errors on polling day

26 (1) The presiding officer must keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13B(3B) or (3D) or 13BB(4) of the 1983 Act which takes effect on the date of the referendum.

(2) The list kept under paragraph (1) is referred to as the “polling day alterations list”.

Adjournment of poll in case of riot

27 (1) Where the proceedings at any polling station are interrupted by riot or open violence, the presiding officer must—

(a) adjourn the proceedings until the following day, and

(b) inform the counting officer without delay.

(2) If the counting officer is informed under paragraph (1)(b), the counting officer must inform the Chief Counting Officer without delay.

(3) Where the poll is adjourned at any polling station—

(a) the hours of polling on the day to which it is adjourned are to be the same as for the original day, and

(b) references in these rules to the close of the poll are to be construed accordingly.

Procedure on close of poll

28 (1) As soon as reasonably practicable after the close of the poll, the presiding officer must—

(a) in the presence of any polling agents, seal each ballot box in use at the station so as to prevent the introduction of additional ballot papers,
(b) separate and make up into separate sealed packets the papers mentioned in paragraph (2), and
(c) deliver the sealed ballot boxes and packets (or arrange for them to be delivered) to the counting officer to be taken charge of by the counting officer.

(2) The papers referred to in paragraph (1) are—

(a) the unused and spoilt ballot papers (as a single packet),
(b) the tendered ballot papers,
(c) the marked copies of the Polling List (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and of the list of proxies (as a single packet),
(d) any certificates produced under rule 15(6),
(e) the corresponding number list completed in accordance with rule 21(2)(b) (the “completed corresponding number list”),
(f) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations list and the companion declarations (as a single packet),
(g) any postal ballot papers or postal voting statements returned to the station.

(3) The marked copies of the Polling List and of the list of proxies are to be in one packet but must not be in the same packet as the certificates mentioned in paragraph (2)(d) or the lists mentioned in paragraph (2)(e).

(4) The packets must be accompanied by a statement (the “ballot paper account”) made by the presiding officer, showing the number of ballot papers entrusted to the presiding officer and accounting for them under the following heads—

(a) ballot papers issued and not otherwise accounted for,
(b) unused ballot papers,
(c) spoilt ballot papers, and
(d) tendered ballot papers.

(5) If the sealed ballot boxes and packets are not delivered to the counting officer by the presiding officer personally, the arrangements for their delivery require the counting officer’s approval.

(6) In paragraph (1), references to “sealing” mean sealing using—

(a) the presiding officer’s seal, and
(b) the seals of any polling agents who wish to affix their own seals.

Attendance at counting of votes

29 (1) The counting officer must make arrangements for counting of the votes as soon as reasonably practicable after the close of the poll.

(2) The counting officer must publish notice of the time and place at which the counting officer will begin to count the votes.

(3) The counting officer must take proper precautions for the security of the ballot boxes and packets in the period between taking charge of them and the beginning of the count.
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(4) No person other than the persons mentioned in paragraph (5) may attend the counting of the votes.

(5) Those persons are—

(a) the Member of Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,

(b) the member of the Scottish Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,

(c) members of the Scottish Parliament for any region which contains all or part of the area in which the votes being counted have been cast,

(d) members of the council for any local government area which contains all or part of the area in which the votes being counted have been cast,

(e) members of the European Parliament for the electoral region of Scotland,

(f) the Chief Counting Officer and members of the Chief Counting Officer’s staff,

(g) a counting officer and members of a counting officer’s staff,

(h) constables on duty,

(i) persons entitled to attend by virtue of section 17,

(j) persons entitled to attend by virtue of section 18 or 19,

(k) referendum agents,

(l) counting agents appointed to attend at the count, and

(m) any other person the counting officer permits to attend.

(6) The counting officer may exclude persons from the counting of the votes if the counting officer considers that the efficient counting of the votes would be impeded.

(7) Paragraph (6) does not permit the counting officer to exclude the persons mentioned in paragraph (5)(f) or (i).

(8) The counting officer may limit the number of counting agents who are permitted to be present at the counting of the votes on behalf of a permitted participant, but the same limit is to apply to each permitted participant.

(9) The counting officer must give any counting agents such reasonable facilities for overseeing the proceedings and such information with respect to the proceedings as the counting officer can give consistently with the orderly conduct of the proceedings and the carrying out of the counting officer’s functions in connection with them.

(10) In particular, where the votes are counted by sorting the ballot papers according to the answer for which the vote is given and then counting the number of ballot papers for each answer, the counting agents are entitled to satisfy themselves that the ballot papers are correctly sorted.

The count

30 (1) The counting officer must—

(a) in the presence of the counting agents, open each ballot box and count and record the number of ballot papers in it, checking the number against the ballot paper account,
(b) verify each ballot paper account in the presence of any referendum agents, and
(c) count such of the postal ballot papers as have been duly returned and record the number counted.

(2) For the purposes of paragraph (1)(b), a counting officer must—
(a) verify the ballot paper account by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the counting officer’s possession and the tendered votes list (opening and resealing the packets containing the unused and spoilt ballot papers and the tendered votes list), and
(b) prepare a statement as to the result of the verification (the “verification statement”).

(3) Any counting agent present at the verification may copy the verification statement.

(4) For the purposes of paragraph (1)(c), a postal ballot paper is not to be considered as having been duly returned unless it—
(a) is returned—
   (i) by hand to a polling station in the same local government area, or
   (ii) by hand or post to the counting officer, before the close of the poll, and
(b) is accompanied by a postal voting statement which—
   (i) is duly signed (unless the requirement for signature has been dispensed with in accordance with paragraph 7(5) of schedule 2), and
   (ii) states the date of birth of the voter or the voter’s proxy.

(5) The counting officer must not count the votes given on any ballot papers until—
(a) in the case of postal ballot papers, they have been mixed with ballot papers from at least one ballot box, and
(b) in the case of ballot papers from a ballot box, they have been mixed with ballot papers from at least one other ballot box.

(6) The counting officer must not count any tendered ballot paper.

(7) The counting officer must not count any postal ballot paper if, having taken steps to verify the signature and date of birth of the voter or the voter’s proxy, the counting officer is not satisfied that the postal voting statement has been properly completed.

(8) The counting officer, while counting and recording the number of ballot papers and counting the votes, must take all proper precautions for preventing any person from identifying the voter who cast the vote.

(9) The counting officer must, so far as reasonably practicable, proceed continuously with counting the votes, allowing only time for refreshment, but the counting officer may suspend counting between 7pm on any day following the date of the referendum and 9am on the following morning.

(10) During any period when counting is suspended, the counting officer must take proper precautions for the security of the papers.
Rejected ballot papers

31 (1) Any ballot paper to which paragraph (2) applies is void and is not to be counted, subject to paragraph (3).

(2) This paragraph applies to a ballot paper—

(a) which does not bear the official mark,
(b) which indicates a vote in favour of both answers to the referendum question,
(c) on which anything is written or marked by which the voter can be identified (other than by the unique identifying number), or
(d) which is unmarked or void for uncertainty.

(3) A ballot paper on which the vote is marked—

(a) elsewhere than in the proper place,
(b) otherwise than by means of a cross, or
(c) by more than one mark,

is not for such reason to be considered to be void by reason only of indicating a vote by means of figures or words (or any other mark) instead of a cross if, in the counting officer’s opinion, the mark clearly indicates the voter’s intention.

(4) Paragraph (3) does not apply if—

(a) the way in which the ballot paper is marked identifies the voter, or
(b) it can be shown that the voter can be identified from it.

(5) The counting officer must—

(a) endorse the word “rejected” on any ballot paper which falls not to be counted under this rule, and
(b) if any counting agent objects to the counting officer’s decision, add to the endorsement the words “rejection objected to”.

(6) The counting officer must prepare a statement showing the number of ballot papers rejected under each of sub-paragraphs (a) to (d) of paragraph (2).

Counting the votes

32 The counting officer must count the votes in favour of each answer to the referendum question.

Decisions on ballot papers

33 The decision of the counting officer on any question arising in respect of a ballot paper is final.

Re-counts

34 (1) The counting officer may have the votes re-counted (or again re-counted) if the counting officer considers it appropriate to do so.

(2) The Chief Counting Officer may require the counting officer to have the votes re-counted (or again re-counted).
Declaration of result

35 (1) After making the certification under section 6(2)(b) (results for the counting officer’s area), the counting officer must, without delay, give to the Chief Counting Officer—

(a) notice of the matters certified,

(b) details of the information contained in the verification statements prepared under rule 30, and

(c) notice of the number of rejected ballot papers under each head shown in the statement of rejected ballot papers prepared under rule 31.

(2) When authorised to do so by the Chief Counting Officer, the counting officer must—

(a) make a declaration of the matters certified under section 6(2)(b), and

(b) as soon as practicable, give public notice of those matters together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.

(3) After making the certification under section 6(4) (results for the whole of Scotland), the Chief Counting Officer must—

(a) make a declaration of the matters certified, and

(b) as soon as practicable, give public notice of those matters together with the total number of rejected ballot papers for the whole of Scotland under each head shown in the statements of rejected ballot papers.

Sealing up of ballot papers

36 (1) On the completion of the counting, the counting officer must seal up in separate packets—

(a) the counted ballot papers, and

(b) the rejected ballot papers.

(2) The counting officer must not open the sealed packets of—

(a) tendered ballot papers,

(b) the completed corresponding number lists,

(c) the certificates mentioned in rule 15(6), or

(d) marked copies of the Polling List (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and lists of proxies.

Delivery of papers

37 (1) After sealing the papers in accordance with rule 36, the counting officer must send the papers mentioned in paragraph (2) to the proper officer of the council for the local government area in which the votes being counted have been cast, endorsing on each packet a description of its contents and the date of the referendum.

(2) Those papers are—

(a) the packets of ballot papers in the counting officer’s possession,
(b) the ballot paper accounts, the statements of rejected ballot papers and the verification statements,

c) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations lists and the companion declarations,

(d) the packets of the completed corresponding numbers lists,

(e) the packets of the certificates mentioned in rule 15(6), and

(f) the packets containing marked copies of the Polling List (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and of the postal voters list, of lists of proxies and of the proxy postal voters list.

Retention and public inspection of papers

38 (1) The proper officer of the council must retain for one year all papers received by virtue of rule 37.

(2) Those papers, except ballot papers, completed corresponding number lists and the certificates mentioned in rule 15(6), are to be made available for public inspection at such times and in such manner as the proper officer may determine.

(3) A person inspecting marked copies of the Polling List may not—

   (a) make copies of any part of them, or

   (b) record any particulars included in them, otherwise than by means of hand-written notes.

(4) A person who makes a copy of marked copies of the Polling List, or records any particulars included in them, otherwise than by means of hand-written notes commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) After the expiry of one year, the proper officer must ensure that the papers are securely destroyed, unless otherwise directed by an order of the Court of Session or a sheriff principal.

Retention and public inspection of certifications

39 (1) The Chief Counting Officer must retain for one year—

   (a) certifications made by counting officers under section 6(2)(b), and

   (b) certifications made by the Chief Counting Officer under section 6(4).

(2) Those certifications are to be made available for public inspection at such times and in such manner as the Chief Counting Officer may determine.

Orders for production of documents

40 (1) The Court of Session or a sheriff principal may make an order mentioned in paragraph (2) if the Court or the sheriff principal is satisfied by evidence on oath that the order is required for the purpose of—

   (a) instituting or maintaining a prosecution for an offence in relation to ballot papers, or

   (b) proceedings brought as mentioned in section 31.
(2) An order referred to in paragraph (1) is an order for—
   (a) the inspection or production of any rejected ballot papers in the custody of a proper officer,
   (b) the opening of a sealed packet of the completed corresponding number lists or of the certificates mentioned in rule 15(6), or
   (c) the inspection of any counted ballot papers in the proper officer’s custody.

(3) An order under this rule may be made subject to such conditions as to—
   (a) persons,
   (b) time,
   (c) place and mode of inspection, and
   (d) production or opening,
   as the Court or the sheriff principal considers expedient.

(4) In making and carrying out an order mentioned in paragraph (2)(b) or (c), care must be taken to ensure that the way in which the vote of any particular voter has been given will not be disclosed until it is proved—
   (a) that such vote was given, and
   (b) that such vote has been declared by a competent court to be invalid.

(5) Any power given to the Court of Session or a sheriff principal under this rule may be exercised by any judge of the Court, or by the sheriff principal, otherwise than in open court.

(6) An appeal lies to the Court of Session from any order of a sheriff principal under this rule.

(7) Where an order is made for the production by a proper officer of any document in that officer’s custody relating to the referendum—
   (a) the production by such officer or the officer’s agent of the document ordered in such manner as may be directed by that order is conclusive evidence that the document relates to the referendum, and
   (b) any endorsement on any packet of ballot papers so produced is \textit{prima facie} evidence that the ballot papers are what they are stated to be by the endorsement.

(8) The production from the proper officer’s custody of—
   (a) a ballot paper purporting to have been used at the referendum, and
   (b) a completed corresponding number list with a number marked in writing beside the number of the ballot paper,
   is \textit{prima facie} evidence that the voter whose vote was given by that ballot paper was the person whose entry in the Polling List (or on a notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) at the time of the referendum contained the same number as the number marked as mentioned in sub-paragraph (b).

(9) Except as provided by this rule, no person is to be allowed to—
   (a) inspect any rejected or counted ballot papers in the custody of the proper officer, or
(b) open any sealed packet of the completed corresponding number list or of the certificates mentioned in rule 15(6).

**Power of Chief Counting Officer to prescribe**

41 (1) In this schedule, “prescribed” means prescribed by the Chief Counting Officer.

(2) Where a form is prescribed under paragraph (1), the form may be used with such variations as the circumstances may require.

**SCHEDULE 4**

*(introduced by section 10)*

**CAMPAIGN RULES**

**PART 1**

**INTERPRETATION**

**Interpretation of schedule**

1 (1) In this schedule—

“bequest” includes any form of testamentary disposition,

“body”, without more, includes a body corporate or any combination of persons or other unincorporated associations,

“broadcaster” means—

(a) the holder of a licence under the Broadcasting Act 1990 or 1996, or

(b) the British Broadcasting Corporation,

“exempt trust donation” has the meaning given by section 162 of the 2000 Act,

“market value”, in relation to any property, means the price which might reasonably be expected to be paid for the property on a sale in the open market,

“property” includes any description of property, and references to the provision of property accordingly include the supply of goods,

“qualified auditor” has the meaning given by section 160 of the 2000 Act.

(2) For the purposes of this schedule, each of the following is a “permissible donor”—

(a) an individual registered in an electoral register,

(b) a company—

(i) registered under the Companies Act 2006,

(ii) incorporated within the United Kingdom or another member State, and

(iii) carrying on business in the United Kingdom,

(c) a registered party,

(d) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992 (S.I.1992/807),
(e) a building society (within the meaning of the Building Societies Act 1986),
(f) a limited liability partnership—
   (i) registered under the Limited Liability Partnerships Act 2000, and
   (ii) carrying on business in the United Kingdom,
(g) a friendly society registered under the Friendly Societies Act 1974 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, and
(h) any unincorporated association of two or more persons which—
   (i) does not fall within any of the preceding paragraphs,
   (ii) carries on business or other activities wholly or mainly in the United Kingdom, and
   (iii) has its main office in the United Kingdom.

(3) In this schedule, “electoral register” means any of the following—

(a) a register of parliamentary or local government electors maintained under section 9 of the 1983 Act,
(b) a register of relevant citizens of the European Union prepared under the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (S.I 2001/1184),
(c) a register of peers prepared under regulations under section 3 of the Representation of the People Act 1985.

(4) References in this schedule (in whatever terms) to payments out of public funds are references to any of the following—

(a) payments out of—
   (i) the Consolidated Fund of the United Kingdom, the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund, or
   (ii) money provided by Parliament or appropriated by Act of the Northern Ireland Assembly,
(b) payments by—
   (i) a Minister of the Crown, the Scottish Ministers, a Minister within the meaning of the Northern Ireland Act 1998 or the Welsh Ministers (including the First Minister for Wales or the Counsel General to the Welsh Assembly Government), or
   (ii) a government department (including a Northern Ireland department) or a part of the Scottish Administration,
(c) payments by the SPCB, the Northern Ireland Assembly Commission or the National Assembly for Wales Commission, and
(d) payments by the Electoral Commission.
(5) References in this schedule (in whatever terms) to expenses met, or things provided, out of public funds are references to expenses met, or things provided, by means of payments out of public funds.

**PART 2**

**PERMITTED PARTICIPANTS AND DESIGNATED ORGANISATIONS**

**Permitted participants**

2 (1) For the purposes of this schedule, a registered party, a qualifying individual or a qualifying body may make a declaration to the Electoral Commission in accordance with this paragraph and paragraph 3 identifying the outcome for which the party, individual or body proposes to campaign at the referendum.

(2) A party, individual or body which has made a declaration in accordance with this paragraph and paragraph 3 is referred to in this Act as a “permitted participant”.

(3) A “qualifying individual” is an individual who is—

(a) resident in the United Kingdom, or

(b) registered in—

(i) an electoral register, or

(ii) the register of young voters.

(4) A “qualifying body” is a body which is—

(a) a company—

(i) registered under the Companies Act 2006,

(ii) incorporated within the United Kingdom or another member State, and

(iii) carrying on business in the United Kingdom,

(b) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807),

(c) a building society within the meaning of the Building Societies Act 1986,

(d) a limited liability partnership—

(i) registered under the Limited Liability Partnerships Act 2000, and

(ii) carrying on business in the United Kingdom,

(e) a friendly society registered under the Friendly Societies Act 1974 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, or

(f) an unincorporated association of two or more persons which—

(i) does not fall within any of the preceding paragraphs,

(ii) carries on business or other activities wholly or mainly in the United Kingdom, and

(iii) has its main office in the United Kingdom.
**Further provision about declarations under paragraph 2**

3 (1) A declaration under paragraph 2 by a registered party—

(a) must be signed by the responsible officers of the party (within the meaning of section 64(7) of the 2000 Act), and

(b) if made by a minor party, must be accompanied by a notification which states the name of the person who will be responsible for compliance on the part of the party with the provisions of this schedule.

(2) A declaration under paragraph 2 by a qualifying individual must—

(a) state the individual’s full name and home address, and

(b) be signed by the individual.

(3) A declaration under paragraph 2 by a qualifying body must—

(a) state—

(i) all such details in respect of the body as are required by virtue of any of sub-paragraphs (4) and (6) to (10) of paragraph 2 of Schedule 6 to the 2000 Act to be given in respect of such a body as the donor of a recordable donation, and

(ii) the name of the person or officer who will be responsible for compliance on the part of the body with the provisions of this schedule, and

(b) be signed by the body’s secretary or a person who acts in a similar capacity in relation to the body.

(4) If, at any time before the end of the compliance period, any statement which is contained in a notification under sub-paragraph (1)(b) or, in accordance with any provision of sub-paragraph (2) or (3), is contained in a declaration under paragraph 2, ceases to be accurate, the permitted participant by whom the notification was given or declaration was made must give the Electoral Commission a notification (“a notification of alteration”) replacing the statement with another statement—

(a) contained in the notification of alteration, and

(b) conforming with sub-paragraph (1)(b), (2) or (as the case may be) (3).

(5) For the purposes of sub-paragraph (4), “the compliance period” is the period during which any provision of this schedule remains to be complied with on the part of the permitted participant.

**Register of declarations under paragraph 2**

4 (1) The Electoral Commission must maintain a register of all declarations made to them under paragraph 2.

(2) The register is to be maintained by the Commission in such form as the Commission may determine.

(3) The register must contain, in relation to each declaration, all of the information supplied to the Commission in connection with the declaration in accordance with paragraph 3.
(4) Where a declaration is made to the Commission under paragraph 2, the Commission must cause the information mentioned in sub-paragraph (3) to be entered in the register as soon as is reasonably practicable.

(5) Where a notification of alteration is given to the Commission under paragraph 3(4) the Commission must cause any change required as a consequence of the notification to be made in the register as soon as is reasonably practicable.

(6) The information to be entered in the register in respect of a permitted participant who is an individual must not include the individual’s home address.

Designated organisations

(1) The Electoral Commission may, in relation to each of the two possible outcomes in the referendum, designate under this paragraph one permitted participant as representing those campaigning for the outcome in question.

(2) The Commission may make a designation under this paragraph only on an application made under paragraph 6.

(3) The Commission may designate a permitted participant under this paragraph in relation to one of the possible outcomes whether or not a permitted participant is designated in relation to the other possible outcome.

(4) A permitted participant designated under this paragraph is referred to in this Act as a “designated organisation”.

Applications for designation under paragraph 5

(1) A permitted participant seeking to be designated under paragraph 5 must make an application for that purpose to the Electoral Commission.

(2) An application for designation must—

(a) be accompanied by information or statements designed to show that the applicant adequately represents those campaigning for the outcome in the referendum in relation to which the applicant seeks to be designated, and

(b) be made within the period of 28 days beginning with the first day of the referendum period.

(3) Where an application for designation has been made to the Commission in accordance with this paragraph, the application must be determined by the Commission within the period of 14 days beginning with the day after the end of the period of 28 days mentioned in sub-paragraph (2)(b).

(4) If there is only one application in relation to a particular outcome in the referendum, the Commission must designate the applicant unless they are not satisfied that the applicant adequately represents those campaigning for that outcome.

(5) If there is more than one application in relation to a particular outcome in the referendum, the Commission must designate whichever of the applicants appears to them to represent to the greatest extent those campaigning for that outcome unless they are not satisfied that any of the applicants adequately represents those campaigning for that outcome.
Designated organisation’s right to use rooms for holding public meetings

7 (1) Subject to the provisions of this paragraph, persons authorised by a designated organisation are entitled, for the purpose of holding public meetings in furtherance of the organisation’s referendum campaign, to the use free of charge, at reasonable times during the relevant period, of—

(a) a suitable room in the premises of a school to which this paragraph applies in accordance with sub-paragraph (2), and

(b) any meeting room to which this paragraph applies in accordance with sub-paragraph (3).

For this purpose, “the relevant period” means the period of 28 days ending with the day before the date of the referendum.

(2) This paragraph applies to any school maintained by an education authority.

(3) This paragraph applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—

(a) the Scottish Ministers or any other part of the Scottish Administration, or

(b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(4) Where a room is used for a meeting in pursuance of the rights conferred by this paragraph, the person by whom or on whose behalf the meeting is convened—

(a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting, and

(b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.

(5) A person is not entitled to exercise the rights conferred by this paragraph except on reasonable notice; and this paragraph does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

(6) For the purposes of this paragraph (except those of paragraph (b) of sub-paragraph (4)), the premises of a school are not to be taken to include any private dwelling.

(7) In this paragraph—

“dwelling” includes any part of a building where that part is occupied separately as a dwelling,

“meeting room” means any room which it is the practice to let for public meetings, and

“room” includes a hall, gallery or gymnasium.

Supplementary provisions about use of rooms for public meetings

8 (1) This paragraph has effect with respect to the rights conferred by paragraph 7 and the arrangements to be made for their exercise.
(2) Any arrangement for the use of a room in school premises is to be made with the education authority maintaining the school.

(3) Any question as to the rooms in school premises which a person authorised by a designated organisation is entitled to use, or as to the times at which the person is entitled to use them, or as to the notice which is reasonable, is to be determined by the Scottish Ministers.

(4) Any person authorised by a designated organisation is entitled at all reasonable hours to inspect—

(a) any lists prepared in pursuance of paragraph 6 of Schedule 5 to the 1983 Act (use of rooms for parliamentary election meetings), or

(b) a copy of any such lists,

in connection with exercising the rights conferred by paragraph 7.

PART 3

REFERENDUM EXPENSES

(1) The following provisions have effect for the purposes of this schedule.

(2) “Referendum expenses” means expenses incurred by or on behalf of any individual or body which are—

(a) expenses falling within paragraph 10, and

(b) incurred for referendum purposes.

(3) Expenses are incurred for referendum purposes if they are incurred—

(a) in connection with the conduct or management of a referendum campaign, or

(b) otherwise in connection with promoting or procuring any particular outcome in the referendum.

Expenses qualifying where incurred for referendum purposes

(1) For the purposes of paragraph 9(2)(a) the expenses falling within this paragraph are expenses incurred in respect of any of the matters set out in the following list—

1. Referendum campaign broadcasts.

   (Expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing and producing such broadcasts.)

2. Advertising of any nature (whatever the medium used.)

   (Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.)

3. Unsolicited material addressed to voters (whether addressed to them by name or intended for delivery to households within any particular area or areas).
(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material (including the cost of postage).)

4. Any material to which paragraph 25 applies.

(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material.)

5. Market research or canvassing conducted for the purpose of ascertaining voting intentions.

6. The provision of any services or facilities in connection with press conferences or other dealings with the media.

7. Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with a referendum campaign.

(Expenses in respect of such transport include the costs of hiring a particular means of transport for the whole or part of the period during which the campaign is being conducted.)

8. Rallies and other events, including public meetings (but not annual or other party conferences) organised so as to obtain publicity in connection with a referendum campaign or for other purposes connected with a referendum campaign.

(Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.)

(2) Nothing in sub-paragraph (1) is to be taken as extending to—

(a) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds,

(b) any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise) of the campaign organiser,

(c) any expenses incurred in respect of an individual (“A”) by way of travelling expenses (by any means of transport) or in providing for A’s accommodation or other personal needs to the extent that the expenses are paid by A from A’s own resources and are not reimbursed to A, or

(d) any expenses incurred in respect of the publication of any matter relating to the referendum (other than an advertisement) in—

(i) a newspaper or periodical,

(ii) a broadcast made by the British Broadcasting Corporation, or

(iii) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.

(3) The Electoral Commission may issue, and from time to time revise, a code of practice giving guidance as to the kinds of expenses which do, or do not, fall within this paragraph.

(4) As soon as practicable after issuing or revising a code of practice under sub-paragraph (3), the Commission must send a copy to the Scottish Ministers.
(5) The Scottish Ministers must lay before the Scottish Parliament a copy of the code or (as the case may be) the revised code.

Notional referendum expenses

11 (1) This paragraph applies where, in the case of any individual or body—

(a) either—

(i) property is transferred to the individual or body free of charge or at a discount of more than 10 per cent of its market value, or

(ii) property, services or facilities is or are provided for the use or benefit of the individual or body free of charge or at a discount of more than 10 per cent of the commercial rate for the use of the property or for the provision of the services or facilities, and

(b) the property, services or facilities is or are made use of by or on behalf of the individual or body in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the individual or body in respect of that use, they would be (or are) referendum expenses incurred by or on behalf of the individual or body.

(2) Where this paragraph applies, an amount of referendum expenses determined in accordance with this paragraph (“the appropriate amount”) is to be treated, for the purposes of this schedule, as incurred by the individual or body during the period for which the property, services or facilities is or are made use of as mentioned in sub-paragraph (1)(b).

(3) Sub-paragraph (2) is subject to sub-paragraph (13).

(4) Where sub-paragraph (1)(a)(i) applies, the appropriate amount is such proportion as is reasonably attributable to the use made of the property as mentioned in sub-paragraph (1)(b) of either—

(a) the market value of the property (where the property is transferred free of charge), or

(b) the difference between the market value of the property and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the property (where the property is transferred at a discount).

(5) Where sub-paragraph (1)(a)(ii) applies the appropriate amount is such proportion as is reasonably attributable to the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) of either—

(a) the commercial rate for the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided free of charge), or

(b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided at a discount).

(6) Sub-paragraph (7) applies where the services of an employee are made available by the employee’s employer for the use or benefit of an individual or body.
(7) For the purposes of this paragraph, the amount which is to be taken as constituting the commercial rate for the provision of those services is the amount of the remuneration or allowances payable to the employee by the employer in respect of the period for which the employee’s services are made available (but do not include any amount in respect of contributions or other payments for which the employer is liable in respect of the employee).

(8) Where an amount of referendum expenses is treated, by virtue of sub-paragraph (2), as incurred by or on behalf of an individual or body during any period the whole or part of which falls within the referendum period then—

(a) the amount mentioned in sub-paragraph (10) is to be treated as incurred by or on behalf of the individual or body during the referendum period, and

(b) if a return falls to be prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of the individual or body during that period, the responsible person must make a declaration of that amount.

(9) Sub-paragraph (8) does not apply if the amount referred to in sub-paragraph (8)(a) does not exceed £200.

(10) The amount referred to in sub-paragraph (8)(a) is such proportion of the appropriate amount (determined in accordance with sub-paragraph (4) or (5)) as reasonably represents the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) during the referendum period.

(11) A person commits an offence if the person knowingly or recklessly makes a false declaration under sub-paragraph (8)(b).

(12) A person who commits an offence under sub-paragraph (11) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(13) No amount of referendum expenses is to be regarded as incurred by virtue of sub-paragraph (2) in respect of—

(a) the transmission by a broadcaster of a referendum campaign broadcast,

(b) the provision of any rights conferred on a designated organisation (or persons authorised by such an organisation) by virtue of—

(i) paragraph 7 or 8, or

(ii) paragraph 1 of Schedule 12 (right to send referendum address post free) to the 2000 Act (as applied by article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242)), or

(c) the provision by any individual of the individual’s own services which are provided voluntarily in the individual’s own time and free of charge.

(14) Paragraph 29(5) and (6)(a) applies with any necessary modifications for the purpose of determining, for the purposes of sub-paragraph (1), whether property is transferred to an individual or body.
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Restriction on incurring referendum expenses

12 (1) No amount of referendum expenses is to be incurred by or on behalf of a permitted participant except with the authority of—

(a) the responsible person, or

(b) a person authorised in writing by the responsible person.

(2) A person commits an offence if, without reasonable excuse, the person incurs any expenses in contravention of sub-paragraph (1).

(3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where, in the case of a permitted participant that is a registered party, any expenses are incurred in contravention of sub-paragraph (1), the expenses do not count for the purposes of paragraphs 17 to 23 as referendum expenses incurred by or on behalf of the permitted participant.

Restriction on payments in respect of referendum expenses

13 (1) No payment (of whatever nature) may be made in respect of any referendum expenses incurred or to be incurred by or on behalf of a permitted participant except by—

(a) the responsible person, or

(b) a person authorised in writing by the responsible person.

(2) A payment made in respect of any such expenses by a person within paragraph (a) or (b) of sub-paragraph (1) must be supported by an invoice or a receipt unless the amount of the payment does not exceed £200.

(3) Where a person within paragraph (b) of sub-paragraph (1) makes a payment to which sub-paragraph (2) applies, the person must, as soon as possible after making the payment, deliver to the responsible person—

(a) notification that the payment has been made, and

(b) the supporting invoice or receipt.

(4) A person commits an offence if, without reasonable excuse, the person—

(a) makes a payment in contravention of sub-paragraph (1), or

(b) contravenes sub-paragraph (3).

(5) A person who commits an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Restriction on making claims in respect of referendum expenses

14 (1) A claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant during the referendum period is not payable unless the claim is sent within the period of 30 days after the end of the referendum period to—

(a) the responsible person, or

(b) any other person authorised under paragraph 12 to incur the expenses.
(2) A claim sent in accordance with sub-paragraph (1) must be paid within the period of 60 days after the end of the referendum period.

(3) A person commits an offence if, without reasonable excuse, the person—
   (a) pays a claim which by virtue of sub-paragraph (1) is not payable, or
   (b) makes a payment in respect of a claim after the end of the period allowed under sub-paragraph (2).

(4) A person who commits an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In the case of a claim to which sub-paragraph (1) applies—
   (a) the person making the claim, or
   (b) the person with whose authority the expenses in question were incurred,
   may apply to the Electoral Commission for leave for the claim to be paid although sent in after the end of the period mentioned in that sub-paragraph; and the Commission, if satisfied that for any special reason it is appropriate to do so, may grant the leave.

(6) Nothing in sub-paragraph (1) or (2) applies in relation to any sum paid in pursuance of the leave granted by the Commission.

(7) Sub-paragraph (2) is without prejudice to any rights of a creditor of a permitted participant to obtain payment before the end of the period allowed under that sub-paragraph.

(8) Subsections (9) and (10) of section 77 of the 2000 Act apply for the purposes of this paragraph as if—
   (a) any reference to subsection (1) or (2) of that section were a reference to sub-paragraph (1) or (2) above,
   (b) any reference to campaign expenditure were a reference to referendum expenses, and
   (c) any reference to the treasurer or deputy treasurer of the registered party were a reference to the responsible person in relation to the permitted participant.

**Disputed claims**

15 (1) This paragraph applies where—
   (a) a claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant as mentioned in paragraph 14(1) is sent to—
      (i) the responsible person, or
      (ii) any other person with whose authority it is alleged that the expenses were incurred,
      within the period allowed under that provision, and
   (b) the responsible person or other person to whom the claim is sent fails or refuses to pay the claim within the period allowed under paragraph 14(2).

(2) A claim to which this paragraph applies is referred to in this paragraph as “the disputed claim”.
(3) The person by whom the disputed claim is made may bring an action for the disputed claim, and nothing in paragraph 14(2) applies in relation to any sum paid in pursuance of any judgment or order made by a court in the proceedings.

(4) For the purposes of this paragraph sub-paragraphs (5) and (6) of paragraph 14 apply in relation to an application made by the person mentioned in sub-paragraph (1)(b) above for leave to pay the disputed claim as they apply in relation to an application for leave to pay a claim (whether it is disputed or otherwise) which is sent in after the period allowed under paragraph 14(1).

Rights of creditors

16 Nothing in this schedule which prohibits—

(a) payments and contracts for payments,

(b) the payment or incurring of referendum expenses in excess of the maximum amount allowed by this schedule, or

(c) the incurring of expenses not authorised as mentioned in paragraph 12,

affects the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of that contract or expense being in contravention of this schedule.

General restriction on referendum expenses

17 (1) This paragraph applies in relation to an individual or body that is not a permitted participant.

(2) The total referendum expenses incurred by or on behalf of an individual or a body to which this paragraph applies during the referendum period must not exceed £10,000.

(3) Where, during the referendum period, any referendum expenses are incurred by or on behalf of an individual to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), the individual commits an offence if the individual knew, or ought reasonably to have known, that the expenses were being incurred in excess of that limit.

(4) An individual who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(5) Where, during the referendum period, any referendum expenses are incurred by or on behalf of a body to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), then—

(a) the body commits an offence, and

(b) any person who authorised the expenses to be incurred by or on behalf of the body also commits an offence if the person knew, or ought reasonably to have known, that the expenses would be incurred in excess of that limit.

(6) A body or person who commits an offence under sub-paragraph (5) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or
to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months
or to a fine (or both).

(7) It is a defence for an individual, body or other person charged with an offence under
sub-paragraph (3) or (5) to show—
(a) that any code of practice for the time being issued under paragraph 10(3) was
complied with in determining whether to incur any expenses, and
(b) that the limit would not have been exceeded on the basis of compliance with the
code of practice as it had effect at that time.

(8) Sub-paragraph (9) applies where—
(a) before the beginning of the referendum period, any expenses are incurred by or on
behalf of an individual or body to which this paragraph applies in respect of any
property, services or facilities, and
(b) the property, services or facilities is or are made use of by or on behalf of the
individual or body during the referendum period in circumstances such that, had
any expenses been incurred in respect of that use during that period, they would
by virtue of paragraph 9(2) have constituted referendum expenses incurred by or
on behalf of the individual or body during that period.

(9) The appropriate proportion of the expenses mentioned in sub-paragraph (8)(a) is to be
treated for the purposes of this paragraph as referendum expenses incurred by or on
behalf of the individual or body during that period.

(10) For the purposes of sub-paragraph (9) the appropriate proportion of the expenses
mentioned in paragraph (a) of sub-paragraph (8) is such proportion of those expenses as
is reasonably attributable to the use made of the property, services or facilities as
mentioned in paragraph (b) of that sub-paragraph.

Special restrictions on referendum expenses by permitted participants

18 (1) The total referendum expenses incurred by or on behalf of a permitted participant during
the referendum period must not exceed—
(a) if the permitted participant is a designated organisation, £1,500,000,
(b) if the permitted participant is not a designated organisation but is a registered
party and has a relevant percentage, whichever is the greater of—
   (i) the sum calculated by multiplying the sum of £3,000,000 by the party’s
   relevant percentage, or
   (ii) £150,000, or
(c) if the permitted participant is not a designated organisation nor such a registered
party, £150,000.

(2) For the purposes of sub-paragraph (1)(b)—
(a) a registered party has a relevant percentage if, at the general election for
membership of the Scottish Parliament held in 2011 ("the 2011 election"),
constituency votes were cast for one or more candidates at the election authorised
to use the party’s registered name and regional votes were cast for the party, and
(b) a registered party’s relevant percentage is equal to the sum of—

(i) the total number of constituency votes cast at the 2011 election for the candidate or candidates mentioned in paragraph (a) expressed as a percentage of the total number of constituency votes cast at that election for all candidates, multiplied by 56.6% and rounded to one decimal place, and

(ii) the total number of regional votes cast at the 2011 election for the party expressed as a percentage of the total number of regional votes cast at that election for all registered parties and individual candidates, multiplied by 43.4% and rounded to one decimal place.

(3) Sub-paragraph (4) applies in the case where, at the 2011 election, a candidate stood for return as a constituency member in the name of more than one registered party.

(4) For the purposes of sub-paragraph (2)(b)(i), the number of constituency votes cast for the candidate is to be divided equally among each of the registered parties in whose name the candidate stood.

(5) In sub-paragraphs (2) to (4)—

“constituency member” has the meaning given in section 126(1) of the Scotland Act 1998,

“constituency vote” means a vote cast for a candidate standing for return as a constituency member,

“regional vote” has the meaning given in section 6(2) of the Scotland Act 1998.

(6) Where any referendum expenses are incurred by or on behalf of a permitted participant during the referendum period in excess of the limit imposed by sub-paragraph (1), then—

(a) if the permitted participant is a registered party—

(i) the party commits an offence, and

(ii) the responsible person or any deputy treasurer of the party also commits an offence if the person or deputy treasurer authorised the expenses to be incurred by or on behalf of the party and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,

(b) if the permitted participant is an individual, that individual commits an offence if the individual knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,

(c) if the permitted participant is a body other than a registered party—

(i) the body commits an offence, and

(ii) the responsible person commits an offence if the person authorised the expenses to be incurred by or on behalf of the body and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit.

(7) A person who commits an offence under sub-paragraph (6) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.
(8) It is a defence for a permitted participant or other person charged with an offence under sub-paragraph (6) to show—

(a) that any code of practice for the time being issued under paragraph 10(3) was complied with in determining the items and amounts of referendum expenses to be entered in the relevant return under paragraph 20, and

(b) that the limit would not have been exceeded on the basis of the items and amounts entered in that return.

(9) Sub-paragraphs (8) to (10) of paragraph 17 apply for the purposes of this paragraph and paragraphs 20 to 23 as they apply for the purposes of paragraph 17, but as if references in them to an individual or body to which that paragraph applies were references to a permitted participant.

(10) For the purposes of this paragraph and paragraphs 20 to 23 any reference to referendum expenses incurred by or on behalf of a permitted participant during the referendum period includes any referendum expenses so incurred at any time before the individual or body became a permitted participant.

Referendum expenses incurred as part of common plan

19 (1) This paragraph applies where—

(a) referendum expenses are incurred by or on behalf of an individual or body during the referendum period,

(b) the expenses are incurred as part of a common plan or other arrangement with one or more other individuals or bodies,

(c) the common plan or arrangement is one whereby referendum expenses are to be incurred by or on behalf of both or all of the individuals or bodies involved in the common plan or arrangement with a view to, or otherwise in connection with, promoting or procuring one particular outcome in the referendum, and

(d) there is a designated organisation in respect of each of the possible outcomes in the referendum.

(2) The expenses referred to in sub-paragraph (1)(a) are to be treated for the purposes of paragraphs 17 and 18 and 20 to 23 as having also been incurred by each of the other individuals or bodies involved in the common plan or arrangement.

(3) This paragraph applies whether or not any of the individuals or bodies involved in the common plan or arrangement is a permitted participant.

(4) But this paragraph does not treat any expenses incurred by or on behalf of a permitted participant that is a designated organisation as having been incurred also by or on behalf of any other individual or body.

Returns as to referendum expenses

20 (1) The responsible person in relation to a permitted participant must make a return under this paragraph in respect of any referendum expenses incurred by or on behalf of the permitted participant during the referendum period.

(2) A return under this paragraph must contain—
(a) a statement of all payments made in respect of referendum expenses incurred by
or on behalf of the permitted participant during the referendum period,
(b) a statement of all disputed claims (within the meaning of paragraph 15),
(c) a statement of all the unpaid claims (if any) of which the responsible person is
aware in respect of which an application has been made, or is about to be made, to
the Electoral Commission under paragraph 14(5), and
(d) in a case where the permitted participant either is not a registered party or is a
minor party—
   (i) the statement required by paragraph 38, and
   (ii) a statement of regulated transactions entered into in respect of the
referendum which complies with the requirements of paragraphs 52 to 56.

(3) A return under this paragraph must be accompanied by—
   (a) all invoices or receipts relating to the payments mentioned in sub-paragraph
       (2)(a), and
   (b) in the case of any referendum expenses treated as incurred by virtue of paragraph
       11, any declaration falling to be made with respect to those expenses in
       accordance with paragraph 11(8).

(4) Sub-paragraphs (2) and (3) do not apply to any referendum expenses incurred at any
time before the individual or body became a permitted participant, but the return must
be accompanied by a declaration made by the responsible person of the total amount of
such expenses incurred at any such time.

(5) Sub-paragraph (6) applies where the responsible person in relation to a permitted
participant makes a declaration that, to the best of the person’s knowledge and belief—
   (a) no referendum expenses have been incurred by or on behalf of a permitted
       participant during the referendum period, or
   (b) the total amount of such expenses incurred by or on behalf of a permitted
       participant during that period does not exceed £10,000.

(6) The responsible person in relation to the permitted participant—
   (a) is not required to make a return under this paragraph, but
   (b) must instead deliver the declaration referred to in sub-paragraph (5) to the
       Electoral Commission within the period of 3 months beginning with the end of the
       referendum period.

(7) The responsible person commits an offence if—
   (a) without reasonable excuse, the person fails to comply with the requirements of
       sub-paragraph (6) in relation to a declaration, or
   (b) the person knowingly or recklessly makes a false declaration under that sub-
       paragraph.

(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary
conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

The Electoral Commission may issue guidance about the form of return to be used for the purposes of this paragraph.

### Auditor’s report on return

21 (1) Where the return prepared under paragraph 20 in respect of the referendum expenses incurred by or on behalf of a permitted participant indicates that the expenses incurred exceed £250,000, a report must be prepared by a qualified auditor on the return.

(2) If it appears to the Electoral Commission that the permitted participant has failed to appoint a qualified auditor within the period of 3 months beginning with the end of the referendum period to carry out an audit under this paragraph, the Commission may appoint a qualified auditor to carry out the audit.

(3) The expenses of any audit carried out under this paragraph by a qualified auditor appointed by the Commission, including the auditor’s remuneration, may be recovered by the Commission from the permitted participant.

(4) An auditor appointed by the Commission to carry out an audit under this paragraph—

(a) has a right of access at all reasonable times to such books, documents and other records of the permitted participant as the auditor thinks necessary for purpose of carrying out of the audit,

(b) is entitled to require from the responsible person in relation to the permitted participant such information and explanations as the auditor thinks necessary for that purpose.

(5) If a person fails to provide the auditor with any access, information or explanation to which the auditor has a right or is entitled by virtue of sub-paragraph (4), the Commission may give the person such written directions as they consider appropriate for ensuring that the failure is remedied.

(6) If the person fails to comply with the directions, the Court of Session may, on the application of the Commission, deal with the person as if the person had failed to comply with an order of the Court.

(7) A person commits an offence if the person knowingly or recklessly makes to an auditor appointed by the Electoral Commission to carry out an audit under this paragraph a statement (whether written or oral) which—

(a) conveys or purports to convey any information or explanation to which the auditor is entitled by virtue of sub-paragraph (4), and

(b) is misleading, false or deceptive in a material particular.

(8) A person who commits an offence under sub-paragraph (7) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
Deliver the returns to Elector Commission

22 (1) Sub-paragraph (2) applies where—
(a) a return falls to be prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of a permitted participant, and
(b) an auditor’s report on it falls to be prepared under paragraph 21.

(2) The responsible person must deliver the return to the Electoral Commission, together with a copy of the auditor’s report, within the period of 6 months beginning with the end of the referendum period.

(3) In the case of any other return falling to be prepared under paragraph 20, the responsible person must deliver the return to the Commission within the period of 3 months beginning with the end of the referendum period.

(4) Where, after the date on which a return is delivered to the Commission under this paragraph, leave is given by the Commission under paragraph 14(5) for any claim to be paid, the responsible person must, within the period of 7 days after the payment, deliver to the Commission a return of any sums paid in pursuance of the leave accompanied by a copy of the Commission’s decision giving the leave.

(5) The responsible person commits an offence if, without reasonable excuse, the person—
(a) fails to comply with the requirements of sub-paragraph (2) or (3) in relation to a return under paragraph 20,
(b) delivers a return which does not comply with the requirements of paragraph 20(2) or (3), or
(c) fails to comply with the requirements of sub-paragraph (4) in relation to a return under that sub-paragraph.

(6) A person who commits an offence under sub-paragraph (5)(a) or (c) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person who commits an offence under sub-paragraph (5)(b) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to return under paragraph 20

23 (1) Each return prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—
(a) that the responsible person has examined the return in question, and
(b) that to the best of the responsible person’s knowledge and belief—
(i) it is a complete and correct return as required by law, and
(ii) all expenses shown in it as paid have been paid by the responsible person or a person authorised by the responsible person.

(3) In a case where the permitted participant either is not a registered party or is a minor party, the declaration must also—

(a) in relation to all relevant donations recorded in the return as having been received by the permitted participant—

(i) state that they were all from permissible donors, or

(ii) state whether or not paragraph 34(3) was complied with in the case of each of those donations that was not from a permissible donor,

(b) in relation to all regulated transactions entered in the return as having been entered into by the permitted participant—

(i) state that none of the transactions was made void by paragraph 46(2) or (6), or

(ii) state whether or not paragraph 46(3)(a) was complied with in the case of each of the transactions that was made void by paragraph 46(2) or (6).

(4) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the return relates.

(5) A person who commits an offence under sub-paragraph (4) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(6) In this paragraph “relevant donation” has the same meaning as in paragraph 28.

Public inspection of returns under paragraph 20

24 (1) Where the Electoral Commission receive any return under paragraph 20 they must—

(a) as soon as reasonably practicable after receiving the return, make a copy of the return and of the documents accompanying it available for public inspection, and

(b) keep any such copy available for public inspection for the period for which the return or other document is kept by them.

(2) If the return contains a statement of relevant donations or a statement of regulated transactions in accordance with paragraph 20(2)(d) the Commission must secure that the copy of the statement made available for public inspection does not include—

(a) in the case of any donation by an individual, the donor’s address,

(b) in the case of a transaction entered into by the permitted participant with an individual, the individual’s address.

(3) At the end of the period of two years beginning with the date when any return or other document mentioned in sub-paragraph (1) is received by the Commission—
(a) they may cause the return or other document to be destroyed, but
(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the return or other document to be returned to that person.

PART 4
PUBLICATIONS

Restriction on publication etc. of promotional material by central and local government etc.

25 (1) This paragraph applies to any material which—
(a) provides general information about the referendum,
(b) deals with any of the issues raised by the referendum question,
(c) puts any arguments for or against any outcome, or
(d) is designed to encourage voting at the referendum.

(2) Subject to sub-paragraph (3), no material to which this paragraph applies is to be published during the relevant period by or on behalf of—
(a) the Scottish Ministers or any other part of the Scottish Administration,
(b) the SPCB, or
(c) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(3) Sub-paragraph (2) does not apply to—
(a) material made available to persons in response to specific requests for information or to persons specifically seeking access to it,
(b) anything done by or on behalf of—
(i) a designated organisation,
(ii) the Electoral Commission, or
(iii) the Chief Counting Officer or any other counting officer, or
(c) the publication of information relating to the holding of the poll.

(4) In this paragraph—
“publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means (and “publication” is to be construed accordingly),
“the relevant period” means the period of 28 days ending with the day before the date of the referendum.

Details to appear on referendum material

26 (1) No material wholly or mainly relating to the referendum is to be published during the referendum period unless—
(a) in the case of material which is, or is contained in, such a printed document as is mentioned in sub-paragraph (3), (4) or (5), the requirements of that sub-paragraph are complied with, or

(b) in the case of any other material, the requirements of sub-paragraph (6) are complied with.

(2) For the purposes of sub-paragraphs (3) to (5) the following details are “the relevant details” in the case of any material falling within sub-paragraph (1)(a), namely—

(a) the name and address of the printer of the document,
(b) the name and address of the promoter of the material, and
(c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(3) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.

(4) Where the material is a printed document other than one to which sub-paragraph (3) applies, the relevant details must appear on either the first or last page of the document.

(5) Where the material is an advertisement contained in a newspaper or periodical—

(a) the name and address of the printer of the newspaper or periodical must appear on either its first or last page, and
(b) the relevant details specified in sub-paragraph (2)(b) and (c) must be included in the advertisement.

(6) In the case of material falling within sub-paragraph (1)(b), the following details, namely—

(a) the name and address of the promoter of the material, and
(b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter),

must be included in the material unless it is not reasonably practicable to include the details.

(7) Where during the referendum period any material falling within sub-paragraph (1)(a) is published in contravention of sub-paragraph (1), then the following persons commit an offence, namely—

(a) the promoter of the material,
(b) any other person by whom the material is so published, and
(c) the printer of the document.

(8) Where during the referendum period any material falling within sub-paragraph (1)(b) is published in contravention of sub-paragraph (1), then the following persons commit an offence, namely—

(a) the promoter of the material, and
(b) any other person by whom the material is so published.

(9) A person who commits an offence under sub-paragraph (7) or (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(10) It is a defence for a person charged with an offence under sub-paragraph (7) or (8) to show—

(a) that the offence arose from circumstances beyond the person’s control, and

(b) that the person took all reasonable steps, and exercised all due diligence, to ensure that that an offence under this paragraph would not be committed.

(11) Sub-paragraph (1) does not apply to any material published for the purposes of the referendum if the publication is required under or by virtue of any enactment.

(12) In this paragraph—

“print” means print by whatever means, and “printer” is to be construed accordingly,

“the promoter”, in relation to any material falling within sub-paragraph (1), means the person causing the material to be published,

“publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means.

Display of advertisements

27 The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (SI 1984/467) have effect in relation to the display on any site in Scotland of an advertisement relating specifically to the referendum as they have effect in relation to the display of an advertisement relating specifically to a Parliamentary election.

PART 5
CONTROL OF DONATIONS

Operation and interpretation of this Part

28 (1) This Part has effect for controlling donations to permitted participants that either are not registered parties or are minor parties.

(2) The following provisions have effect for the purposes of this Part.

(3) In accordance with sub-paragraph (1) “permitted participant” does not include a permitted participant that is a registered party other than a minor party.

(4) “Relevant donation”, in relation to a permitted participant, means a donation to the permitted participant for the purpose of meeting referendum expenses incurred by or on behalf of the permitted participant.

(5) “Donation” is to be construed in accordance with paragraphs 29 to 31.

(6) In relation to donations received by a permitted participant other than a designated organisation, references to a permissible donor do not include a registered party.

(7) Where any provision of this Part refers to a donation for the purpose of meeting a particular kind of expenses incurred by or on behalf of a permitted participant—

(a) the reference includes a reference to a donation for the purpose of securing that any such expenses are not so incurred, and
(b) a donation is to be taken to be a donation for either of those purposes if, having regard to all the circumstances, it must reasonably be assumed to be such a donation.

(8) Sub-paragraphs (9) and (10) apply to any provision of this Part which provides, in relation to a permitted participant, that money spent (otherwise than by or on behalf of the permitted participant) in paying expenses incurred directly or indirectly by the permitted participant is to constitute a donation to the permitted participant.

(9) The reference in any such provision to money so spent is a reference to money so spent by a person, other than the permitted participant, out of the person’s own resources (with no right to reimbursement out of the resources of the permitted participant).

(10) Where by virtue of any such provision any amount of money so spent constitutes a donation to the permitted participant, the permitted participant is to be treated as receiving an equivalent amount on the date on which the money is paid to the creditor in respect of the expenses in question.

(11) For the purposes of this Part, it is immaterial whether a donation received by a permitted participant is so received in Scotland or elsewhere.

Donations: general rules

29 (1) “Donation”, in relation to a permitted participant, means (subject to paragraph 31)—

(a) a gift to the permitted participant of money or other property,

(b) any sponsorship provided in relation to the permitted participant (as defined by paragraph 30),

(c) any money spent (otherwise than by or on behalf of the permitted participant) in paying any referendum expenses incurred by or on behalf of the permitted participant,

(d) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the permitted participant (including the services of any person),

(e) in the case of a permitted participant other than an individual, any subscription or other fee paid for affiliation to, or membership of, the permitted participant.

(2) Where—

(a) any money or other property is transferred to a permitted participant pursuant to any transaction or arrangement involving the provision by or on behalf of the permitted participant of any property, services or facilities or other consideration of monetary value, and

(b) the total value in monetary terms of the consideration so provided by or on behalf of the permitted participant is less than the value of the money or (as the case may be) the market value of the property transferred,

the transfer of the money or property is (subject to sub-paragraph (4)) to be taken to be a gift to the permitted participant for the purposes of sub-paragraph (1)(a).
(3) In determining for the purposes of sub-paragraph (1)(d) whether any property, services or facilities provided for the use or benefit of a permitted participant is or are so provided otherwise than on commercial terms, regard must be had to the total value in monetary terms of the consideration provided by or on behalf of the permitted participant in respect of the provision of the property, services or facilities.

(4) Where (apart from this sub-paragraph) anything would be a donation both by virtue of sub-paragraph (1)(b) and by virtue of any other provision of this paragraph, sub-paragraph (1)(b) (together with paragraph 30) applies in relation to it to the exclusion of the other provision of this paragraph.

(5) Anything given or transferred to any officer, member, trustee or agent of a permitted participant in the officer’s, member’s, trustee’s or agent’s capacity as such (and not for the officer’s, member’s, trustee’s or agent’s own use or benefit) is to be regarded as given or transferred to the permitted participant (and references to donations received by a permitted participant accordingly include donations so given or transferred).

(6) In this paragraph—

(a) any reference to anything being given or transferred to a permitted participant or any other person is a reference to its being given or transferred either directly or indirectly through any third person,

(b) “gift” includes bequest.

Sponsorship

30 (1) For the purposes of this schedule sponsorship is provided in relation to a permitted participant if—

(a) any money or other property is transferred to the permitted participant or to any person for the benefit of the permitted participant, and

(b) the purpose (or one of the purposes) of the transfer is (or must, having regard to all the circumstances, reasonably be assumed to be)—

(i) to help the permitted participant with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the permitted participant, or

(ii) to secure that to any extent any such expenses are not so incurred.

(2) In sub-paragraph (1) “defined expenses” means expenses in connection with—

(a) any conference, meeting or other event organised by or on behalf of the permitted participant,

(b) the preparation, production or dissemination of any publication by or on behalf of the permitted participant, or

(c) any study or research organised by or on behalf of the permitted participant.

(3) The following do not, however, constitute sponsorship by virtue of sub-paragraph (1)—

(a) the making of any payment in respect of—

(i) any charge for admission to any conference, meeting or other event, or

(ii) the purchase price of, or any other charge for access to, any publication,
(b) the making of any payment in respect of the inclusion of an advertisement in any publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in any such publication.

(4) In this paragraph “publication” means a publication made available in whatever form and by whatever means (whether or not to the public at large or any section of the public).

Payments etc. not to be regarded as donations

31 (1) None of the following is to be regarded as a donation—

(a) any grant provided out of public funds,

(b) the provision of any rights conferred on a designated organisation (or persons authorised by a designated organisation) by virtue of—

(i) paragraph 7 or 8, or

(ii) paragraph 1 of Schedule 12 (right to send referendum address post free) to the 2000 Act (as applied by article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242)),

(c) the transmission by a broadcaster of a referendum campaign broadcast,

(d) the provision by an individual of the individual’s own services which the individual provides voluntarily in the individual’s own time and free of charge, or

(e) any interest accruing to a permitted participant in respect of any donation which is dealt with by the permitted participant in accordance with paragraph 34(3)(a) or (b).

(2) Any donation the value of which (as determined in accordance with paragraph 32) does not exceed £500 is to be disregarded.

Value of donations

32 (1) The value of any donation falling within paragraph 29(1)(a) (other than money) is to be taken to be the market value of the property in question.

(2) Where, however, paragraph 29(1)(a) applies by virtue of paragraph 29(2), the value of the donation is to be taken to be the difference between—

(a) the value of the money, or (as the case may be) the market value of the property, in question, and

(b) the total value in monetary terms of the consideration provided by or on behalf of the permitted participant.

(3) The value of any donation falling within paragraph 29(1)(b) is to be taken to be the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 30(1) and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question is to be disregarded.

(4) The value of any donation falling within paragraph 29(1)(d) is to be taken to be the amount representing the difference between—
(a) the total value in monetary terms of the consideration that would have had to be
provided by or on behalf of the permitted participant in respect of the provision of
the property, services or facilities if the property, services or facilities had been
provided on commercial terms, and
(b) the total value in monetary terms of the consideration (if any) actually so provided
by or on behalf of the permitted participant.

(5) Where a donation such as is mentioned in sub-paragraph (4) confers an enduring benefit
on the donee over a particular period, the value of the donation—
(a) is to be determined at the time when it is made, but
(b) is to be so determined by reference to the total benefit accruing to the donee over
that period.

Prohibition on accepting donations from impermissible donors

33 (1) A relevant donation received by a permitted participant must not be accepted by the
permitted participant if—
(a) the person by whom the donation would be made is not, at the time of its receipt
by the permitted participant, a permissible donor, or
(b) the permitted participant is (whether because the donation is given anonymously
or by reason of any deception or concealment or otherwise) unable to ascertain the
identity of the person offering the donation.

(2) For the purposes of this schedule, any relevant donation received by a permitted
participant which is an exempt trust donation is to be regarded as a relevant donation
received by the permitted participant from a permissible donor.

(3) But, for the purposes of this schedule, any relevant donation received by a permitted
participant from a trustee of any property (in the trustee’s capacity as such) which is
not—
(a) an exempt trust donation, or
(b) a relevant donation transmitted by the trustee to the permitted participant on
behalf of beneficiaries under the trust who are—
(i) persons who at the time of its receipt by the permitted participant are
permissible donors, or
(ii) the members of an unincorporated association which at that time is a
permissible donor,
is to be regarded as a relevant donation received by the permitted participant from a
person who is not a permissible donor.

(4) Where any person (“the principal donor”) causes an amount (“the principal donation”)
to be received by a permitted participant by way of a relevant donation—
(a) on behalf of the principal donor and one or more other persons, or
(b) on behalf of two or more other persons,
then for the purposes of this schedule each individual contribution by a person falling
within paragraph (a) or (b) which exceeds £500 is to be treated as if it were a separate
donation received from that person.
In relation to each such separate donation, the principal donor must ensure that, at the time when the principal donation is received by the permitted participant, the responsible person is given—

(a) (except in the case of a donation which the principal donor is treated as making) all such details in respect of the person treated as making the donation as are required by virtue of paragraph 39(1)(c) to be given in respect of the donor of a donation to which that paragraph applies, and

(b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 39(1)(a).

Where—

(a) any person ("the agent") causes an amount to be received by a permitted participant by way of a donation on behalf of another person ("the donor"), and

(b) the amount of the donation exceeds £500,

the agent must ensure that, at the time when the donation is received by the permitted participant, the responsible person is given all such details in respect of the donor as are required by virtue of paragraph 39(1)(c) to be given in respect of the donor of a donation to which that paragraph applies.

A person commits an offence if, without reasonable excuse, the person fails to comply with sub-paragraph (5) or (6).

A person who commits an offence under sub-paragraph (7) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Acceptance or return of donations

Sub-paragraph (2) applies where—

(a) a donation is received by a permitted participant, and

(b) it is not immediately decided that the permitted participant should (for whatever reason) refuse the donation.

All reasonable steps must be taken without delay by or on behalf of the permitted participant to verify (or, so far as any of the following is not apparent, ascertain)—

(a) the identity of the donor,

(b) whether the donor is a permissible donor, and

(c) if it appears that the donor is a permissible donor, all such details in respect of the donor as are required by virtue of paragraph 39(1)(c) to be included in a statement under paragraph 38 in respect of a relevant donation.

If a permitted participant receives a donation which the permitted participant is prohibited from accepting by virtue of paragraph 33(1), or which it is decided the permitted participant should refuse, then—
(a) unless the donation falls within paragraph 33(1)(b), the donation, or a payment of an equivalent amount, must be sent back to the person who made the donation or any person appearing to be acting on that person’s behalf,

(b) if the donation falls within that paragraph, the required steps (see paragraph 35(1)) must be taken in relation to the donation,

within the period of 30 days beginning with the date when the donation is received by the permitted participant.

(4) The permitted participant and the responsible person each commit an offence if—

(a) sub-paragraph (3)(a) applies in relation to a donation, and

(b) the donation is not dealt with in accordance with that sub-paragraph.

(5) It is a defence for a permitted participant or responsible person charged with an offence under sub-paragraph (4) to show that—

(a) all reasonable steps were taken by or on behalf of the permitted participant to verify (or ascertain) whether the donor was a permissible donor, and

(b) as a result, the responsible person believed the donor to be a permissible donor.

(6) The responsible person in relation to a permitted participant commits an offence if—

(a) sub-paragraph (3)(b) applies in relation to a donation, and

(b) the donation is not dealt with in accordance with that sub-paragraph.

(7) A person who commits an offence under sub-paragraph (4) or (6) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(8) For the purposes of this schedule, a donation received by a permitted participant is to be taken to have been accepted by the permitted participant unless—

(a) it is dealt with in accordance with sub-paragraph (3), and

(b) a record can be produced of the receipt of the donation and of its having been dealt in accordance with that sub-paragraph.

(9) Where a donation is received by a permitted participant in the form of an amount paid into an account held by the permitted participant with a financial institution, it is to be taken for the purposes of this schedule to have been received by the permitted participant at the time when the permitted participant is notified in the usual way of the payment into the account.

Return of donation where donor unidentifiable

35 (1) For the purposes of paragraph 34(3)(b), the required steps are—

(a) if the donation was transmitted by a person other than the donor and the identity of that person is apparent, to return the donation to that person,

(b) if paragraph (a) does not apply but it is apparent that the donor has, in connection with the donation, used any facility provided by an identifiable financial institution, to return the donation to that institution, or
(c) in any other case, to send the donation to the Electoral Commission.

(2) In sub-paragraph (1) any reference to returning or sending a donation to any person or body includes a reference to sending a payment of an equivalent amount to that person or body.

(3) Any amount sent to the Electoral Commission in pursuance of sub-paragraph (1)(c) is to be paid by the Commission into the Scottish Consolidated Fund.

Forfeiture of donations made by impermissible or unidentifiable donors

36 (1) This paragraph applies to any donation received by a permitted participant—

(a) which, by virtue of paragraph 33(1), the permitted participant is prohibited from accepting, but

(b) which has been accepted by the permitted participant.

(2) A sheriff may, on the application of the Electoral Commission, order the forfeiture by the permitted participant of an amount equal to the value of the donation.

(3) An order may be made under this paragraph whether or not proceedings are brought against any person for an offence connected with the donation.

(4) Proceedings on an application for an order under this paragraph are civil proceedings and, accordingly, the standard of proof that applies is that applicable in civil proceedings.

(5) The permitted participant may appeal to the Court of Session against an order made under this paragraph.

(6) Rules of court may make provision—

(a) with respect to applications and appeals under this paragraph,

(b) for the giving of notice of such applications or appeals to persons affected by them,

(c) for the sisting of such persons as parties,

(d) generally with respect to procedure in such applications or appeals.

(7) An amount forfeited by virtue of an order under this paragraph is to be paid into the Scottish Consolidated Fund.

(8) Sub-paragraph (7) does not apply—

(a) where an appeal is made under sub-paragraph (5), before the appeal is determined or otherwise disposed of, or

(b) in any other case, before the end of any period within which, in accordance with rules of court, an appeal under sub-paragraph (5) is to be made.

Evasion of restrictions on donations

37 (1) A person commits an offence if the person—

(a) knowingly enters into, or

(b) knowingly does any act in furtherance of,
any arrangement which facilitates or is likely to facilitate, whether by means of any concealment or disguise or otherwise, the making of relevant donations to a permitted participant by any person or body other than a permissible donor.

(2) A person commits an offence if the person—

(a) knowingly gives the responsible person in relation to a permitted participant any information relating to—

(i) the amount of any relevant donation made to the permitted participant, or

(ii) the person or body making such a donation, which is false in a material particular, or

(b) with intent to deceive, withholds from the responsible person in relation to a permitted participant any material information relating to a matter within paragraph (a)(i) or (ii).

(3) A person who commits an offence under this paragraph is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Statement of relevant donations

38 The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 20 a statement of relevant donations which complies with paragraphs 39 and 40.

Donations from permissible donors

39 (1) The statement must record, in relation to each relevant donation falling within sub-paragraph (2) which is accepted by the permitted participant—

(a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32,

(b) the date when the donation was accepted by the permitted participant, and

(c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in donation reports by virtue of paragraph 2 of Schedule 6 to the 2000 Act.

(2) Sub-paragraph (1) applies to a relevant donation where—

(a) the value of the donation exceeds £7,500, or

(b) the value of it and any other relevant benefit or benefits exceeds that amount.

In paragraph (b) “relevant benefit” means any relevant donation or regulated transaction (with the meaning of paragraph 42(4)) made by or entered into with the person who made the donation.

(3) The statement must also record the total value of any relevant donations, other than those falling within sub-paragraph (2), which are accepted by the permitted participant.
(4) In the case of a donation made by an individual who has an anonymous entry in an electoral register if the statement states that the permitted participant has seen evidence that the individual has such an anonymous entry, the statement must be accompanied by a copy of the evidence.

Donations from impermissible or unidentifiable donors

5 40 (1) This paragraph applies to relevant donations falling within paragraph 33(1)(a) or (b).

(2) Where paragraph 33(1)(a) applies, the statement must record—

(a) the name and address of the donor,

(b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32, and

(c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with paragraph 34(3)(a).

(3) Where paragraph 33(1)(b) applies, the statement must record—

(a) details of the manner in which the donation was made,

(b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32, and

(c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with paragraph 34(3)(b).

Donation reports during referendum period

5 41 (1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—

(a) the period of 4 weeks beginning with the day on which the referendum period starts,

(b) each of the two succeeding periods of 4 weeks during the referendum period, and

(c) the period from the end of the second of the periods referred to in paragraph (b) until the end of the seventh day before the day by which the report is to be delivered to the Electoral Commission ("the final period").

(2) The report for a period must record, in relation to each relevant donation of more than £7,500 which is received by the permitted participant during the period—

(a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32,

(b) the date when the donation was received by the permitted participant, and

(c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in weekly donation reports by virtue of paragraph 3 of Schedule 6 to the 2000 Act.

(3) If during any period no relevant donations of more than £7,500 were received by the permitted participant, the report for the period must contain a statement of that fact.
(4) A report under this paragraph must be delivered by the responsible person to the Electoral Commission—
   (a) in the case the report in respect of a period other than the final period, within the period of 7 days beginning with the end of the period to which the report relates,
   (b) in the case of the report in respect of the final period, by the end of the fourth day before the date of the referendum.

(5) For the purpose of paragraph (4)(b), the following days are to be disregarded—
   (a) a Saturday or Sunday,
   (b) Christmas Eve or Christmas Day,
   (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(6) If, in relation to a donation made by an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.

(7) The responsible person commits an offence if, without reasonable excuse, the person—
   (a) fails to comply with the requirements of sub-paragraph (4) in relation to a report under this paragraph,
   (b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (2), (3) or (6).

(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

PART 6
CONTROL OF LOANS AND CREDIT

Operation of Part

42 (1) This Part has effect for controlling regulated transactions entered into by permitted participants that either are not registered parties or are minor parties.

(2) The following provisions have effect for the purposes of this Part.

(3) In accordance with sub-paragraph (1), “permitted participant” does not include a permitted participant which is a registered party other than a minor party.

(4) “Regulated transaction” has the meaning given by paragraph 43.

(5) In relation to transactions entered into by a permitted participant other than a designated organisation, the reference in paragraph 45(2) to a permissible donor does not include a registered party.
Regulated transactions

43 (1) An agreement between a permitted participant and another person by which the other person makes a loan of money to the permitted participant is a regulated transaction if the use condition is satisfied.

5 (2) An agreement between a permitted participant and another person by which the other person provides a credit facility to the permitted participant is a regulated transaction if the use condition is satisfied.

(3) Where—

(a) a permitted participant and another person (“A”) enter into a regulated transaction of a description mentioned in sub-paragraph (1) or (2), or a transaction under which any property, services or facilities are provided for the use or benefit of the permitted participant (including the services of any person),

(b) A also enters into an arrangement whereby another person (“B”) gives any form of security (whether real or personal) for a sum owed to A by the permitted participant under the transaction mentioned in paragraph (a), and

(c) the use condition is satisfied,

the arrangement is a regulated transaction.

(4) An agreement or arrangement is also a regulated transaction if—

(a) the terms of the agreement or arrangement as first entered into do not constitute a regulated transaction by virtue of sub-paragraph (1), (2) or (3), but

(b) the terms are subsequently varied in such a way that the agreement or arrangement becomes a regulated transaction.

(5) The use condition is that the permitted participant intends at the time of entering into a transaction mentioned in sub-paragraph (1), (2) or (3) (a) to use any money or benefit obtained in consequence of the transaction for meeting referendum expenses incurred by or on behalf of the permitted participant.

(6) For the purposes of sub-paragraph (5), it is immaterial that only part of the money or benefit is intended to be used for meeting referendum expenses incurred by or on behalf of the permitted participant.

(7) References in sub-paragraphs (1) and (2) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if that person makes the agreement as such.

(8) References in sub-paragraph (3) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if the property, services or facilities are provided to that person as such, or the sum is owed by that person as such.

(9) A reference to a connected transaction is a reference to the transaction mentioned in sub-paragraph (3) (b).

(10) In this paragraph a reference to anything being done by or in relation to a permitted participant or a person includes a reference to its being done directly or indirectly through a third person.
(11) A credit facility is an agreement whereby a permitted participant is enabled to receive from time to time from another party to the agreement a loan of money not exceeding such amount (taking account of any repayments made by the permitted participant) as is specified in or determined in accordance with the agreement.

(12) An agreement or arrangement is not a regulated transaction—

(a) to the extent that a payment made in pursuance of the agreement or arrangement falls, by virtue of paragraph 38, to be included in a return under paragraph 20, or

(b) if its value does not exceed £500.

Valuation of regulated transaction

(1) The value of a regulated transaction which is a loan is the value of the total amount to be lent under the loan agreement.

(2) The value of a regulated transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.

(3) The value of a regulated transaction which is an arrangement by which any form of security is given is the contingent liability under the security provided.

(4) For the purposes of sub-paragraphs (1) and (2), no account is to be taken of the effect of any provision contained in a loan agreement or an agreement for a credit facility at the time it is entered into which enables outstanding interest to be added to any sum for the time being owed in respect of the loan or credit facility, whether or not any such interest has been so added.

Authorised participants

(1) A permitted participant must not—

(a) be a party to a regulated transaction to which any of the other parties is not an authorised participant,

(b) derive a benefit in consequence of a connected transaction if any of the parties to that transaction is not an authorised participant.

(2) In this Part, an authorised participant is a person who is a permissible donor.

Regulated transaction involving unauthorised participant

(1) This paragraph applies if a permitted participant is a party to a regulated transaction to which another party is not an authorised participant.

(2) The transaction is void.

(3) Despite sub-paragraph (2)—

(a) any money received by the permitted participant by virtue of the transaction must be repaid by the responsible person to the person from whom it was received, along with interest at the rate referred to in section 71I(3)(a) of the 2000 Act,

(b) the person from whom it was received is entitled to recover the money, along with such interest.

(4) If—
(a) the money is not (for whatever reason) repaid as mentioned in sub-paragraph (3)(a), or

(b) the person entitled to recover the money refuses or fails to do so,

the Commission may apply to a sheriff to make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.

(5) An order under sub-paragraph (4) may in particular—

(a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),

(b) where any form of security is given for a sum owed under the transaction, require that security to be discharged.

(6) In the case of a regulated transaction where a party other than a permitted participant—

(a) at the time the permitted participant enters into the transaction, is an authorised participant, but

(b) subsequently, for whatever reason, ceases to be an authorised participant,

the transaction is void and sub-paragraphs (3) to (5) apply with effect from the time when the other party ceased to be an authorised participant.

Guarantees and securities: unauthorised participant

(1) This paragraph applies if—

(a) a permitted participant and another person (“A”) enter into a transaction of a description mentioned in paragraph 43(3)(a),

(b) A is party to a regulated transaction of a description mentioned in paragraph 43(3)(b) (“the connected transaction”) with another person (“B”), and

(c) B is not an authorised participant.

(2) Paragraph 46(2) to (5) applies to the transaction mentioned in sub-paragraph (1)(a).

(3) The connected transaction is void.

(4) Sub-paragraph (5) applies if (but only if) A is unable to recover from the permitted participant the whole of the money mentioned in paragraph 46(3)(a) (as applied by sub-paragraph (2) above), along with such interest as is there mentioned.

(5) Despite sub-paragraph (3), A is entitled to recover from B any part of that money (and such interest) that is not recovered from the permitted participant.

(6) Sub-paragraph (5) does not entitle A to recover more than the contingent liability under the security provided by virtue of the connected transaction.

(7) In the case of a connected transaction where B—

(a) at the time A enters into the transaction, is an authorised participant, but

(b) subsequently, for whatever reason, ceases to be an authorised participant,

sub-paragraphs (2) to (6) apply with effect from the time when B ceased to be an authorised participant.
(8) If the transaction mentioned in paragraph 43(3)(a) is not a regulated transaction of a description mentioned in paragraph 43(1) or (2), references in this paragraph and paragraph 46(2) to (5) (as applied by sub-paragraph (2) above) to the repayment or recovery of money are to be construed as references to (as the case may be)—

(a) the return or recovery of any property provided under the transaction,

(b) to the extent that such property is incapable of being returned or recovered or its market value has diminished since the time the transaction was entered into, the repayment or recovery of the market value at that time, or

(c) the market value (at that time) of any facilities or services provided under the transaction.

Transfer to unauthorised participant invalid

48 If an authorised participant purports to transfer the participant’s interest in a regulated transaction to a person who is not an authorised participant the purported transfer is of no effect.

Offences

49 (1) An individual who is a permitted participant commits an offence if—

(a) the individual enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and

(b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(2) A permitted participant that is not an individual commits an offence if—

(a) it enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and

(b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(3) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—

(a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and

(b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(4) An individual who is a permitted participant commits an offence if—

(a) the individual enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,

(b) the individual neither knew nor ought reasonably to have known that the other party is not an authorised participant, and

(c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the individual the individual fails to take all reasonable steps to repay any money which the individual has received by virtue of the transaction.
(5) A permitted participant that is not an individual commits an offence if—
   (a) it enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,
   (b) no officer of the permitted participant knew or ought reasonably to have known that the other party is not an authorised participant, and
   (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the responsible person the responsible person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.

(6) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
   (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,
   (b) sub-paragraph (3)(b) does not apply to the person, and
   (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the person the person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.

(7) An individual who is a permitted participant commits an offence if—
   (a) the individual benefits from or falls to be nefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
   (b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(8) A permitted participant that is not an individual commits an offence if—
   (a) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
   (b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(9) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
   (a) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
   (b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(10) An individual who is a permitted participant commits an offence if—
   (a) the individual is a party to a transaction of a description mentioned in paragraph 43(3)(a),
   (b) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
   (c) the individual neither knew nor ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and
(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the individual the individual fails to take all reasonable steps to pay to any person who has provided the individual with any benefit in consequence of the connected transaction the value of the benefit.

(11) A permitted participant that is not an individual commits an offence if—

(a) it is a party to a transaction of a description mentioned in paragraph 43(3)(a),

(b) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,

(c) no officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and

(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the individual the individual fails to take all reasonable steps to pay to any person who has provided the individual with any benefit in consequence of the connected transaction the value of the benefit.

(12) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—

(a) the permitted participant is a party to a transaction of a description mentioned in paragraph 43(3)(a),

(b) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,

(c) sub-paragraph (9)(b) does not apply to the person, and

(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the responsible person the responsible person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.

(13) A person commits an offence if the person—

(a) knowingly enters into, or

(b) knowingly does any act in furtherance of,

any arrangement which facilitates or is likely to facilitate, whether by means of concealment or disguise or otherwise, the participation by a permitted participant in a regulated transaction with a person other than an authorised participant.

(14) It is a defence for a person charged with an offence under sub-paragraph (3) to prove that the person took all reasonable steps to prevent the permitted participant entering into the transaction.

(15) It is a defence for a person charged with an offence under sub-paragraph (9) to prove that the person took all reasonable steps to prevent the permitted participant benefiting in consequence of the connected transaction.

(16) A reference to a permitted participant entering into a regulated transaction includes a reference to any circumstances in which the terms of a regulated transaction are varied so as to increase the amount of money to which the permitted participant is entitled in consequence of the transaction.
(17) A reference to a permitted participant entering into a transaction to which another party is not an authorised participant includes a reference to any circumstances in which another party to the transaction who is an authorised participant ceases (for whatever reason) to be an authorised participant.

5

Penalties

50 (1) A person who commits an offence under sub-paragraph (1), (2), (4), (7), (8) or (10) of paragraph 49 is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

10 (2) A person who commits an offence under sub-paragraph (3), (5), (6), (9), (11), (12) or (13) of paragraph 49 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Statement of regulated transactions

51 (1) The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 20 a statement of regulated transactions entered into by the permitted participant.

20 (2) The statement must comply with paragraphs 52 to 56.

(3) For the purposes of those paragraphs a regulated transaction is a recordable transaction—

(a) if the value of the transaction does not exceed £7,500, or

(b) if the aggregate value of it and any other relevant benefit or benefits does not exceed that amount.

In paragraph (b) “relevant benefit” means any relevant donation (within the meaning of paragraph 28(4)) or regulated transaction made by, or entered into with, the person with whom the regulated transaction was entered into.

Identity of authorised participants

52 The statement must record, in relation to each recordable transaction to which an authorised participant was a party, the information about the authorised participant which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 2 of Schedule 6A to the 2000 Act.

Identity of unauthorised participants

53 The statement must record, in relation to each recordable transaction to which a person other than an authorised participant was a party—

(a) the name and address of the person,
(b) the date when, and the manner in which, the transaction was dealt with in accordance with sub-paragraphs (3) to (5) of paragraph 46 or those sub-paragraphs as applied by paragraph 46(6) or 47(2).

Details of transaction

54 (1) The statement must record, in relation to each recordable transaction, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 5(2), (3) and (4) of Schedule 6A to the 2000 Act (read with any necessary modifications).

(2) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 43(1) or (2) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 6 of Schedule 6A to the 2000 Act.

(3) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 43(3)(a) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 7(2)(b), (3) and (4) of Schedule 6A to the 2000 Act.

Changes

55 (1) Where another authorised participant has become a party to a regulated transaction (whether in place of or in addition to any existing participant), or there has been any other change in any of the information that is required by paragraphs 52 to 54 to be included in the statement, the statement must record—

(a) the information as it was both before and after the change,

(b) the date of the change.

(2) Where a recordable transaction has come to an end, the statement must—

(a) record that fact,

(b) record the date when it happened,

(c) in the case of a loan, state how the loan has come to an end.

(3) For the purposes of sub-paragraph (2), a loan comes to an end if—

(a) the whole debt (or all the remaining debt) is repaid,

(b) the creditor releases the whole debt.

Total value of non-recordable transactions

56 The statement must record the total value of any regulated transactions that are not recordable transactions.

Transaction reports during referendum period

57 (1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—
(a) the period of 4 weeks beginning with the day on which the referendum period
starts,
(b) each of the two succeeding periods of 4 weeks during the referendum period, and
(c) the period from the end of the second of the periods referred to in paragraph (b)
until the end of the seventh day before the day by which the report is to be
delivered to the Electoral Commission (“the final period”).

(2) The report for any period must record, in relation to each regulated transaction having a
value exceeding £7,500 which is entered into by the permitted participant during the
period—

(a) the same information about the transaction as would be required, by virtue of
paragraph 54, to be recorded in the statement referred to in paragraph 51(1),
(b) in relation to a transaction to which an authorised participant is a party, the
information about each authorised participant which is, in connection with
recordable transactions entered into by registered parties, required to be recorded
in weekly transaction reports by virtue of paragraph 3 of Schedule 6A to the 2000
Act, and
(c) in relation to a transaction to which a person who is not an authorised participant
is a party, the information referred to in paragraph 53.

(3) If during any period no regulated transactions having a value exceeding £7,500 were
entered into by the permitted participant, the report for the period must contain a
statement of that fact.

(4) A report under this paragraph must be delivered by the responsible person to the
Electoral Commission—

(a) in the case of the report in respect of a period other than the final period, within
the period of 7 days beginning with the end of the period to which the report
relates,
(b) in the case of the report in respect of the final period, by the end of the fourth day
before the date of the referendum.

(5) For the purpose of paragraph (4)(b), the following days are to be disregarded—

(a) a Saturday or Sunday,
(b) Christmas Eve or Christmas Day,
(c) a day which is a bank holiday in Scotland under the Banking and Financial
Dealings Act 1971.

(6) If, in relation to a regulated transaction entered into with an individual who has an
anonymous entry in an electoral register, a report under this paragraph contains a
statement that the permitted participant has seen evidence that the individual has such an
anonymous entry, the report must be accompanied by a copy of the evidence.

(7) The responsible person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with the requirements of sub-paragraph (4) in relation to a report
under this paragraph,
(b) delivers a report to the Electoral Commission that does not comply with the
requirements of sub-paragraphs (2), (3) or (6).
(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Non-disclosure with intent to conceal

58 (1) This paragraph applies where, on an application made by the Commission, a sheriff is satisfied that any failure to comply with a requirement of paragraphs 51 to 57 in relation to—
   (a) any transaction entered into by the permitted participant, or
   (b) any change made to a transaction to which the permitted participant is a party,
was attributable to an intention on the part of any person to conceal the existence or true value of the transaction.

(2) The sheriff may make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.

(3) An order under this paragraph may in particular—
   (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),
   (b) where any form of security is given for a sum owed under the transaction, or the transaction is an arrangement by which any form of security is given, require that the security be discharged.

Proceedings under paragraphs 46 and 58

59 (1) This paragraph has effect in relation to proceedings on an application under paragraph 46(4) or 58.

(2) The proceedings are civil proceedings and, accordingly, the standard of proof that applies is that applicable to civil proceedings.

(3) An order may be made whether or not proceedings are brought against any person for an offence under paragraph 23 or paragraph 49.

(4) An appeal against an order made by the sheriff may be made to the Court of Session.

(5) Rules of court may make provision—
   (a) with respect to applications or appeals from proceedings on such applications,
   (b) for the giving of notice of such applications or appeals to persons affected,
   (c) for the sisting of such persons as parties,
   (d) generally with respect to procedure in such applications or appeals.
(6) Sub-paragraph (5) does not affect any existing power to make rules.

Interpretation

60 (1) In this Part—

“authorised participant” is to be construed in accordance with paragraph 45 (and see paragraph 42(5)),

“connected transaction” has the meaning given by paragraph 43(9),

“credit facility” has the meaning given by paragraph 43(11),

“permitted participant” is to be construed in accordance with paragraph 42,

“regulated transaction” is to be construed in accordance with paragraph 43.

(2) For the purposes of any provision relating to the reporting of transactions, anything required to be done by a permitted participant in consequence of its being a party to a regulated transaction must also be done by it, if it is a party to a transaction of a description mentioned in paragraph 43(3)(a), as if it were a party to the connected transaction.

SCHEDULE 5
(introduced by section 11(4))

CAMPAIGN RULES: INVESTIGATORY POWERS OF THE ELECTORAL COMMISSION

Power to require disclosure

1 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.

(2) The Electoral Commission may give a disclosure notice to a person who—

(a) is, or has been at any time in the period of 5 years ending with the day on which the notice is given, the treasurer or another officer of an organisation to which this paragraph applies, or

(b) is an individual to whom this paragraph applies.

(3) A disclosure notice is a notice requiring the person to whom it is given—

(a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents which—

(i) relate to income and expenditure of the organisation or individual in question, and

(ii) are reasonably required by the Commission for the purposes of carrying out their functions under section 11 and schedule 4, or

(b) to provide the Commission, or a person authorised by the Commission, with any information or explanation which relates to that income and expenditure and is reasonably required by the Commission for those purposes.

(4) A person to whom a disclosure notice is given must comply with the notice within such reasonable time as is specified in the notice.
Inspection warrants

2 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.

(2) A sheriff or a justice of the peace may, on the application of the Electoral Commission, issue an inspection warrant in relation to any premises occupied by an organisation or individual to whom this paragraph applies if satisfied that—

(a) there are reasonable grounds for believing that on those premises there are documents relating to the income and expenditure of the organisation or individual,

(b) the Commission need to inspect the documents for the purposes of carrying out their functions under section 11 and schedule 4 (other than their investigatory functions), and

(c) permission to inspect the documents on the premises has been requested by the Commission and has been unreasonably refused.

(3) An inspection warrant is a warrant authorising a member of the Commission’s staff—

(a) at any reasonable time to enter the premises specified in the warrant, and

(b) having entered the premises, to inspect any documents within sub-paragraph (2)(a).

(4) An inspection warrant also authorises the person who executes the warrant to be accompanied by any other persons who the Commission consider are needed to assist in executing it.

(5) The person executing an inspection warrant must, if required to do so, produce—

(a) the warrant, and

(b) documentary evidence that the person is a member of the Commission’s staff, for inspection by the occupier of the premises that are specified in the warrant or by anyone acting on the occupier’s behalf.

(6) An inspection warrant continues in force until the end of the period of one month beginning with the day on which it is issued.

(7) An inspection warrant may not be used for the purposes of carrying out investigatory functions.

(8) In this paragraph, “investigatory functions” means functions of investigating—

(a) suspected campaign offences, or

(b) suspected contraventions of restrictions or requirements imposed by schedule 4.

Powers in relation to suspected offences or contraventions

3 (1) This paragraph applies where the Electoral Commission have reasonable grounds to suspect that—

(a) a person has committed a campaign offence, or

(b) a person has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 4.
In this paragraph, “the suspected offence or contravention” means the offence or contravention referred to in sub-paragraph (1).

The Commission may by notice require any person (including an organisation or individual to whom paragraph 1 applies)—

(a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents that they reasonably require for the purposes of investigating the suspected offence or contravention,

(b) to provide the Commission, or a person authorised by the Commission, with any information or explanation that they reasonably require for those purposes.

A person to whom a notice is given under sub-paragraph (3) must comply with the notice within such reasonable time as is specified in the notice.

A person authorised by the Commission (“the investigator”) may require—

(a) the person mentioned in sub-paragraph (1) (if that person is an individual), or

(b) an individual who the investigator reasonably believes has relevant information,

to attend before the investigator at a specified time and place and answer any questions that the investigator reasonably considers to be relevant.

The time specified must be a reasonable time.

In sub-paragraph (5), “relevant” means relevant to an investigation by the Commission of the suspected offence or contravention.

This paragraph applies where the Electoral Commission have given a notice under paragraph 3 requiring documents to be produced.

The Court of Session may, on the application of the Commission, make a document disclosure order against a person (“the respondent”) if satisfied that—

(a) there are reasonable grounds to suspect that a person (whether or not the respondent) has committed a campaign offence or has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 4, and

(b) there are documents referred to in the notice under paragraph 3 which—

(i) have not been produced as required by the notice (either within the time specified in the notice for compliance or subsequently),

(ii) are reasonably required by the Commission for the purposes of investigating the offence or contravention referred to in paragraph (a), and

(iii) are in the custody or under the control of the respondent.

A document disclosure order is an order requiring the respondent to deliver to the Commission, within such time as is specified in the order, such documents falling within sub-paragraph (2)(b) as are identified in the order (either specifically or by reference to any category or description of document).

For the purposes of sub-paragraph (2)(b)(iii) a document is under a person’s control if it is in the person’s possession or if the person has a right to possession of it.
(5) A person who fails to comply with a document disclosure order may not, in respect of 
that failure, be both punished for contempt of court and convicted of an offence under 
paragraph 12(1).

5 (1) This paragraph applies where the Electoral Commission have given a notice under 
paragraph 3 requiring any information or explanation to be provided.

(2) The Court of Session may, on the application of the Commission, make an information 
disclosure order against a person (“the respondent”) if satisfied that—

(a) there are reasonable grounds to suspect that a person (whether or not the 
respondent) has committed a campaign offence or has contravened (otherwise 
than by committing an offence) any restriction or other requirement imposed by 
schedule 4, and

(b) there is any information or explanation referred to in the notice under paragraph 3 
which—

(i) has not been provided as required by the notice (either within the time 
specified in the notice for compliance or subsequently),

(ii) is reasonably required by the Commission for the purposes of investigating 
the offence or contravention referred to in paragraph (a), and

(iii) the respondent is able to provide.

(3) An information disclosure order is an order requiring the respondent to provide to the 
Commission, within such time as is specified in the order, such information or 
explanation falling within sub-paragraph (2)(b) as is identified in the order.

(4) A person who fails to comply with an information disclosure order may not, in respect 
of that failure, be both punished for contempt of court and convicted of an offence under 
paragraph 12(1).

Retention of documents delivered under paragraph 4

6 (1) The Electoral Commission may retain any documents delivered to them in compliance 
with an order under paragraph 4 for a period of 3 months (or for longer if any of sub-
paragraphs (3) to (8) applies).

(2) In this paragraph, “the documents” and “the 3 month period” mean the documents and 
the period mentioned in sub-paragraph (1).

(3) If within the 3 month period proceedings to which the documents are relevant are 
commenced against any person for any criminal offence, the documents may be retained 
until the conclusion of the proceedings.

(4) If within the 3 month period the Commission serve a notice under paragraph 2(1) of 
schedule 6 of a proposal to impose a fixed monetary penalty on any person and the 
documents are relevant to the decision to serve the notice, the documents may be 
retained—

(a) until liability for the penalty is discharged as mentioned in paragraph 2(2) of that 
schedule (if it is),

(b) until the Commission decide not to impose a fixed monetary penalty (if that is 
what they decide),
(c) until the end of the period given by sub-paragraph (6) (if they do impose a fixed monetary penalty).

(5) If within the 3 month period the Commission serve a notice under paragraph 6(1) of schedule 6 of a proposal to impose a discretionary requirement on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—

(a) until the Commission decide not to impose a discretionary requirement (if that is what they decide),

(b) until the end of the period given by sub-paragraph (6) (if they do impose a discretionary requirement).

(6) If within the 3 month period—

(a) a notice is served imposing a fixed monetary penalty on any person under paragraph 2(4) of schedule 6 and the documents are relevant to the decision to impose the penalty, or

(b) a notice is served imposing a discretionary requirement on any person under paragraph 6(5) of that schedule and the documents are relevant to the decision to impose the requirement,

the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

(7) If within the 3 month period—

(a) a stop notice is served on any person under paragraph 10 of schedule 6, and

(b) the documents are relevant to the decision to serve the notice,

the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

(8) If within the 3 month period or the period given by sub-paragraph (7) (or, if applicable, by sub-paragraph (5) or (6)(b))—

(a) the Commission, having served a stop notice on any person under paragraph 10 of schedule 6, decide not to issue a completion certificate under paragraph 12 of that schedule in relation to the stop notice, and

(b) the documents are relevant to the decision not to issue the certificate,

the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

Power to make copies and records

The Electoral Commission or a person authorised by the Commission—

(a) may make copies or records of any information contained in—

(i) any documents produced or inspected under this schedule,

(ii) any documents delivered to them in compliance with an order under paragraph 4,
(b) may make copies or records of any information or explanation provided under this schedule.

Authorisation to be in writing

8 An authorisation of a person by the Electoral Commission under this schedule must be in writing.

Documents in electronic form

9 (1) In the case of documents kept in electronic form—

(a) a power of the Electoral Commission under this schedule to require documents to be produced for inspection includes power to require a copy of the documents to be made available for inspection in legible form,

(b) a power of a person (“the inspector”) under this schedule to inspect documents includes power to require any person on the premises in question to give any assistance that the inspector reasonably requires to enable the inspector—

(i) to inspect and make copies of the documents in legible form or to make records of information contained in them, or

(ii) to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the documents.

(2) Paragraph 7(a) applies in relation to any copy made available as mentioned in sub-paragraph (1)(a) above.

Legal professional privilege

10 Nothing in this schedule requires a person to produce or provide, or authorises a person to inspect or take possession of, anything in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.

Admissibility of statements

11 (1) A statement made by a person (“P”) in compliance with a requirement imposed under this schedule is admissible in evidence in any proceedings (as long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question).

(2) But in criminal proceedings in which P is charged with an offence other than one to which sub-paragraph (3) applies or in proceedings within sub-paragraph (4) to which both the Electoral Commission and P are parties—

(a) no evidence relating to the statement is admissible against P, and

(b) no question relating to the statement may be asked on behalf of the prosecution or (as the case may be) the Commission in cross-examination of P,

unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of P.

(3) This sub-paragraph applies to—

(a) an offence under paragraph 12(3),
(b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath).

(4) Proceedings are within this sub-paragraph if they arise out of the exercise by the Commission of any of their powers under schedule 6 other than powers in relation to an offence under paragraph 12(3) below.

Offences
12 (1) A person who fails, without reasonable excuse, to comply with any requirement imposed under or by virtue of this schedule commits an offence.

(2) A person who intentionally obstructs a person authorised by or by virtue of this schedule in the carrying out of that person’s functions under the authorisation commits an offence.

(3) A person who knowingly or recklessly provides false information in purported compliance with a requirement imposed under or by virtue of this schedule commits an offence.

(4) A person who commits an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who commits an offence under sub-paragraph (3) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Guidance by Commission
13 (1) The Electoral Commission must prepare and publish guidance as to—
   (a) the circumstances in which the Commission are likely to give a notice under paragraph 1 or 3(3),
   (b) the consequences (including criminal sanctions) that may result from a failure to comply with such a notice,
   (c) the circumstances in which the Commission are likely to apply for a warrant under paragraph 2,
   (d) the procedures to be followed in connection with questioning under paragraph 3(5),
   (e) the circumstances in which the Commission are likely to apply for an order under paragraph 4 or 5,
   (f) the principles and practices to be applied in connection with the exercise of powers under paragraphs 6 and 7,
   (g) any other matters concerning the exercise of powers under this schedule about which the Commission consider that guidance would be useful.

(2) Where appropriate, the Commission must revise guidance published under this paragraph and publish the revised guidance.

(3) The Commission must consult such persons as they consider appropriate before publishing guidance or revised guidance under this paragraph.
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Part 1—Fixed monetary penalties

(4) The Commission must have regard to the guidance or revised guidance published under this paragraph in exercising their functions under this Act.

Information about use of investigatory powers in Commission’s report

14 (1) The report by the Electoral Commission under section 24 must contain information about the use made by the Commission of their powers under this schedule.

(2) The report must, in particular, specify—
   (a) the cases in which a notice was given under paragraph 1 or 3(3),
   (b) the cases in which premises were entered under a warrant issued under paragraph 2,
   (c) the cases in which a requirement was imposed under paragraph 3(5),
   (d) the cases in which an order under paragraph 4 or 5—
       (i) was applied for,
       (ii) was made.

(3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—
   (a) would or might be unlawful, or
   (b) might adversely affect any current investigation or proceedings.

Interpretation

15 In this schedule—

“contravention” includes a failure to comply, and related expressions are to be construed accordingly,
“documents” includes any books or records,
“restriction” includes prohibition.

SCHEDULE 6
(introduced by section 11(5))

CAMPAIGN RULES: CIVIL SANCTIONS

PART 1

FIXED MONETARY PENALTIES

Imposition of fixed monetary penalties

30 1 (1) The Electoral Commission may by notice impose a fixed monetary penalty on a person if satisfied beyond reasonable doubt that the person—
   (a) has committed a prescribed campaign offence, or
   (b) has (otherwise than by committing an offence) contravened a prescribed restriction or requirement imposed by or by virtue of schedule 4.
(2) The Commission may by notice impose a fixed monetary penalty on a permitted participant if satisfied beyond reasonable doubt that the responsible person—

(a) has committed a prescribed campaign offence, or
(b) has (otherwise than by committing an offence) contravened a prescribed restriction or requirement imposed by or by virtue of schedule 4.

(3) For the purposes of this schedule a “fixed monetary penalty” is a requirement to pay to the Commission a penalty of a prescribed amount.

(4) In the case of a fixed monetary penalty imposed under sub-paragraph (1)(a) or (2)(a), where the offence in question is—

(a) triable summarily (whether or not it is also triable on indictment), and
(b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the penalty may not exceed the maximum amount of that fine.

Representations and appeals etc.

(1) Where the Electoral Commission propose to impose a fixed monetary penalty on a person, they must serve on the person a notice of what is proposed.

(2) A notice under sub-paragraph (1) must offer the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of a prescribed sum (which must be less than or equal to the amount of the penalty). The following provisions of this paragraph apply if the person does not do so.

(3) The person may make written representations and objections to the Commission in relation to the proposed imposition of the fixed monetary penalty.

(4) After the end of the period for making such representations and objections (see paragraph 3(2)) the Commission must decide whether to impose the fixed monetary penalty.

If they decide to do so they must serve on the person a notice imposing the penalty.

(5) The Commission may not impose a fixed monetary penalty on a person—

(a) if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 1(1) or (2) (as applicable),
(b) in such other circumstances as may be prescribed.

(6) A person on whom a fixed monetary penalty is imposed may appeal against the decision to impose the penalty on the ground that—

(a) it was based on an error of fact,
(b) it was wrong in law, or
(c) it was unreasonable,

or on such other grounds as may be prescribed.

(7) An appeal under sub-paragraph (6) is to a sheriff.
Information to be included in notices under paragraph 2

3 (1) A notice under paragraph 2(1) must include information as to—

(a) the grounds for the proposal to impose the fixed monetary penalty,
(b) the effect of payment of the sum referred to in paragraph 2(2),
(c) the right to make representations and objections,
(d) the circumstances in which the Commission may not impose the fixed monetary penalty.

(2) Such a notice must also specify—

(a) the period within which liability for the fixed monetary penalty may be discharged, and
(b) the period within which representations and objections may be made.

Neither period may be more than 28 days beginning with the day on which the notice is received.

(3) A notice under paragraph 2(4) must include information as to—

(a) the grounds for imposing the fixed monetary penalty,
(b) how payment may be made,
(c) the period within which payment may be made,
(d) any early payment discounts or late payment penalties,
(e) rights of appeal,
(f) the consequences of non-payment.

Fixed monetary penalties: criminal proceedings and conviction

4 (1) Where a notice under paragraph 2(1) is served on a person—

(a) no criminal proceedings for a campaign offence may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period within which the person’s liability may be discharged as mentioned in paragraph 2(2) (see paragraph 3(2)),
(b) if the liability is so discharged, the person may not at any time be convicted of a campaign offence in relation to that act or omission.

(2) A person on whom a fixed monetary penalty is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the penalty.

PART 2

DISCRETIONARY REQUIREMENTS

Imposition of discretionary requirements

5 (1) The Electoral Commission may impose one or more discretionary requirements on a person if satisfied beyond reasonable doubt that the person—
(a) has committed a prescribed campaign offence, or
(b) has (otherwise than by committing an offence) contravened a prescribed restriction or requirement imposed by or by virtue of schedule 4.

(2) The Commission may impose one or more discretionary requirements on a permitted participant if satisfied beyond reasonable doubt that the responsible person—
(a) has committed a prescribed campaign offence, or
(b) has (otherwise than by committing an offence) contravened a prescribed restriction or requirement imposed by or by virtue of schedule 4.

(3) For the purposes of this schedule a “discretionary requirement” is—
(a) a requirement to pay a monetary penalty to the Commission of such amount as the Commission may determine,
(b) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the offence or contravention does not continue or recur, or
(c) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence or contravention had not happened.

(4) Discretionary requirements may not be imposed on the same person on more than one occasion in relation to the same act or omission.

(5) In this schedule—
“variable monetary penalty” means such a requirement as is referred to in sub-paragraph (3)(a),
“non-monetary discretionary requirement” means such a requirement as is referred to in sub-paragraph (3)(b) or (c).

(6) In the case of a variable monetary penalty imposed under sub-paragraph (1)(a) or (2)(a), where the offence in question is—
(a) triable summarily only, and
(b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),
the amount of the penalty may not exceed the maximum amount of that fine.

Representations and appeals etc.

6 (1) Where the Electoral Commission propose to impose a discretionary requirement on a person, they must serve on the person a notice of what is proposed.

(2) A person served with a notice under sub-paragraph (1) may make written representations and objections to the Commission in relation to the proposed imposition of the discretionary requirement.

(3) After the end of the period for making such representations and objections (see paragraph 7(2)) the Commission must decide whether—
(a) to impose the discretionary requirement, with or without modifications, or
(b) to impose any other discretionary requirement that the Commission have power to impose under paragraph 5.

(4) The Commission may not impose a discretionary requirement on a person—

(a) if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 5(1) or (2) (as applicable),

(b) in such other circumstances as may be prescribed.

(5) Where the Commission decide to impose a discretionary requirement on a person, they must serve on the person a notice specifying what the requirement is.

(6) A person on whom a discretionary requirement is imposed may appeal against the decision to impose the requirement on the ground—

(a) that the decision was based on an error of fact,

(b) that the decision was wrong in law,

(c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,

(d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable, or

(e) that the decision is unreasonable for any other reason,

or on such other grounds as may be prescribed.

(7) An appeal under sub-paragraph (6) is to a sheriff.

Information to be included in notices under paragraph 6

7 (1) A notice under paragraph 6(1) must include information as to—

(a) the grounds for the proposal to impose the discretionary requirement,

(b) the right to make representations and objections,

(c) the circumstances in which the Commission may not impose the discretionary requirement.

(2) Such a notice must also specify the period within which representations and objections may be made. That period may not be less than 28 days beginning with the day on which the notice is received.

(3) A notice under paragraph 6(5) must include information as to—

(a) the grounds for imposing the discretionary requirement,

(b) where the discretionary requirement is a variable monetary penalty—

(i) how payment may be made,

(ii) the period within which payment must be made, and

(iii) any early payment discounts or late payment penalties,

(c) rights of appeal,

(d) the consequences of non-compliance.
Discretionary requirements: criminal conviction

8 (1) A person on whom a discretionary requirement is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the requirement.

5 (2) Sub-paragraph (1) does not apply where—
   (a) a non-monetary discretionary requirement is imposed on the person,
   (b) no variable monetary penalty is imposed on the person, and
   (c) the person fails to comply with the non-monetary discretionary requirement.

Failure to comply with discretionary requirements

10 (1) The Electoral Commission may by notice impose a monetary penalty (a “non-compliance penalty”) on a person for failing to comply with a non-monetary discretionary requirement imposed on the person.

(2) Subject to any prescribed criteria, or any prescribed maximum or minimum amounts, the amount of a non-compliance penalty is to be such as the Commission may determine.

15 (3) A person served with a notice imposing a non-compliance penalty may appeal against the notice on the ground that the decision to serve the notice—
   (a) was based on an error of fact,
   (b) was wrong in law, or
   (c) was unfair or unreasonable for any reason (for example because the amount is unreasonable),

or on such other grounds as may be prescribed.

(4) An appeal under sub-paragraph (3) is to a sheriff.

PART 3
STOP NOTICES

Imposition of stop notices

10 (1) Where sub-paragraph (2) or (3) applies, the Electoral Commission may serve on a person a notice (a “stop notice”) prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) This sub-paragraph applies where—
   (a) the person is carrying on the activity,
   (b) the Commission reasonably believe that the activity as carried on by the person involves or is likely to involve the person—
      (i) committing a prescribed campaign offence, or
      (ii) contravening (otherwise than by committing an offence) a prescribed restriction or requirement imposed by or by virtue of schedule 4, and
(c) the Commission reasonably believe that the activity as carried on by the person is seriously damaging public confidence in the effectiveness of the controls in schedule 4, or presents a significant risk of doing so.

(3) This sub-paragraph applies where—

(a) the person is likely to carry on the activity,
(b) the Commission reasonably believe that the activity as carried on by the person will involve or will be likely to involve the person—

(i) committing a prescribed campaign offence, or
(ii) contravening (otherwise than by committing an offence) a prescribed restriction or requirement imposed by or by virtue of schedule 4, and
(c) the Commission reasonably believe that the activity as likely to be carried on by the person will seriously damage public confidence in the effectiveness of the controls mentioned in sub-paragraph (2)(c), or will present a significant risk of doing so.

(4) The steps referred to in sub-paragraph (1) must be steps to secure that the activity is carried on or (as the case may be) will be carried on in a way that does not involve the person acting as mentioned in sub-paragraph (2)(b) or (3)(b).

Information to be included in stop notices

A stop notice must include information as to—

(a) the grounds for serving the notice,
(b) rights of appeal,
(c) the consequences of not complying with the notice.

Completion certificates

Where, after the service of a stop notice on a person, the Electoral Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect (a “completion certificate”).

(2) A stop notice ceases to have effect on the issue of a completion certificate relating to that notice.

(3) A person on whom a stop notice is served may at any time apply for a completion certificate.

The Commission must make a decision whether to issue a completion certificate within the period of 14 days of the day on which they receive such an application.

Appeals etc.

A person served with a stop notice may appeal against the decision to serve it on the ground that—

(a) the decision was based on an error of fact,
(b) the decision was wrong in law,
(c) the decision was unreasonable,
(d) any step specified in the notice is unreasonable, or
(e) the person has not acted as mentioned in paragraph 10(2)(b) or (3)(b) and would not have done so even if the stop notice had not been served,
or on such other grounds as may be prescribed.

(2) A person served with a stop notice may appeal against a decision not to issue a completion certificate on the ground that the decision—
(a) was based on an error of fact,
(b) was wrong in law, or
(c) was unfair or unreasonable,
or on such other grounds as may be prescribed.

(3) An appeal under sub-paragraph (1) or (2) is to a sheriff.

Failure to comply with stop notice

14 (1) A person served with a stop notice who does not comply with it commits an offence.
(2) A person who commits an offence under sub-paragraph (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).

PART 4
ENFORCEMENT UNDERTAKINGS

15 (1) This paragraph applies where—
(a) the Electoral Commission have reasonable grounds to suspect that a person—
   (i) has committed a prescribed campaign offence, or
   (ii) has (otherwise than by committing an offence) contravened a prescribed restriction or requirement imposed by or by virtue of schedule 4,
(b) the person offers an undertaking (an “enforcement undertaking”) to take such action, within such period, as is specified in the undertaking,
(c) the action so specified is—
   (i) action to secure that the offence or contravention does not continue or recur,
   (ii) action to secure that the position is, so far as possible, restored to what it would have been if the offence or contravention had not happened, or
   (iii) action of a prescribed description, and
(d) the Commission accept the undertaking.

(2) Unless the person has failed to comply with the undertaking or any part of it—
(a) the person may not at any time be convicted of a campaign offence in respect of the act or omission to which the undertaking relates,

(b) the Commission may not impose on the person any fixed monetary penalty that they would otherwise have power to impose by virtue of paragraph 1 in respect of that act or omission,

(c) the Commission may not impose on the person any discretionary requirement that they would otherwise have power to impose by virtue of paragraph 5 in respect of that act or omission.

**PART 5**

**POWER TO MAKE SUPPLEMENTARY PROVISION ETC. BY ORDER**

**Supplementary orders: general**

16 (1) The Scottish Ministers may by order (a “supplementary order”)—

(a) make provision (including transitional provision) supplementing that made by this schedule,

(b) make provision that is consequential on or incidental to that made by this schedule.

(2) The following provisions of this Part are not to be read as limiting the power conferred by sub-paragraph (1).

(3) A supplementary order may make provision amending, repealing or revoking an enactment (whenever passed or made).

(4) A supplementary order is subject to the affirmative procedure if it contains—

(a) provision made by virtue of—

(i) paragraph 1(1), (2) or (3),

(ii) paragraph 5(1) or (2),

(iii) paragraph 10(2)(b) or (3)(b), or

(iv) paragraph 15(1)(a), or

(b) provision amending an Act.

(5) Otherwise, a supplementary order is subject to the negative procedure.

**Consultation**

17 (1) Before making a supplementary order the Scottish Ministers must consult the Electoral Commission and such other persons (if any) as the Scottish Ministers consider appropriate.

(2) If, as a result of any consultation required by sub-paragraph (1), it appears to the Scottish Ministers that it is appropriate substantially to change the whole or any part of the proposals, they must undertake such further consultation with respect to the changes as they consider appropriate.
Monetary penalties

18 (1) A supplementary order may make any of the following provision in relation to the power of the Electoral Commission to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty—

(a) provision for early payment discounts,
(b) provision for the payment of interest or other financial penalties for late payment,
(c) provision for enforcement.

(2) Provision made by virtue of sub-paragraph (1)(b) must secure that the interest or other financial penalties for late payment do not in total exceed the amount of the penalty itself.

(3) Provision made by virtue of sub-paragraph (1)(c) may include—

(a) provision for the Commission to recover the penalty, and any interest or other financial penalty for late payment, as a civil debt,
(b) provision for the penalty, and any interest or other financial penalty for late payment, to be recoverable, on the order of a court, as if payable under a court order.

(4) In relation to the power of the Commission to require a person to pay a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty for failing to comply with a requirement or undertaking by the end of a particular period, a supplementary order may—

(a) make provision under which the amount of the penalty is determined by reference to the length of time between the end of that period and the time of compliance,
(b) make provision for successive penalties to be payable in a case of continued failure to comply.

Enforcement undertakings

19 A supplementary order may make any of the following provision in relation to an enforcement undertaking—

(a) provision as to the procedure for entering into an undertaking,
(b) provision as to the terms of an undertaking,
(c) provision as to publication of an undertaking by the Commission,
(d) provision as to variation of an undertaking,
(e) provision as to circumstances in which a person may be regarded as having complied with an undertaking,
(f) provision as to monitoring by the Commission of compliance with an undertaking,
(g) provision as to certification by the Commission that an undertaking has been complied with,
(h) provision for appeals against refusal to give such certification,
(i) in a case where a person has given inaccurate, misleading or incomplete information in relation to an undertaking, provision for the person to be regarded as not having complied with it,
(j) in a case where a person has complied partly but not fully with an undertaking, provision for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person.

*Extension of time for taking criminal proceedings*

20 For the purposes of enabling criminal proceedings to be instituted against a person in respect of a campaign offence—

(a) in the case referred to in paragraph 8(2), or

(b) in a case where there has been a breach of an enforcement undertaking or any part of an enforcement undertaking,

a supplementary order may make provision extending any period within which such proceedings may be instituted.

*Appeals*

21 (1) A supplementary order may make any of the following provision in relation to an appeal in respect of the imposition of a requirement, or the service of a notice, under this schedule—

(a) provision suspending the requirement or notice pending determination of the appeal,

(b) provision as to the powers of the court to which the appeal is made,

(c) provision as to how a sum payable in pursuance of a decision of that court is to be recoverable.

(2) Provision made by virtue of sub-paragraph (1)(b) may in particular include provision conferring on the court to which the appeal is made—

(a) power to withdraw the requirement or notice,

(b) power to confirm the requirement or notice,

(c) power to take such steps as the Commission could take in relation to the act or omission giving rise to the requirement or notice,

(d) power to remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Commission,

(e) power to award expenses.

**PART 6**

**GENERAL AND SUPPLEMENTAL**

*Combination of sanctions*

22 (1) The Electoral Commission may not serve on a person a notice under paragraph 2(1) (notice of proposed fixed monetary penalty) in relation to any act or omission in relation to which—

(a) a discretionary requirement has been imposed on that person, or

(b) a stop notice has been served on that person.
(2) The Commission may not serve on a person a notice under paragraph 6(1) (notice of proposed discretionary requirement), or serve a stop notice on a person, in relation to any act or omission in relation to which—
(a) a fixed monetary penalty has been imposed on that person, or
(b) the person’s liability for a fixed monetary penalty has been discharged as mentioned in paragraph 2(2).

Use of statements made compulsorily

23 (1) The Electoral Commission must not take into account a statement made by a person in compliance with a requirement imposed under schedule 5 in deciding whether—
(a) to impose a fixed monetary penalty on the person,
(b) to impose a discretionary requirement on the person,
(c) to serve a stop notice on the person.

(2) Sub-paragraph (1)(a) or (b) does not apply to a penalty or requirement imposed in respect of an offence under paragraph 12(3) of schedule 5 (providing false information in purported compliance with a requirement under that schedule).

Unincorporated associations

24 Any amount that is payable under this schedule by an unincorporated association must be paid out of the funds of the association.

Guidance as to enforcement

25 (1) The Electoral Commission must prepare and publish guidance as to—
(a) the sanctions (including criminal sanctions) that may be imposed on a person who—
(i) commits a campaign offence, or
(ii) contravenes a restriction or requirement that is prescribed for the purposes of paragraph 1, 5, 10 or 15,
(b) the action that the Commission may take in relation to such a person (whether by virtue of this schedule or otherwise),
(c) the circumstances in which the Commission are likely to take any such action.

(2) The guidance must include guidance about the Commission’s use of the power to impose a fixed monetary penalty, with information as to—
(a) the circumstances in which such a penalty may not be imposed,
(b) the amount of such a penalty,
(c) how liability for such a penalty may be discharged and the effect of discharge,
(d) rights to make representations and objections and rights of appeal in relation to such a penalty.

(3) The guidance must include guidance about the Commission’s use of the power to impose a discretionary requirement, with information as to—
(a) the circumstances in which such a requirement may not be imposed,
(b) rights to make representations and objections and rights of appeal in relation to such a requirement,
(c) in the case of a variable monetary penalty, the matters likely to be taken into account by the Commission in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance).

(4) The guidance must include guidance about the Commission’s use of the power to serve a stop notice, with information as to—
(a) the circumstances in which such a notice may not be served,
(b) rights of appeal in relation to such a notice.

(5) The guidance must include guidance about the Commission’s use of the power to accept an enforcement undertaking.

(6) Where appropriate, the Commission must revise guidance published under this paragraph and publish the revised guidance.

(7) The Commission must consult such persons as they consider appropriate before publishing guidance or revised guidance under this paragraph.

(8) The Commission must have regard to the guidance or revised guidance published under this paragraph in exercising their functions.

**Payment of penalties etc into Scottish Consolidated Fund**

26 Where, in pursuance of any provision contained in or made under this schedule, the Electoral Commission receive—

(a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty,
(b) any interest or other financial penalty for late payment of such a penalty, or
(c) a sum paid as mentioned in paragraph 2(2) (in discharge of liability for a fixed monetary penalty),

they must pay it into the Scottish Consolidated Fund.

**Reports on use of civil sanctions**

27 (1) The report by the Electoral Commission under section 24 must contain information about the use made by the Commission of their powers under this schedule.

(2) The report must, in particular, specify—
(a) the cases in which a fixed monetary penalty or discretionary requirement was imposed or a stop notice served (other than cases in which the penalty, requirement or notice was overturned on appeal),
(b) the cases in which liability for a fixed monetary penalty was discharged as mentioned in paragraph 2(2),
(c) the cases in which an enforcement undertaking was accepted.
(3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—
(a) would or might be unlawful, or
(b) might adversely affect any current investigation or proceedings.

Disclosure of information

28 (1) Information held by or on behalf of a procurator fiscal or a constable in Scotland may be disclosed to the Electoral Commission for the purpose of the exercise by the Commission of any powers conferred on them under or by virtue of this schedule.

(2) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into effect of this schedule.

(3) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information.

(4) This paragraph does not affect a power to disclose that exists apart from this paragraph.

PART 7

INTERPRETATION

29 In this schedule—
“completion certificate” has the meaning given in paragraph 12(1),
“contravention” includes a failure to comply, and related expressions are to be construed accordingly,
“discretionary requirement” has the meaning given in paragraph 5(3),
“enforcement undertaking” has the meaning given in paragraph 15(1)(b),
“fixed monetary penalty” has the meaning given in paragraph 1(3),
“non-compliance penalty” has the meaning given in paragraph 9(1),
“non-monetary discretionary requirement” has the meaning given in paragraph 5(5),
“prescribed” means prescribed in a supplementary order,
“responsible person”, in relation to a permitted participant, has the meaning given in schedule 8,
“restriction” includes prohibition,
“stop notice” has the meaning given in paragraph 10(1),
“supplementary order” has the meaning given in paragraph 16(1),
“variable monetary penalty” has the meaning given in paragraph 5(5).
Personation

1 (1) A person (“A”) commits the offence of personation in the referendum if—

(a) A votes in person or by post in the referendum as some other person, whether as a voter or as proxy, and whether that other person is living or dead or is a fictitious person, or

(b) A votes, as proxy, in person or by post in the referendum—

(i) for a person whom A knows or has reasonable grounds for supposing to be dead or to be a fictitious person, or

(ii) when A knows or has reasonable grounds for supposing that A’s appointment as proxy is no longer in force.

(2) For the purposes of this paragraph, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

(3) A person commits a corrupt practice if the person commits the offence of personation in the referendum or aids, abets, counsels or procurs the commission of that offence.

Other voting offences

2 (1) A person (“A”) commits an offence if—

(a) A votes in person or by post in the referendum, whether as a voter or as proxy, or applies to vote by proxy or by post as a voter in the referendum knowing that A is subject to a legal incapacity to vote in the referendum,

(b) A applies for the appointment of a proxy to vote for A in the referendum knowing that A or the person to be appointed is subject to a legal incapacity to vote in the referendum, or

(c) A votes, whether in person or by post, as proxy for some other person in the referendum, knowing that the other person is subject to a legal incapacity to vote.

(2) For the purposes of sub-paragraph (1), references to a person being subject to a legal incapacity to vote do not, in relation to things done before the date of the referendum, include the person’s being below voting age if the person will be of voting age on that date.

(3) A person (“A”) commits an offence if—

(a) A votes as a voter more than once in the referendum,

(b) A votes as a voter in person in the referendum when A is entitled to vote by post,

(c) A votes as a voter in person in the referendum knowing that a person appointed to vote as A’s proxy in the referendum either has already voted in person in the referendum or is entitled to vote by post in the referendum, or
(d) A applies for a person to be appointed as A’s proxy to vote for A in the referendum without applying for the cancellation of a previous appointment of a third person then in force in respect of the referendum or without withdrawing a pending application for such an appointment in respect of the referendum.

5 (4) A person (“A”) commits an offence if—

(a) A votes as proxy for the same voter more than once in the referendum,

(b) A votes in person as proxy for a voter in the referendum when A is entitled to vote by post as proxy in the referendum for that voter, or

(c) A votes in person as proxy for a voter in the referendum knowing that the voter has already voted in person in the referendum.

5 (5) A person (“A”) commits an offence if A votes in the referendum as proxy for more than two persons of whom A is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

5 (6) A person (“A”) commits an offence if A knowingly induces or procures some other person to do an act which is, or but for that other person’s lack of knowledge would be, an offence by that other person under any of sub-paragraphs (1) to (5).

5 (7) For the purposes of this paragraph a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

5 (8) For the purpose of determining whether an application for a ballot paper constitutes an offence under sub-paragraph (5), a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper is, if the person does not exercise that right, to be disregarded.

5 (9) A person does not commit an offence under sub-paragraph (3)(b) or (4)(b) only by reason of the person’s having marked a tendered ballot paper in pursuance of rule 24 of the conduct rules.

5 (10) An offence under this paragraph is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

5 (11) In this paragraph “legal incapacity to vote” has the meaning given by section 2(2) of the Scottish Independence Referendum (Franchise) Act 2013.

Imitation poll cards

3 (1) A person commits an offence if the person, for the purpose of promoting or procuring a particular outcome in the referendum, issues any poll card or document so closely resembling an official poll card as to be calculated to deceive.

3 (2) An offence under sub-paragraph (1) is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

Offences relating to applications for postal and proxy votes

4 (1) A person (“A”) commits an offence if A—
(a) engages in an act specified in sub-paragraph (2) in connection with the referendum, and
(b) intends, by doing so, to deprive another of an opportunity to vote in the referendum or to make for A or another a gain of a vote in the referendum to which A or the other is not otherwise entitled or a gain of money or property.

(2) These are the acts—
(a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person),
(b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote or providing false information in, or in connection with, such an application,
(c) inducing the registration officer or counting officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote,
(d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.

(3) In sub-paragraph (1)(b), property includes any description of property.

(4) In sub-paragraph (2), a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or proxy postal ballot paper (as the case may be).

(5) A person commits a corrupt practice if the person commits an offence under sub-paragraph (1) or aids, abets, counsels or procures the commission of that offence.

Breach of official duty

5 (1) If a person to whom this paragraph applies without reasonable cause (and whether by act or omission) breaches the person’s official duty, the person commits an offence.

25 (2) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) No person to whom this paragraph applies is liable for breach of official duty to any penalty at common law and no action for damages lies in respect of the breach by such a person of the person’s official duty.

30 (4) The persons to whom this paragraph applies are—
(a) the Chief Counting Officer,
(b) any proper officer, registration officer, counting officer or presiding officer, and
(c) any deputy of a person mentioned in paragraph (a) or (b) or any other person appointed to assist or, in the course of the other person’s employment, assisting a person so mentioned in connection with that person’s official duties,

35 and “official duty” for the purpose of this paragraph is to be construed accordingly, but does not include duties imposed otherwise than by this Act.

Tampering with ballot papers etc.

6 (1) A person (“A”) commits an offence if, in connection with the referendum—
(a) A fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or official envelope used in connection with voting by post,

(b) A, without due authority, supplies any ballot paper to any person,

(c) A fraudulently puts into any ballot box any paper other than the ballot paper which A is authorised by law to put in,

(d) A fraudulently takes out of the polling station any ballot paper,

(e) A, without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the referendum, or

(f) A fraudulently or without due authority (as the case may be) attempts to do any of the acts mentioned in paragraphs (a) to (e).

(2) A person commits an offence if, in connection with the referendum, the person forges or counterfeits (or attempts to forge or counterfeit) any ballot paper or the official mark on any ballot paper.

(3) If a counting officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers in the referendum, commits an offence under this paragraph, the officer or clerk is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).

(4) If any other person commits an offence under this paragraph the person is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

Requirement of secrecy

7 (1) Every person (other than one mentioned in sub-paragraph (2)) attending at a polling station in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not, except for a purpose authorised by law, communicate to any person before the close of the poll the information described in sub-paragraph (3).

(2) Sub-paragraph (1) does not apply to—

(a) a person attending at the polling station for the purpose of voting,

(b) a person under the age of 16 accompanying a voter,

(c) a companion of a voter with disabilities,

(d) a constable on duty at the polling station.

(3) The information referred to in sub-paragraph (1) is any information as to—

(a) the name of any voter or proxy for a voter who has or has not applied for a ballot paper or voted at a polling station,

(b) the number on the Polling List of any voter who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station,
(c) the official mark being used in accordance with rule 6 of the conduct rules.

(4) Every person attending at the counting of the votes in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—

(a) ascertain or attempt to ascertain at the counting of the votes the unique identifying number on the back of any ballot paper,

(b) communicate any information obtained at the counting of the votes as to the outcome for which any vote is given on any particular ballot paper.

(5) A person must not—

(a) interfere with or attempt to interfere with a voter when recording the voter’s vote in the referendum,

(b) otherwise obtain or attempt to obtain in a polling station information as to the outcome for which a voter in that station is about to vote or has voted in the referendum,

(c) communicate at any time to any person any information obtained in a polling station in the referendum as to the outcome for which a voter in that station is about to vote or has voted, or in the referendum as to the unique identifying number on the back of a ballot paper given to a voter at that station, or

(d) directly or indirectly induce a voter to display a ballot paper after the voter has marked it so as to make known to any person any outcome for which the voter has or has not voted in the referendum.

(6) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—

(a) except for a purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark,

(b) except for a purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the unique identifying number on the back of any ballot paper sent to any person,

(c) except for a purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the unique identifying number on the back of any ballot paper, or

(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the outcome for which any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(7) A companion of a voter with disabilities must not communicate at any time to any person any information as to the outcome for which that voter intends to vote or has voted, or as to the unique identifying number on the back of a ballot paper given for the use of that voter.

(8) If a person acts in contravention of this paragraph the person commits an offence.

(9) A person who commits an offence under sub-paragraph (8) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

(10) In this paragraph a voter with disabilities is a voter who has made a declaration under rule 23(1) of the conduct rules.
**Prohibition on publication of exit polls**

8 (1) No person may publish before the close of the poll—
   (a) any statement relating to the way in which voters have voted in the referendum where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or
   (b) any forecast as to the result of the referendum which is (or might reasonably be taken to be) based on information so given.

(2) If a person acts in contravention of this paragraph the person commits an offence.

(3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

(4) In this paragraph—
   “forecast” includes estimate,
   “publish” means make available to the public at large (or any section of the public), in whatever form and by whatever means,
   any reference to the result of the referendum is a reference to the result for the whole of Scotland or the result in one or more local government areas.

**Payments to voters for exhibition of referendum notices**

9 (1) No payment or contract for payment may, for the purposes of promoting a particular outcome in the referendum, be made to a voter on account of—
   (a) the exhibition of, or
   (b) the use of any house, land, building or premises for the exhibition of,
   any bill, advertisement or notice.

(2) Sub-paragraph (1) does not apply if—
   (a) it is the ordinary business of the voter to exhibit bills, advertisements or notices for payment, and
   (b) the payment or contract is made in the ordinary course of that business.

(3) If a payment or contract for payment is knowingly made in contravention of sub-paragraph (1) (whether before, during or after the referendum), each of the following persons commits an offence—
   (a) the person who makes the payment or enters into the contract,
   (b) the person who receives the payment or is a party to the contract (if the person knows the payment or contract is in contravention of sub-paragraph (1)).

(4) An offence under sub-paragraph (3) is an illegal practice.
Treating

10 (1) A person (“A”) commits the offence of treating in connection with the referendum if A, whether before, during or after the referendum, corruptly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—

(a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting in the referendum, or

(b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting, in the referendum.

(2) Sub-paragraph (1) applies regardless of whether an act is done—

(a) directly or indirectly,

(b) by A or by another person on A’s behalf.

(3) A voter or proxy who corruptly accepts or takes any such meat, drink, entertainment or provision also commits the offence of treating in connection with the referendum.

(4) A person commits a corrupt practice if the person commits the offence of treating in connection with the referendum.

Undue influence

11 (1) A person (“A”) commits the offence of undue influence in connection with the referendum if—

(a) A makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, personally or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting in the referendum, or on account of that person having voted or refrained from voting, in the referendum, or

(b) by abduction, duress or any fraudulent device or contrivance, A impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of a voter or proxy for a voter in the referendum, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, a voter or proxy for a voter either to vote or to refrain from voting in the referendum.

(2) Sub-paragraph (1)(a) applies regardless of whether an act is done—

(a) directly or indirectly,

(b) by the person or by another person on the person’s behalf.

(3) A person commits a corrupt practice if the person commits the offence of undue influence in connection with the referendum.

Bribery

12 (1) A person commits the offence of bribery in connection with the referendum if the person—

(a) gives any money or procures any office—

(i) to or for any voter,
(ii) to or for any other person on behalf of any voter, or

(iii) to or for any other person,

in order to induce any voter to vote or refrain from voting in the referendum,

(b) corruptly makes any gift or procurement as mentioned in paragraph (a) on account of any voter having voted or refrained from voting in the referendum,

(c) makes any gift or procurement as mentioned in paragraph (a) to or for any person in order to induce that person to procure, or endeavour to procure, any particular outcome in the referendum, or

(d) upon or in consequence of any such gift or procurement as mentioned in paragraph (a), procures or engages, promises or endeavours to procure any particular outcome in the referendum.

(2) A person commits the offence of bribery in connection with the referendum if the person—

(a) advances or pays or causes to be paid any money to or for the use of any other person with the intent that the money or any part of it is to be expended in bribery in connection with the referendum, or

(b) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or partly expended in bribery in connection with the referendum.

(3) A voter commits the offence of bribery in connection with the referendum if, whether before or during the referendum, the voter receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment for the voter or for any other person for—

(a) voting or agreeing to vote in the referendum, or

(b) refraining or agreeing to refrain from voting in the referendum.

(4) A person commits the offence of bribery in connection with the referendum if, after the referendum, the person receives any money or valuable consideration on account of any person—

(a) having voted or refrained from voting in the referendum, or

(b) having induced any other person to vote or refrain from voting in the referendum.

(5) Sub-paragraphs (1) to (4) apply regardless of whether an act is done—

(a) directly or indirectly,

(b) by the person or by another person on the person’s behalf.

(6) For the purposes of sub-paragraph (1)—

(a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or to endeavour to procure any money or valuable consideration,

(b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.

(7) Sub-paragraphs (1) and (2) do not apply to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning the referendum.
(8) A person commits a corrupt practice if the person commits the offence of bribery in connection with the referendum.

(9) In this paragraph, the expression “voter” includes any person who has or claims to have a right to vote in the referendum.

5 Disturbances at public meetings

13 (1) A person commits an offence if the person, at a lawful public meeting to which this paragraph applies, acts (or incites others to act) in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together.

(2) This paragraph applies to a meeting held in connection with the referendum during the referendum period.

(3) An offence under this paragraph is an illegal practice.

Illegal canvassing by police officers

14 (1) A person who is a constable commits an offence if the person by word, message, writing or in any other manner, endeavours to persuade any person to give (or dissuade any person from giving) the person’s vote in the referendum.

(2) A person is not liable under sub-paragraph (1) for anything done in the discharge of the person’s duty as a constable.

(3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

20 Prosecutions for corrupt practices

15 A person who commits a corrupt practice under any provision of this schedule is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment—

(i) in the case of a corrupt practice under paragraph 1 or 4, to imprisonment for a term not exceeding 2 years or to a fine (or both),

(ii) in any other case, to imprisonment for a term not exceeding 12 months or to a fine (or both).

30 Prosecutions for illegal practices

16 (1) A person who commits an illegal practice under any provision of this schedule is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) On a prosecution for such an illegal practice it is sufficient to allege that the person charged has committed an illegal practice.
Conviction of illegal practice on charge of corrupt practice etc.

17 A person charged with a corrupt practice under any provision of this schedule may, if the circumstances warrant such finding, be convicted of an illegal practice (which offence is for that purpose to be an indictable offence), and a person charged with an illegal practice may be convicted of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

Incapacity to hold public or judicial office in Scotland

18 (1) A person convicted of a corrupt or illegal practice under any provision of this schedule—

(a) is for the period of 5 years beginning with the date of the person’s conviction, incapable of holding any public or judicial office in Scotland (within the meaning of section 185 of the 1983 Act), and

(b) if already holding such an office, vacates it as from that date.

(2) Sub-paragraph (1) applies in addition to any punishment imposed on the person under paragraph 15 or 16.

Prohibition of paid canvassers

19 If a person is, whether before or during the referendum, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting a particular outcome in the referendum—

(a) the person so engaging or employing the canvasser, and

(b) the canvasser,

commits the offence of illegal employment.

Providing money for illegal purposes

20 If a person knowingly provides money—

(a) for any payment which is contrary to the provisions of this Act,

(b) for any expenses incurred in excess of the maximum amount allowed by this Act, or

(c) for replacing any money expended in any such payment or expenses,

the person commits the offence of illegal payment.

Prosecutions for illegal employment or illegal payment

21 (1) A person who commits an offence of—

(a) illegal employment under paragraph 19, or

(b) illegal payment under paragraph 20,

is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) On a prosecution for such an illegal employment or illegal payment it is sufficient to allege that the person charged has committed the offence of illegal employment or illegal payment (as the case may be).
(3) A person charged with an offence of illegal employment or illegal payment may be convicted of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

SCHEDULE 8
(introduced by section 32)

INTERPRETATION

In this Act—

“the 1983 Act” means the Representation of the People Act 1983,

“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000,

“absent vote” is to be construed in accordance with paragraph 1(8)(a) of schedule 2,

“anonymous entry” in relation to a register of electors, is to be construed in accordance with section 9B of the 1983 Act, and “record of anonymous entries” means the record prepared under regulation 45A of the Representation of the People (Scotland) Regulations 2001 (SI 2001/497),

“assisted voters list” has the meaning given in rule 23(8) of the conduct rules,

“ballot paper account” has the meaning given in rule 28(4) of the conduct rules,

“campaign offence” means an offence under section 13 or any of schedules 4 to 6,

“campaign organiser”, in relation to referendum expenses, means the individual or body by whom or on whose behalf the expenses are incurred,

“Chief Counting Officer” means the person appointed under section 4(1) or (6),

“companion” has the meaning given in rule 23(1) of the conduct rules,

“companion declaration” has the meaning given in rule 23(2) of the conduct rules,

“completed corresponding number list” has the meaning given in rule 28(2)(e) of the conduct rules,

“conduct rules” means the rules set out in schedule 3,

“corresponding number list” means the list prepared in accordance with rule 5 of the conduct rules,

“council” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994,

“counting agent” has the meaning given by rule 14(8) of the conduct rules,

“counting officer” means a person appointed under section 5(1) or (5),

“cut-off date” has the meaning given in paragraph 18(1) of schedule 2,

“data form” means information which is in a form which is capable of being processed by means of equipment operating automatically in response to instructions given for that purpose,

“date of the referendum” means the date on which the poll at the referendum is to be held in accordance with section 1(4) or (6),
“designated organisation” means a permitted participant that has been designated under paragraph 5 of schedule 4,

“education authority” has the same meaning as in the Education (Scotland) Act 1980,

“list of proxies” means the list kept under paragraph 4(3) of schedule 2,

“local government area” is to be construed in accordance with section 1 of the Local Government etc. (Scotland) Act 1994,

“marked copy” has the meaning given in paragraph 54(10) of schedule 2,

“marked votes list” has the meaning given in rule 22(2) of the conduct rules,

“members of the Chief Counting Officer’s staff” means staff appointed or provided under section 6(8),

“members of the counting officer’s staff” means staff provided under section 6(9),

“minor party” has the same meaning as in the 2000 Act,

“money” and “pecuniary reward” (except in schedule 4 and paragraph 12 of schedule 7) include—

(a) any office, place or employment,

(b) any valuable security or other equivalent of money, and

(c) any valuable consideration,

and expressions referring to money are to be construed accordingly,

“organisation” includes any body corporate and any combination of persons or other unincorporated association,

“outcome” means a particular outcome in relation to the referendum question,

“payment” includes any pecuniary or other reward,

“permissible donor” is to be construed in accordance with paragraph 1(2) of schedule 4,

“permitted participant” has the meaning given in paragraph 2 of schedule 4,

“personal identifiers record” means the record kept by a registration officer under paragraph 10 of schedule 2,

“polling agent” has the meaning given by paragraph 19(3) of schedule 2,

“polling day alterations list” has the meaning given in rule 26(2) of the conduct rules,

“Polling List” has the meaning given in paragraph 17(2) of schedule 2,

“postal ballot agent” has the meaning given by paragraph 19(3) of schedule 2,

“postal voters list” means the list kept under paragraph 4(2) of schedule 2,

“postal voting statement” means the statement referred to in rule 8(1)(b) of the conduct rules,

“presiding officer” means an officer appointed under rule 10(1)(a) of the conduct rules,

“proper officer” has the meaning given in section 235(3) of the Local Government (Scotland) Act 1973,
“proxy postal voters list” means the list kept under paragraph 6(7) of schedule 2,
“qualifying address” in relation to a person registered in the register of electors, is the address in respect of which that person is entitled to be so registered,
“referendum agent” has the meaning given in section 16,
“referendum campaign” means a campaign conducted with a view to promoting or procuring a particular outcome in the referendum,
“referendum campaign broadcast” means a broadcast the purpose (or main purpose) of which is or may reasonably be assumed to be—
(a) to further any referendum campaign, or
(b) otherwise to promote or procure any particular outcome in the referendum,
“referendum expenses” is to be construed in accordance with paragraph 9 of schedule 4,
“referendum period” means the period of 16 weeks ending on the date of the referendum,
“referendum question” means the question to be voted on in the referendum (as set out in section 1(2)),
“register of electors” means (as the case may be)—
(a) the register of local government electors for any area maintained under section 9 of the 1983 Act, or
(b) the register of young voters for any area maintained under section 4 of the Scottish Independence Referendum (Franchise) Act 2013,
“registered party” means a party registered under Part 2 of the 2000 Act other than a Gibraltar party (within the meaning of that Act),
“registration officer” means a registration officer appointed under section 8(3) of the 1983 Act,
“relevant citizen of the European Union” means a citizen of the Union who is not a Commonwealth citizen or a citizen of the Republic of Ireland,
“relevant counting officer”, in relation to a registration officer, means the counting officer for the local government area for which the registration officer is appointed,
“responsible person” means, in relation to a permitted participant—
(a) if the permitted participant is a registered party—
(i) the treasurer of the party, or
(ii) in the case of a minor party, the person for the time being notified to the Electoral Commission by the party in accordance with paragraph 3(1)(b) of schedule 4,
(b) if the permitted participant is an individual, that individual, and
(c) otherwise, the person or officer for the time being notified to the Electoral Commission by the permitted participant in accordance with paragraph 3(3)(a)(ii) of schedule 4,
“SPCB” means the Scottish Parliamentary Corporate Body,
“spoilt ballot paper” has the meaning given in rule 25(1) of the conduct rules,
“tendered ballot paper” means a ballot paper referred to in rule 24(6) of the conduct rules,
“tendered votes list” has the meaning given in rule 24(8) of the conduct rules,
“treasurer”, in relation to a registered party, has the same meaning as in the 2000 Act,
“unique identifying number” means the number on the back of a ballot paper which is unique to that ballot paper and which identifies that ballot paper as a ballot paper to be issued by the counting officer,
“verification statement” has the meaning given in rule 30(2) of the conduct rules,
“voter” (except in the conduct rules) means a person entitled to vote in the referendum in the person’s own right (as opposed to a person entitled to vote as proxy for another),
“voter” (in the conduct rules) means a person voting at the referendum and includes (except where the context requires otherwise) a person voting as proxy and “vote” (whether as noun or verb) is to be construed accordingly except that any reference to a voter voting or a voter’s vote includes a reference to a voter voting by proxy or a voter’s vote given by proxy,
“voter number” means, in relation to a person registered in the register of local government electors, the person’s electoral number,
“voting age” means age 16 or over.
Scottish Independence Referendum Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision, in accordance with paragraph 5A of Part 1 of Schedule 5 to the Scotland Act 1998, for the holding of a referendum in Scotland on a question about the independence of Scotland.

Introduced by: Nicola Sturgeon
On: 21 March 2013
Bill type: Government Bill
These documents relate to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

SCOTTISH INDEPENDENCE REFERENDUM BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Scottish Independence Referendum Bill introduced in the Scottish Parliament on 21 March 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 25–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

3. The Bill covers a range of issues, with much of the detail set out in schedules, as follows:
   - Provision for a referendum (section 1 and schedule 1)
   - Provision about voting etc. (sections 2-3 and schedule 2)
   - Rules concerning the conduct of the poll (sections 4-9 and schedule 3)
   - Campaign rules and enforcement (section 10-15 and schedules 4-6)
   - Referendum agents and observers (sections 16-20)
   - Other functions and funding of the Electoral Commission (sections 21-27)
   - Offences (sections 28-29 and schedule 7)
   - Power to make supplementary, incidental or consequential provision (section 30)
   - Legal proceedings (section 31)
   - Final provisions and interpretation (sections 32-34 and schedule 8)

BACKGROUND TO THE BILL

4. This Bill provides the legislative framework for the holding of a referendum on Scotland’s independence. The Bill provides for a single-question referendum about whether Scotland should be an independent country.

5. The Bill covers the technical aspects of holding the referendum. It prescribes the rules for voting, and sets out the rules for how the poll should be conducted. The Bill also provides campaign rules to regulate the political campaign preceding the referendum. The rules are largely based on existing UK and Scottish legislation covering elections and referendums. They include the administration and limits of spending by and donations given to participants during the referendum campaign.
COMMENTARY

6. The Bill consists of 34 sections, with most of the detailed provisions set out in 8 schedules.

Referendum

7. Section 1 of the Bill provides for a referendum on a question about Scotland’s independence. It sets out the question and the date of the referendum.

8. Section 1 also introduces schedule 1 to the Bill which sets out the design of the ballot paper to be used in the referendum.

9. The ballot paper asks voters whether Scotland should be an independent country and seeks a yes or no response.

10. The date of the referendum will be 18 September 2014. Subsections (5) to (7) give the Scottish Ministers power by order approved by the Scottish Parliament to modify the date of the referendum to a later date, but only where it would be impossible or impractical to hold the referendum on the original date, or if the referendum would not be conducted properly. The power includes making supplementary or consequential provision as a result. Any new date must be no later than 31 December 2014.

Franchise

11. Section 2 provides that details of who can vote in the referendum are as contained in the Scottish Independence Referendum (Franchise) Act 2013.

Voting etc.

12. Section 3 introduces schedule 2 which sets out provisions about the manner of voting, the register of electors, postal voting and the supply of documents used in this process. These rules broadly follow existing law and practice for local government elections in Scotland, though they are adapted to fit the circumstances of a referendum.

Schedule 2: Further provision about voting in the referendum

Part 1: Manner of voting

13. Paragraph 1 of schedule 2 sets out the various ways to vote in the referendum, giving voters an entitlement to vote in person at polling stations unless they have opted to vote by post, in which case they may do so. A voter may also vote by using a proxy. Offences related to voting are set out in schedule 7.

14. Sub-paragraph (5) allows someone who is working for a counting officer or is a police constable on duty on the day when polling is taking place to vote at any polling station in the same local council area as the polling station at which they would normally vote (provided they have a certificate as described under rule 15(6) of schedule 3).
15. Sub-paragraph (6) allows voters who have been detained in a mental or psychiatric hospital to vote in person at the polling station if they have permission to do so or to vote by post or proxy if they are entitled to do so. Sub-paragraph (6)(b) permits someone remanded in custody, and to whom section 7A of the Representation of the People Act 1983 applies, to vote only by post or proxy.

16. The Bill uses the term ‘absent voter’ to describe both postal voters and proxy voters. Paragraph 2 grants an absent vote in the referendum to postal and proxy voters already on the relevant lists for Scottish local government or Scottish Parliamentary elections at 5pm on the 11th working day before the referendum (‘the cut-off date’, which is defined in paragraph 18 of schedule 2). Such voters are referred to as ‘existing postal voters’ and ‘existing proxy voters’.

17. Paragraph 3 deals with new applications for postal votes and proxy votes for the referendum from applicants who are already on, or have applied to be on, the register of electors, including those with anonymous entries. The ‘register of electors’ for the purposes of the Bill means the register of local government electors and the register of young voters maintained under the Scottish Independence Referendum (Franchise) Act 2013. Applications must be accepted provided they are submitted before the cut-off date and meet the requirements set out in this paragraph and paragraph 7. Paragraph 3 also deals with applications from existing postal voters to vote by proxy and existing proxy voters who wish to vote by post.

18. Paragraph 4 places a requirement on electoral registration officers to keep absent voters lists that comprise a list of all those entitled to a postal vote in the referendum (the postal voters list) and all those entitled to a proxy vote (the list of proxies). Sub-paragraph (4) requires that where someone has an anonymous entry in the register of electors, any entry in the absent voter’s list should include only the person’s voter number. Sub-paragraph (5) requires electoral registration officers to notify anyone who is removed from either of these lists, where it is practicable to do so, with the reason for their removal.

19. Paragraph 5 sets out the requirements for someone who votes as proxy for another voter. The voter can have only one person appointed as proxy to vote for them. The proxy cannot be someone who would be below voting age on the date of the referendum, who would be subject to any other legal incapacity to vote, or who does not fulfil the citizenship qualifications for a local government election. No one can vote as proxy for more than two people who are not their spouse, civil partner or other close family relation. There is a duty on the registration officer to make the appointment of a proxy provided the applicant is entitled to an absent vote and makes an application in accordance with paragraph 3, the nominated proxy is willing and able to be a proxy and the application meets the requirements set out in paragraph 7. These include provision of details of the person the applicant wishes to be appointed as their proxy. Sub-paragraph (10) allows a person to cancel the appointment of a proxy by giving notice to the registration officer.

20. Paragraph 6 sets out the requirements for voting as a proxy. The proxy can vote by post if they opt to have a postal vote, or they may vote at a polling station. Where someone has a proxy and the proxy opts to vote by post, the person who has the proxy is not allowed to apply for a ballot paper to vote at a polling station (other than a tendered ballot paper as described in rule 24 of schedule 3). He or she must rely on the proxy’s postal vote. However, where
someone has a proxy and the proxy does not opt to vote by post, the person may vote at a polling station, provided they do so before a ballot paper has been issued to their proxy (see paragraph 1(4)). Sub-paragraph (6) requires that where someone applies to the registration officer to vote by post as a proxy for someone else, the application must be granted if they are an existing proxy voter for that person and the application meets the requirements of paragraph 7.

21. Sub-paragraph (7) places a requirement on electoral registration officers to keep a proxy postal voters list comprising existing proxies who opt to vote by post and those whose applications under sub-paragraph (6) have been granted. Sub-paragraph (9) requires that where a voter has an anonymous entry in the electoral register, any entry in the proxy postal voter’s list should include only the person’s voter number. The proxy may only vote by post if they are named on that list. Sub-paragraphs (10) and (11) require the registration officer to retain details (name, date of birth and signature) of those who have applied for proxy votes under this paragraph until one year after the date of the referendum.

22. Paragraph 7 sets out the requirements for applications:
   i. From voters to vote by post
   ii. From voters to vote by proxy
   iii. From existing postal voters for their ballot paper to be sent to a different address
   iv. From existing postal voters to vote by proxy in the referendum
   v. From existing proxy voters to vote by post
   vi. From voters wishing to appoint a proxy to vote for them
   vii. From voters wishing to vote by post as proxy for someone else.
   viii. From proxies who wish to vote by post for their ballot paper to be sent to a different address.

23. Such applications must be made in writing before the cut-off date (sub-paragraph (2)). They must also include certain information such as the person’s name, date of birth and signature (unless a signature is not required due to a disability or inability to read or write), as set out in sub-paragraphs (3), (4) and (5). Sub-paragraph (6) sets out the requirements for the format of the applicant’s date of birth and signature on the application. Sub-paragraph (7) sets out the required details in relation to the person to be appointed as a voter’s proxy.

24. Sub-paragraphs (8) and (9) allow for emergency proxy applications, where someone becomes unable to vote in person at the polling station due to a disability that occurs after the cut-off date and that person wishes to appoint someone as their proxy. Such applications must be submitted before 5pm on the day of the referendum.

25. Paragraph 8 places an obligation on electoral registration officers to notify applicants for a postal or proxy vote whether the application has been accepted or not, and to give a reason if the application is refused.
26. Paragraph 9 requires the registration officer to supply as many forms as necessary to anyone wishing to use them in connection with registering to vote, or to applying for an absent vote, at the referendum. The forms must be free of charge. Paragraph 44 provides that the style of the form is as prescribed by the Chief Counting Officer.

27. Paragraph 10 requires registration officers to keep a record of the dates of birth and signatures of voters who have applied for a postal or proxy vote. This information must be made available to the relevant counting officer as soon as possible after the cut-off date. This information is used by counting officers to verify postal voting statements returned along with postal votes.

28. Paragraph 11 states that any entry relating to a voter or proxy who has opted to vote by post should be marked with the letter ‘A’ on any list of voters provided for use at a polling station. This highlights the fact that the voter is an absent voter and is not entitled to vote in person.

29. Paragraph 12 deals with registration appeals made under existing legislation about registering on the electoral register (i.e. under section 56 of the 1983 Act, including as that provision is applied in relation to the register of young voters). Sub-paragraph (1) states that until the appeal has been decided, any activity related to the referendum proceeds on the basis that there is no appeal. For example, if an individual is appealing against the registration officer refusing to register him or her, he or she is not entitled to a vote in the referendum.

30. Under sub-paragraph (2), if, when an appeal is decided it results in an alteration of the register of electors (which is usually carried out by means of a notice rather than by publication of a completely new register), any referendum-related activity should take place in light of the decision as represented by the notice. In other words, once the notice is issued the appeal decision should be acted upon, but until that point the appeal should be ignored.

Part 2: Registration

31. Part 2 of schedule 2 sets out the consequences of being registered to vote and the functions of registration officers.

32. Paragraph 13 prevents anyone who is registered in the electoral register (or who is on the list of proxies) from not being allowed to vote in the referendum on the grounds that they are ineligible to vote. However, if they are found later to be ineligible to vote, their vote can be rejected and they may be subject to pay a penalty for a voting offence. The effect of this is that the person’s entry in the electoral register or on the list of proxies is to be taken as prima facie evidence of his or her entitlement to vote.

33. Paragraph 14 prevents any minor error, such as a spelling error, in the electoral register or any of the other relevant documents used in relation to voting in the referendum from hindering the use of that document.

34. Paragraph 15 requires registration officers to carry out their functions in accordance with directions given by the Chief Counting Officer, which must in turn be in accordance with this
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Bill and all other legislation which currently applies to registration officers (mostly they are regulated under the Representation of the People Act 1983, particularly as amended by the Representation of the People Act 2000). It also allows a deputy registration officer to carry out a registration officer’s duties and in that event the provisions of the Bill apply to deputy registration officers. The paragraph also requires councils to provide staff to a registration officer to enable him or her to fulfil their functions under the Bill.

35. Under the provisions of paragraph 16, any alteration that is to be made to the electoral register within 5 days of the date of the referendum will have no effect in the referendum. Sub-paragraph (3) applies section 13B(2) to (6) of the Representation of the People Act 1983 to the referendum, the effect of which is that where an alteration is to take effect at least 5 days before the referendum but under the normal rules about alterations the notification would not be issued by that date, the registration officer must issue a notice of the alteration which takes effect on the day on which it is issued. This allows alterations to be made quickly so that counting officers are aware of every person who is entitled to vote.

36. Sub-paragraph (4) applies section 13BB of the Representation of the People Act 1983 to the referendum if the referendum is to be held during a canvass period. Section 13BB requires registration officers to publish notice of changes to the electoral register resulting from applications made during the canvass period.

37. Paragraph 17 requires electoral registration officers to create a list known as the ‘polling list’, merging the register of local government electors in their area with the register of young voters in their area. Once the registers are merged, it must not be possible to distinguish between young voters and other voters. The entries should display all of the information contained on the separate registers, except dates of birth. Under sub-paragraphs (5) to (7), electoral registration officers and their staff are prohibited from sharing the polling list with anyone who does not require a copy of the list for the purpose of registration functions in connection with the referendum or otherwise in accordance with the Bill, e.g. counting officers and the designated campaign organisations. The list must be securely destroyed one year after the poll, unless the Court of Session or a sheriff principal otherwise direct.

38. Paragraph 18 sets out the days that are not to be counted in working out the cut-off date of 11 days before the referendum by which certain things must be done for a voter to vote. These include weekends, Christmas Eve and Christmas Day, and bank holidays in Scotland.

Part 3: Postal voting: issue and receipt of ballot papers

39. Part 3 of Schedule 2 sets out the rules for the handling of postal ballot papers.

40. Paragraph 19 specifies that only the counting officer and their staff may be present at the issuing of postal ballot papers, though it protects the right of representatives of the Electoral Commission and accredited observers to attend. At the receipt of the postal ballot papers, counting officers and their staff may be present, along with these representatives and observers. However, referendum agents and their nominated attendees (‘postal ballot agents’) may also attend at the receipt stage (the maximum number of attendees will be determined by the counting officer and will be the same for each referendum agent). Notice of the appointment of a postal
ballot agent must be given to the counting officer in advance of the postal voters box being
opened.

41. Paragraph 20 requires the counting officer to ensure that anyone attending the issue or
receipt of ballot papers has been provided with a copy of the requirement of secrecy contained in
paragraph 7 of schedule 7.

42. Paragraph 21 states that postal ballots may be issued at any time after 5pm on the cut-off
date (11 days before the referendum, as defined in paragraph 18). In certain cases where the
application for a postal vote is approved after the cut-off date, the counting officer has a duty to
issue the ballot as soon as possible.

43. Paragraph 22 provides the rules for the issuing of postal ballot papers to the addresses
shown on the postal voters or proxy postal voters lists. The voter number (as specified in the
polling list) must be marked on the corresponding number list beside the unique identifying
number of the ballot paper issued to that voter. A mark must also be made on the postal voters
list or proxy postal voters list to denote that a ballot paper has been sent to that voter.

44. Under paragraph 23 a counting officer must issue only one ballot paper to a voter with
more than one entry in the postal voters list or proxy postal voters list.

45. Under paragraph 24 a counting officer must issue two envelopes to postal voters; an
envelope marked ‘A’ in which to put the completed ballot paper (‘the ballot paper envelope’);
and an envelope marked ‘B’ in which to return envelope A along with the postal voting
statement.

46. Paragraph 25 requires the counting officer to seal the corresponding number lists in a
packet after the issue of each batch of ballot papers, and to maintain the security of the marked
postal voters list and proxy postal voters lists up until that point.

47. Paragraph 26 provides that all postage costs for postal ballot papers must be pre-paid,
except return postage for postal voters whose ballot pack is sent to an address outside of the UK.

48. Paragraph 27 makes provision for a postal voter who accidentally spoils their ballot paper
or postal voting statement to return them, along with the envelopes supplied, to the counting
officer and to receive a replacement postal ballot pack. To receive a replacement ballot paper
after 5pm on the day before the poll, the ballot pack must be returned in person.

49. The counting officer must, under sub-paragraphs (6) and (7), immediately cancel any
returned postal ballot packs and put them into a sealed packet. Under sub-paragraph (9), the
counting officer must keep a ‘list of spoilt ballot papers’ detailing the name and number of the
voter and the ballot paper number, and, where the postal voter is a proxy, their name and address.

50. Paragraph 28 allows a postal voter who has lost or has not received their postal ballot
paper, postal voting statement or return envelopes by the fourth day before the poll, to apply to
the counting officer for a replacement in the same way as described in paragraph 27.
51. Paragraph 29 requires the counting officer to give at least 48 hours’ notice in writing to referendum agents of the opening of any postal ballot box and its contents. They must include details of the time and place and the number of postal ballot agents permitted.

52. Paragraph 30 requires the counting officer to provide separate boxes to collect covering envelopes and postal ballot papers, marked with their purpose and the name of the local government area. The box must be shown to any postal ballot agents to prove that it is empty before being locked and sealed by the counting officer (and any postal ballot agent who wishes to attach their own seal).

53. Sub-paragraph (5) requires the counting officer to provide separate containers for rejected votes, postal voting statements, ballot paper envelopes, rejected ballot paper envelopes, votes rejected during the verification procedure, and postal voting statements rejected during the verification procedure.

54. Sub-paragraph (6) requires the counting officer to ensure the safety and security of all of the boxes described in this paragraph.

55. Paragraph 31 requires the counting officer to place any returned postal vote covering envelopes (and any other envelopes which contain a ballot paper, ballot paper envelope or postal voting statement) immediately into a postal voters box.

56. Sub-paragraphs (3) and (4) allow the counting officer to collect, or arrange to have collected, any postal ballot papers which have been delivered to polling stations. These should be contained in packets, sealed by the presiding officer and any polling agent who wishes to attach their own seal.

57. Paragraph 32 states that each postal voters box must be opened by the counting officer in front of any postal ballot agents in attendance. As long as one box remains sealed to received covering envelopes until the close of poll, the counting officer may open the other boxes. The last postal voters box and the postal ballot box must be opened along with the counting of the rest of the votes under the conduct rules.

58. Paragraph 33 requires the counting officer to count and record the number of covering envelopes in each opened box, and to set aside at least 20% of each box for verification of the personal identifiers (signature and date of birth). The counting officer must then open each of the remaining covering envelopes, keeping the ballot papers face downwards. The counting officer must not be allowed to view the corresponding number list used at the issuing of the postal ballot papers.

59. Where the envelope is missing either a postal voting statement or ballot paper envelope (or, where there is no ballot paper envelope, is missing a ballot paper), the counting officer should mark the covering envelope ‘provisionally rejected’ and place it, with its contents attached, into the container for rejected votes.
60. Under sub-paragraph (9), where the envelope does contain a postal voting statement, the counting officer should mark the marked copy of the postal voters list or proxy postal voters list with a separate, clear mark, to highlight that the voter has returned their postal vote.

61. Sub-paragraph (11) requires the counting officer, once the last covering envelope has been opened, to make a sealed packet containing the marked postal voters list and proxy postal voters list.

62. Paragraph 34 allows anyone on the postal voters list or proxy postal voters list to request confirmation from the counting officer that their postal voting statement has been received at any time between the issuing of the postal ballots and the close of the poll.

63. Paragraph 35 requires the counting officer to check all postal voting statements which have not been set aside for verification and judge whether they have been properly completed. If the statement has not been properly completed, the counting officer should mark the statement ‘rejected’, attach it to the ballot paper envelope or ballot paper, show it to the postal ballot agents who may object to the counting officer’s decision (in which case the envelope should be marked ‘rejection objected to’) and add it to the container for rejected votes.

64. The counting officer must then compare the numbers on the postal voting statements with those on the ballot paper envelopes. If the numbers match, the postal voting statements and ballot paper envelopes should be placed in their respective containers. Where they do not match, or where there is a valid postal voting statement but no ballot paper envelope, the counting officer should mark the documents ‘provisionally rejected’ and put them in the container for rejected votes.

65. Paragraph 36 applies to envelopes which have been set aside for verification under paragraph 34. The counting officer must open the envelope and judge whether it has been properly completed, including comparing the signature and date of birth on the postal voting statement with those contained in the record of personal identifiers. Votes rejected under this paragraph should be placed in the rejected votes (verification procedure) container. The postal ballot agents must be shown the postal voting statement, permitted to view the personal identifiers record and may object to the decision, in which case the statement will be marked to show that the rejection was objected to.

66. Paragraph 37 allows the counting officer to check at any time the personal identifiers on a postal voting statement which has been placed in the postal voting statements container. If the counting officer is not satisfied that the signatures or dates of birth match, the statement should be marked ‘rejected’, shown to the postal ballot agents (who are permitted to object) and placed in the container for rejected votes (verification procedure), along with the corresponding ballot paper which should be retrieved from the postal ballot paper box. The counting officer must keep the ballot papers face downwards when retrieving them and re-seal the box in the presence of ballot paper agents.

67. Paragraph 38 requires the counting officer to open the ballot paper envelopes and place the ballot papers in the postal ballot box, except where the ballot paper envelope is empty, or where the number on the ballot paper does not match the number on the ballot paper envelope (in
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which case they should be marked ‘ provisionally rejected’ and placed in the containers for rejected ballot paper envelopes or the container for rejected ballot papers respectively).

68. Paragraph 39 allows the counting officer to retrieve any cancelled ballot paper which has been placed in a postal voters box, postal ballot box or the container for ballot paper envelopes.

69. Paragraph 40 requires the counting officer to keep a list of the ballot paper numbers of any postal ballot paper which was received without a corresponding postal voting statement; and a separate list of the ballot paper numbers of any postal ballot papers which were not received with the corresponding postal voting statement.

70. Paragraph 41 provides that where a postal voting statement is received with no attached ballot paper, or vice versa, the counting officer should check to see whether the corresponding papers are included on either of the lists described above. If the papers can be matched, the counting officer must act as though the papers had not been marked ‘ provisionally rejected’ and must treat the papers accordingly.

71. Paragraph 42 requires the counting officer, as soon as possible after the matching of papers under paragraph 41 above, to make up separate sealed packets containing the contents of the containers of rejected votes, postal voting statements, rejected ballot paper envelopes, rejected votes (verification procedure), postal voting statements (verification procedure), and the lists of spoilt and lost ballot papers.

72. Under paragraph 43, the counting officer is required to send all of the sealed packets to the proper officer of the local authority along with the other documents to be sent as part of the conduct rules in Schedule 3 and a statement of the contents and date. A copy of this statement should be provided to the Electoral Commission. Where any papers are received too late to be included in the packs the counting officer should package and send these separately.

73. Paragraph 44 allows the Chief Counting Officer to prescribe forms to be used under paragraphs 9 and 43. Where the forms are prescribed by the Chief Counting Officer, they may be used with such variations as circumstances require.

Part 4: Supply of polling lists etc.

74. Part 4 of Schedule 2 deals with the supply of polling lists and related documentation.

75. Paragraph 46 requires registration officers, at the request of the relevant counting officer, to supply to the counting officer the polling list, any notices of alterations to the register of electors, and any record of anonymous entries. Counting officers may request as many copies as they reasonably require for the purposes of the referendum, and the copies must be provided free of charge. Counting officers should also be provided with as many free copies of the postal voters list, list of proxies and proxy postal voters list as they may reasonably require. This includes a duty to supply one copy in data form. Where additional copies of any of the lists mentioned above are requested, printed copies should be issued. Anyone who receives a copy of a list under this paragraph is prohibited from supplying a copy, disclosing or making use of any
of the information contained in it which is not also available in the edited copy of the local
government register.

76. Paragraph 47 requires registration officers to supply free copies of the polling list and any
alterations, the postal voters list, the list of proxies, and the proxy postal voters list to the
Electoral Commission (in data form unless a paper copy is requested). The Electoral
Commission and their staff are subject to similar restrictions around disclosing the information
as registration officers under paragraph 45. The Commission may, however, use the information
contained in the register to fulfil their duties in relation to the permissibility of donors, and they
may also publish anonymised voter information.

77. Paragraph 48 allows registration officers to supply one copy of edited versions of the lists
(with voter numbers and anonymous entries removed) to the designated campaign organisations
on their making a request in writing. Unless specified by the designated organisation, the copy
will be provided in data form. These copies are to be used only for the purposes of campaigning
and complying with the controls on donations and regulated transactions in schedule 4.

78. Paragraph 49 requires registration officers to supply to permitted participants in the
campaign, on request, one copy of the full version of the local government register and any
alterations, the postal voters list, the list of proxies, and the proxy postal voters list. Permitted
participants are subject to similar restrictions as designated organisations, as above, on the
purposes for which the lists may be used.

79. Paragraph 50 confirms that the duty on a registration officer under this schedule is a duty
only to supply the data in the form in which the registration officer holds it.

80. Paragraph 51 is an additional general restriction on the use of registration documents by
those other than those for whom they are intended (for the purposes of this paragraph,
“registration documents” means the polling list, notices altering that list, record of anonymous
entries, postal voters list, list of proxies, or proxy postal voters list, or the edited equivalents of
these items as provided for by paragraph 48), stating that any person who receives a copy of such
a document must not supply any copies of that document, or disclose or make use of the
information contained in it.

81. Paragraph 52 deals with offences in relation to disclosures of registration documents. A
person is guilty of an offence if they breach any of the disclosure restrictions under this Part of
the schedule, unless they were under direction of a supervisor with whose instructions they
complied, or unless they took all reasonable steps to prevent the breach. An offence under this
paragraph carries a penalty, on conviction, of a fine.

82. Under paragraph 53, any person who holds a copy of a registration document under this
schedule must securely destroy the document no later than one year after the referendum, unless
the Court of Session or a sheriff principal orders otherwise. A person who fails to do so is guilty
of an offence, with a penalty of a fine if convicted.
Part 5: Supply of marked polling lists etc.

83. Part 5 of schedule 2 deals with the supply of marked polling lists (ie. the polling lists which were annotated on the day of the poll to show which voters were provided with a ballot paper). Paragraph 54 allows designated organisations to request the counting officer to supply them with a copy of the marked versions of the polling list, any notices setting out alterations to the polling list, the postal voters list, list of proxies, and proxy postal voters list. The request must be made for purposes in connection with the campaign in respect of the referendum, or of complying with the schedule 4 controls on donations and regulated transactions, and if these purposes are satisfied the counting officer has a duty to supply the requested copies. The copies under this paragraph are subject to the same conditions as unmarked copies.

84. Paragraph 55 sets out the fees to be paid in relation to the supply of copies under paragraph 54.

Conduct

85. Section 4 of the Bill provides for the appointment of the Chief Counting Officer (CCO). The CCO will be the person who, at the time the Bill comes into force, is convener of the Electoral Management Board unless there is no-one in post at the time or the person in post is unwilling or unable to act as the CCO. This section also provides for appointment of a replacement CCO if he or she dies, resigns or is removed from the post by the Scottish Ministers who have a limited power to remove the CCO on health grounds. The CCO has the power to appoint a deputy. Any appointees under this section (including the CCO) must be, or have been, a returning officer.

86. Under the provisions of section 5, the CCO must appoint a counting officer for each local government area and notify the Scottish Ministers. This section also provides for the appointment of replacement counting officers if one should die, resign or be removed from post by the CCO (who has power to remove a counting officer who cannot perform his or her functions, or who does not follow the CCO’s directions). Counting officers also have the power to appoint deputies.

87. Section 6 deals with the functions of the CCO and counting officers. The CCO is responsible for the proper and effective conduct of the referendum, including the conduct of the poll and the count of the votes. Each counting officer is responsible for conducting the poll and the count of votes in their local government area. The CCO must certify the total number of ballot papers in the referendum and the total number of votes cast in favour of each answer to the referendum question (section 6(4)), while the counting officers do the same for each local government area (section 6(2)) under the direction of the Chief Counting Officer. The CCO can give directions to counting officers with which they must comply. Local authorities are responsible for providing the CCO and counting officers with the property, staff and services they need to conduct the referendum (section 6(8) and (9)).

88. Section 7 gives the counting officers, including the CCO, a power to remedy, or correct, any act or omission which would constitute a procedural error by a relevant person (the persons listed in subsection (3)) and which is not in accordance with the requirements of the legislation.
This power does not extend to a re-count of the votes after a declaration of the result has taken place.

89. Section 8 deals with the expenses incurred by counting officers and the CCO. Counting officers, including the CCO, can recover their costs from the Scottish Ministers, up to a maximum amount to be set out in an Order made by the Scottish Ministers. The Scottish Ministers may provide monies in advance to the CCO and counting officers if they consider it appropriate to do so.

Schedule 3: Conduct rules

90. Schedule 3 to the Bill, introduced by section 9, sets out the conduct rules for the referendum.

91. To make voters aware of the arrangements for the referendum, rule 1 of schedule 3 requires each counting officer to publish notice of the referendum not later than the 25th working day before the date of the referendum. The notice must state the date of the referendum, details of who is entitled to vote, the hours of polling (7am – 10pm under the provisions of rule 2), the location of polling stations and the dates by which applications to register to vote and to vote by post and proxy (and other applications and notices about postal or proxy voting) must reach the registration officer. The counting officer must provide a copy of this notice to the referendum agents appointed for their area.

92. Under the provisions of rules 3, 4, 5, and 6, each voter will receive one ballot paper with a unique identifying number and a secret official mark. Counting officers must keep a ‘corresponding number list’ which records the unique identifying number of every ballot paper. The printing of the ballot papers should be arranged locally by counting officers unless the CCO takes over the printing arrangements.

93. Rule 7 gives counting officers a right to use rooms for the poll or for counting the votes, free of charge, in schools maintained by education authorities and other public meeting rooms maintained at a cost to the Scottish Ministers or most public authorities in Scotland. The counting officer must cover any associated expenses such as the lighting, heating or cleaning of the room.

94. Rule 8 places a duty on counting officers to issue postal voters with ballot papers and other associated documentation, including information about how to obtain directions or guidance for voters translated into other languages and Braille or in picture, audible or other formats.

95. Rule 9 places a duty on counting officers to provide enough polling stations and polling booths for the referendum and to allocate voters to polling stations appropriately. It is possible for more than one polling station to be in the same room.

96. Under Rule 10, counting officers must appoint and pay a presiding officer and clerks (as needed) for each polling station. People who have been involved in campaigning for an outcome in the referendum are excluded from undertaking these roles. A counting officer may act as a
presiding officer at a polling station and the rules applying to presiding officers also then apply to a counting officer who does that. The presiding officer can authorise a clerk to do anything the presiding officer can do under these rules, except remove and exclude persons from the polling station.

97. Rule 11 places a duty on counting officers to issue the following to voters as necessary, and to the appropriate address:
   - A poll card
   - A postal poll card
   - A poll card to a proxy
   - A postal poll card to a proxy.

98. Poll cards include the voter’s name, address and electoral register number (unless they have an anonymous entry on the electoral register) and inform the voter of the date of the poll, the hours of polling and the polling station at which they should vote (where applicable). Where the voter has appointed a proxy, the poll card should confirm this.

99. Rule 12 places a duty on local authorities to lend ballot boxes and other relevant equipment to counting officers on terms and conditions which they agree.

100. The counting officer has a duty to provide presiding officers at polling stations with enough ballot boxes (designed to ensure that no ballot papers can be removed from the box without opening it) and ballot papers as necessary for the referendum, and materials for voters to mark their ballot papers, under the provisions of rule 13. Counting officers are to provide each polling station with the documentation needed to run the poll, including the polling list of voters for that area, a list of the postal and proxy voters for the area, the relevant part of the corresponding number list and any notices, declarations or other documents needed for the poll.

Procedures to be followed at polling stations

101. Rule 13 further provides that information to help voters with the voting process is to be displayed inside and outside the polling station and in every polling booth. To help voters who have a visual impairment, an enlarged sample copy of the ballot papers is to be made available, along with a device for enabling voters who are blind or partially sighted to vote without any assistance. The counting officer also has a power to display an enlarged copy of the ballot papers, marked as a specimen copy, translated into other languages as they deem appropriate for that area.

102. Rule 14 allows referendum agents to appoint polling agents or counting agents to attend the poll or the count. Referendum agents must give the counting officer notice of the appointments by the 5th day before the referendum. The number of counting agents allowed to attend the count may be limited by the counting officer, provided that each referendum agent is permitted an equal number, and that number is not less than the number of clerks employed divided by the number of referendum agents. A referendum agent may also undertake the duties of a counting or polling agent under this section. If an agent appointed under this section fails to
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attend to witness the proceedings, this does not invalidate the process so long as it is otherwise conducted properly.

103. Rule 15 lists the people who are allowed to be admitted to a polling station. The presiding officer of the polling station has overall control on how many voters and any children they may have with them may be admitted to the polling station at any one time. Each permitted participant in the referendum cannot have more than one polling agent representing them in the polling station at any time.

104. The counting officer’s staff and police constables on duty at a polling station are allowed to vote at a polling station other than the one they were allotted provided they have a certificate to do so.

105. Under the provisions of rule 16, counting officers must ensure that everyone at a polling station, other than voters and those accompanying them, and police constables, has been given a copy of the information in sub-paragraphs (1), (3), (5), (7), (8) and (9) of paragraph 7 of schedule 7 to the Bill. These sub-paragraphs all relate to the need to ensure that each person’s vote in the referendum remains secret. Before the poll closes, they are not to discuss or reveal the name or electoral registration number of anyone who has or has not requested a ballot paper. The official mark on every ballot paper (under the provisions of schedule 3, rule 6) must not be discussed either (sub-paragraph (3) of paragraph 7 of schedule 7). Nor should they (under sub-paragraph (5)):

- make any attempt to interfere with a voter when recording their vote
- make any attempt in the polling station to find out how the voter intends to vote or has voted
- discuss with anyone how a voter intends to vote or has voted
- discuss the ballot paper number on the back of a voter’s ballot paper
- cause a voter to display a marked ballot paper which might reveal how they have voted or intend to vote in the referendum.

106. If they are required to help a voter with disabilities to vote in the referendum, they should not reveal to anyone how the person has voted or intends to vote, or the unique identifying number on the back of the ballot paper (sub-paragraph (7)).

107. The final piece of information, contained in sub-paragraphs (8) and (9), that counting officers are required to give to everyone at the polling station, is that if they fail to adhere to these requirements they commit an offence. The penalty for the offence is a maximum of 12 months imprisonment or a fine up to level 5 on the standard scale.

108. Rule 17 imposes a duty on the presiding officer to keep order at the polling station and a power to remove anyone who does anything to stop the polling station from operating effectively; such a person can be removed either by the presiding officer or a police constable and may not enter the polling station again that day, other than to vote. If they are charged with
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an offence they may be taken into custody without a warrant. The presiding officer cannot remove someone if it would prevent a voter from voting.

109. Rule 18 sets out the procedures for dealing with the ballot boxes during the poll. Before the poll opens, the presiding officer must demonstrate to anyone present that the ballot boxes are empty and then they must place the presiding officer’s seal on the box in such a way that if the box is opened, the seal would be broken. This verifies to everyone that the box has remained closed and not been tampered with by anyone during the poll. The box must be visible to the presiding officer at all times during the poll for the same reason and it must remain sealed until after the poll closes and it is delivered to the counting officer for the count of the votes.

110. Rule 19 provides the questions that must be put to voters by the presiding officer when they arrive at the polling station to vote, if a referendum agent or polling agent requires it or the presiding officer considers it appropriate to do so. There are different questions for voters applying to vote in person and those applying to vote as proxy. Only the questions set out in this paragraph of schedule 3 may be asked about a voter’s eligibility to vote. The person’s answers to the questions help the presiding officer to determine whether the voter is eligible to vote and whether they should be given a ballot paper to vote in the referendum.

111. Rule 20 makes provision for circumstances where someone declares that the voter is not who they claim to be or the voter is arrested on suspicion of committing or being about to commit an offence of personation. These situations are not to be treated as reasons to prevent the voter from voting.

112. Under the provisions of rule 21, provided an eligible voter has answered the questions put to them under rule 19 satisfactorily, the voter must be given a ballot paper. Before handing a ballot paper to a voter, the staff at the polling station should declare the voter’s name and number as it appears in the polling list and then write the voter’s number against the number of the ballot paper contained in the corresponding number list. This ensures that there is a record of that ballot paper being given to that voter. In the copy of the polling list, the voter’s name should be marked to show that they have received a ballot paper and if the voter is voting as proxy, a mark should be put against their name in the list of proxies. If the voter has an anonymous entry in the electoral register, only their number should be called out.

113. Having received a ballot paper the voter is required to go immediately to a polling booth to vote, cast their vote, show the ballot paper number on their ballot paper to the presiding officer and then, in the presence of the presiding officer, put their ballot paper in the ballot box provided. They must then leave the polling station. Where a voter arrives at the polling station before 10pm, but is still in waiting to vote at 10pm, the presiding officer must allow them to vote after the normal 10pm deadline. The polling station must be closed immediately after the last such voter has voted.

114. If a voter asks for help to cast their vote because of an inability to read or because of a disability such as blindness, rule 22 places a duty on the presiding officer, in the presence of any polling agents, to ensure that their vote is cast as they wish to vote and their ballot paper is placed in the ballot box. The voter’s name and number from the polling list is to be marked in a ‘marked votes list’ along with the reason for the entry in that list.
115. Rule 23 covers other circumstances under which a voter who is unable to read, is blind or has a physical disability may vote. If the voter asks the presiding officer to vote with the help of a companion, the presiding officer will ask them to explain the reason for needing assistance. The companion must complete a form, prescribed by the CCO, stating that they are the parent, grandparent, brother, sister, spouse, civil partner, child or grandchild of the voter, aged 16 or over, and eligible to vote in the referendum. The presiding officer cannot charge a fee for the declaration, and must sign and keep it.

116. If the presiding officer is satisfied that the voter needs assistance and that the companion is eligible to fulfil the role, the request must be granted. If an application has been granted, the voter’s name and number from the polling list and the companion’s name and address must be marked in an ‘assisted voters list’. If someone is voting by proxy in this way, the number to be entered is the voter’s number. If the voter being assisted by the companion has an anonymous entry in the electoral register, only the voter’s number is to be entered in the assisted voters list.

117. Rule 24 sets out four situations which may occur where there is doubt that the person is eligible to vote in the referendum. These situations, set out in paragraphs (2) to (5) are where:

- someone claiming to be a voter (but not named on the postal voter or proxy voter lists) or claiming to be a proxy voter (but not a postal proxy voter) asks for a ballot paper after someone has already voted as that person either in person or as a proxy voter
- someone asking for a ballot paper claims to be a voter on the polling list, is named in the postal voters list and claims that either they have not applied to vote by post in the referendum or that they are not an existing postal voter (under schedule 2, paragraph 2(2))
- someone asking for a ballot paper claims to be a proxy voter in the list of proxies, is named in the proxy postal voters list and claims that either they have not applied to vote as proxy in the referendum or that they are not an existing postal proxy voter in local government or Scottish Parliament elections (under schedule 2, paragraph 6(4))
- someone claims after the last time for replacement postal ballot papers, but before the close of the poll, that they have lost or never received a postal ballot paper and they claim that they are named on the polling list and the postal voters list or that they are a proxy voter in the list of proxies and named in the postal proxy voters list.

118. In all four of the situations described above the person would be allowed to complete what is known as a tendered ballot paper, provided they answered the questions set out in rule 19 to the satisfaction of the presiding officer.

119. In these circumstances, the person will receive a ballot paper of a colour prescribed by the CCO that is different to the colour of the normal ballot paper used in the referendum. Once they have marked their vote, the ‘tendered ballot paper’ is given to the presiding officer who will write the voter’s name and voter number on the ballot paper. The ballot paper is not placed in the ballot box, but is instead placed in a separate packet and kept to one side. Such votes are not counted towards the declared result of the referendum. The voter’s name and voter number is then entered on a list known as the ‘tendered votes list’ (paragraph (8)). If someone is voting as
proxy for a voter in these circumstances, the voter’s number is entered on the tendered votes list (paragraph (9)). Where someone has an anonymous entry in the electoral register, the same procedure is to be followed, except that only the voter’s number would be entered in the tendered votes list (paragraph (10)).

120. Rule 25 deals with ballot papers that have been inadvertently spoiled. If the voter makes an error or the ballot paper cannot be used for some other reason, the original ballot paper must be returned to the presiding officer of the polling station and immediately cancelled and a new ballot paper issued.

121. Under Rule 26, the presiding officer must keep a list, known as the ‘polling day alterations list’, of people who receive ballot papers because they have had their entry in the electoral register altered on the day of the poll itself (done by issuing a late notice of alteration under the Representation of the People Act 1983, including that Act as applied by the Scottish Independence Referendum (Franchise) Act 2013 in relation to the register of young voters) and are then eligible to vote at the referendum.

122. Rule 27 provides a procedure which the presiding officer is to follow if proceedings at the polling station are interrupted by riot or open violence. The presiding officer will close the polling station until the next day and let the counting officer know immediately what has happened. The poll will be adjourned and the polling station will observe the same opening hours the following day.

123. Under the provisions of Rule 28, as soon as possible after the poll closes, the presiding officer must seal each ballot box using the presiding officer’s own seal, so that no more votes can be cast. Separate packets are to be sealed containing:

- unused and spoilt ballot papers
- tendered ballot papers
- marked copies of the polling list, marked copy notices and the list of proxies (all in one packet)
- certificates from police constables or the counting officer’s staff who voted at a polling station instead of the one they were allotted
- the completed corresponding number list. This is to be in a different packet from the one containing the marked copies of the polling list (as is the list of certificates from police constables and counting officer staff)
- the tendered votes list and other specified lists
- any postal ballot papers or postal voting statements returned to the polling station.

124. The presiding officer must include a statement with the packets, known as the ‘ballot paper account’ which provides a count of the ballot papers the presiding officer was given, the number issued and not otherwise accounted for, unused ballot papers, spoilt ballot papers and the tendered ballot papers.
125. The sealed ballot boxes and the packets are then to be delivered to the counting officer. If the presiding officer does not deliver the ballot papers in person, the counting officer must approve any alternative delivery arrangements.

126. Rule 29 places a duty on counting officers to make arrangements for the count of votes as soon as possible after the close of the poll and to publish a notice stating where and when the count will take place. There is also a duty on the counting officer to ensure that the ballot boxes and packets are kept secure from the time he or she assumes responsibility for them until the count gets underway.

127. Paragraph (5) sets out the categories of people who are allowed to attend the count. As with polling and counting agents, counting officers may limit the number of permitted participants’ agents (‘counting agents’) at the polling stations or the count of votes, but they cannot favour one permitted participant over another – they would have to ensure that each permitted participant could have the same number of counting agents present.

128. Before the count of votes for each referendum outcome can start, the counting officer must check the number of votes to be counted from each ballot box against the number of ballot papers delivered and recorded on the ballot paper account by the presiding officer of each polling station. Rule 30 sets out the procedure for this. Each ballot box must be opened with any counting agents present, and the ballot papers it contains counted and recorded (paragraph (1)). The number of ballot papers is to be checked against the ballot paper account supplied by the presiding officer for that box. The ballot paper account is then verified, again with counting agents present, by comparing its totals with the number of ballot papers recorded, the unused and spoilt ballot papers and the tendered votes list. The packets containing the unused and spoilt ballot papers and the tendered votes list are then resealed. The counting officer must then prepare a statement, known as the ‘verification statement’ that records the totals of these counts against the ballot paper accounts provided by presiding officers of the polling stations (paragraph (2)).

129. The number of postal ballot papers is also counted and recorded. Postal ballot papers cannot be included in the count unless they have been delivered by hand to a polling station in the right local authority area or posted to the counting officer before the close of the poll. A postal voting statement that is signed (unless no signature is needed due to a disability or inability to read or write) and includes the voter or proxy’s date of birth must be included with the postal ballot paper (paragraph (4) of rule 30).

130. Under paragraph (5), before the count of votes can start, postal ballot papers must be mixed with the ballot papers from at least one ballot box. Ballot papers in a ballot box must be mixed with the ballot papers of at least one other box. (This prevents anyone from being able to tell from observing the count how voters in a particular locality have voted in the referendum.) Only then can the count of votes for each outcome in the referendum get underway.

131. No tendered ballot paper is to be counted. No postal vote can be included in the count if the counting officer, having verified the personal identifiers (the voter or proxy’s signature and date of birth), is not satisfied that the postal voting statement has been completed correctly.
132. The counting officer must make every effort to ensure that no one can identify the voter that cast a particular vote in the referendum.

133. Rule 29(1) provides that the counting officer must arrange to count the votes as soon as practicable after the close of the poll, which should usually mean that counting begins before midnight on polling day. The counting officer is responsible for the security of the ballot papers during the period between close of the poll and the start of the count. The count should normally proceed to a conclusion, but rule 30(9) allows the counting officer to exclude counting between 7pm on any day after the day of the poll and 9am the following morning.

134. Rule 31 deals with ballot papers that are rejected from the count because they do not bear the official mark, they provide a vote both for and against the referendum question, they include anything that identifies the voter (other than the printed number on the back of the ballot paper) or they are unmarked or the person’s voting intention is unclear. The counting officer must mark these papers rejected (and, if any counting agent objects to the counting officer’s decision, mark them ‘rejection objected to’), and prepare a statement that records the numbers of ballot papers rejected in these ways.

135. Paragraph (3) gives the counting officer the power to decide whether a vote can be counted if the voter’s cross is not where it should be on the ballot paper, they marked the paper without using a cross or if they marked the paper more than once. So long as the voter’s intention is clear, the counting officer may decide to include the ballot paper in the count of votes. However the vote cannot be counted if it is possible to identify the voter from the ballot paper.

136. Rule 32 gives the counting officer a duty to count the votes for and against the referendum question.

137. Rule 33 gives the counting officer final authority to decide any question that arises in respect of a ballot paper.

138. Rule 34 gives both the counting officer and the CCO the power to have votes re-counted and re-counted again if they consider it appropriate to do so.

139. Once the count of votes in their area has been concluded to the counting officer’s satisfaction, under rule 35, the counting officer has a duty to immediately provide the CCO with the total number of votes counted, the number of votes cast for and against the referendum question, the details of the verification statements that relate to the ballot paper account and the details of the rejected ballot papers statement. Once authorised by the CCO, the counting officer must then announce the local result.

140. Once the CCO has received the local information for every area and is satisfied that no re-counts are required, he or she must declare the result of the referendum for the whole of Scotland which includes the number of votes counted, and the number of votes cast for and against the referendum question and the number of rejected ballot papers.
141. Once the CCO has confirmed that no recount is required, each counting officer is required as soon as possible under rule 36 to seal separate packets containing counted ballot papers and rejected ballot papers. Counting officers are not to open the packets containing tendered ballot papers, the corresponding number lists, the certificates presented by police constables and those working at polling stations and the marked copies of the polling lists and any marked copies of the notices of late alterations to the register of electors. Once the papers have been sealed, rule 37 requires the counting officer to add a label to each packet that describes their contents and includes the date of the referendum, and to send them to the proper officer of the local authority for which the ballot papers were counted. The proper officer has responsibility for custody of these kinds of documents under existing local government electoral legislation. The package of papers to be sent must include packets of the following:

- the packets of ballot papers
- the ballot paper accounts from each polling station, the rejected ballot paper statement and the verification statements
- the tendered votes list, the assisted votes list, the marked votes list, the polling day alterations lists and the companion declarations
- the completed corresponding number lists
- the certificates presented by police constables and those working at polling stations under rule 15
- the marked copies of the polling lists and marked copies of the notices of late alteration of the register.

142. The proper officer of the local authority is then required under rule 38 to keep all of the papers for one year after which they must be destroyed unless they are required to keep them for longer by order of the Court of Session or a sheriff principal.

143. With the exception of the ballot papers, the corresponding number lists and the certificates submitted by police constables and those working at polling stations, all the papers must be made available for public inspection as the officer of the local authority sees fit. Anyone who wishes to inspect the papers must not copy them or record any information from them; to do so would be an offence. They are, however, allowed to take handwritten notes about them.

144. Under rule 39, the CCO must keep any certifications made by the CCO or by counting officers under section 6 regarding the results of the referendum. These are to be made available for public inspection as determined by the CCO.

145. If someone is being prosecuted for an offence relating to any ballot papers, under rule 40 the Court of Session or a sheriff principal may order inspection of any rejected ballot papers, corresponding number list, employment certificate or ballot paper that has been counted. The Court or sheriff principal can place conditions on who, when, where and how the inspection of these papers may take place. The way in which a voter voted should not be revealed until it is proved that the vote was given and a court has declared the vote to be invalid. Any appeal against a sheriff principal’s order would be heard in the Court of Session.
146. When the officer of the local authority produces a document in relation to the case, it is to be taken as conclusive evidence that the document relates to the referendum. Anything written on the packet in which the document is kept is to be taken as evidence that the ballot papers in that packet are what is written on the packet (unless there is evidence to the contrary). When the officer of the local authority produces a ballot paper or corresponding number list in relation to a case, these documents are to be taken as evidence that the voter who voted using the ballot paper was the same person whose voter number appears in the corresponding number list against the number of that ballot paper (again unless there is evidence to the contrary).

147. Other than for the purposes of a prosecution relating to an offence, no one is allowed to inspect any counted or rejected ballot papers or open any sealed packet containing the corresponding number list or the employment certificates provided by police constable or people working at polling stations on the day of the referendum.

148. Rule 41 allows the CCO to prescribe the forms necessary for the referendum.

Schedule 4: Campaign rules

Part 1: Interpretation

149. Section 10 introduces schedule 4 to the Bill which provides for the rules which govern campaigning at the referendum. Paragraph 1 contains definitions of words and phrases used in the schedule.

Part 2: Permitted participants and designated organisations

150. Paragraph 2 of schedule 4 provides that if an individual or an organisation (including a political party) wishes to spend more than £10,000 (a limit set by schedule 4, paragraph 17) on campaigning, they will have to declare to the Electoral Commission that they wish to be a ‘permitted participant’ and identify the outcome they will campaign for at the referendum. Paragraph 2 also sets out the criteria that individuals and bodies must fulfil to be eligible to become permitted participants.

151. Paragraph 3 sets out the requirements for the declarations. Declarations made by a registered political party must be signed by the responsible officers of the party (usually the treasurer) or in the case of a minor party (one that contests only one or more parish or community election in England and Wales) it must include the name of the person who will be responsible for the party’s compliance with the referendum campaign rules.

152. Declarations made by individuals wishing to become permitted participants must be signed by the individual and give their full name and home address.

153. Declarations made by other organisations, known as ‘qualifying bodies’ must be signed by the secretary or similar office bearer of the body and must include the name and address of the organisation, including, in the case of a company, its registered number.

154. Paragraph 4 places a duty on the Electoral Commission to create and maintain a register of declarations made by registered parties, individuals and other organisations who wish to
become permitted participants in the referendum. The register must not include the home address of an individual who has made a declaration.

155. Paragraphs 5 and 6 provide that a permitted participant may apply to the Electoral Commission to be the principal campaign organisation representing one of the outcomes of the referendum. These permitted participants are called ‘designated organisations’ and have a higher campaign spending limit (full limits are set out in paragraph 18). Paragraph 6 specifies the form that applications must take and makes clear that even where an application has been made only in respect of one outcome, the Electoral Commission should make the designation provided they are satisfied that the applicant is genuinely representative of those campaigning for that outcome. The Commission may designate an organisation in relation to one or both outcomes.

156. Under paragraph 7, designated organisations are entitled to use school rooms or meeting rooms in publicly maintained buildings for public campaign meetings during the four-week period before the referendum is held.

157. Paragraph 8 requires the designated organisation to contact the education authority in advance if they wish to use a school room and entitles them to inspect a list of the rooms that are available for them to use.

Part 3: Referendum expenses

158. Paragraph 9 defines referendum expenses as any of the activities specified in paragraph 10 which are incurred in the running or conduct of a referendum campaign, or are incurred in connection with the promotion of any particular outcome in the referendum.

159. Paragraph 10 sets out different types of activities which qualify to be counted as referendum expenses (including campaign broadcasts, advertising, material addressed to voters, market research or canvassing, press conferences or media dealings, transport, rallies or public meetings). Sub-paragraph (2) confirms that the definition of referendum expenses does not extend to any expenses which fall to be met out of public funds, any campaign staff costs, any expenses incurred by an individual which are not reimbursed, or any expenses related to the publication of material about the referendum which is not an advertisement.

160. Sub-paragraph (3) gives the Electoral Commission a power to issue guidance on the different kinds of expenses that qualify as referendum expenses, and requires them to provide a copy of this guidance to Scottish Ministers, who will lay a copy before the Scottish Parliament.

161. Paragraph 11 deals with the concept of notional referendum expenses, where an individual or body is given property or allowed to use property, services or other facilities either free of charge or at more than 10% discount from the market rate for their use, for the purposes of campaigning for an outcome in the referendum. Notional expenses are counted towards the referendum expenses limit of the individual or body. There are four situations where notional expenses are calculated:

i. Where a property is provided free of charge, the ‘appropriate amount’ of expenses is calculated as a reasonable proportion of the market value of the property taking into account the use of the property.
ii. Where the property is provided at a discount of more than 10%, the appropriate amount of expenses is the reasonable proportion of the difference between the market value of the property and the amount actually spent.

iii. Where property, services or other facilities are provided free of charge, the appropriate amount of expenses is calculated as a reasonable proportion of the commercial rate for their use of the property taking into account the use of the property.

iv. Where property, services or other facilities are provided at a discount of more than 10%, the appropriate amount of expenses is the reasonable proportion of the difference between the commercial rate for their use and the amount actually spent.

162. Where an employer makes the services of an employee available to the individual or body, the notional referendum expenses are taken to be the person’s salary (but not other payments such as bonus payments for example) during the time they are working on behalf of the individual or body.

163. The effect of sub-paragraphs (9) and (10) is that only the proportion of the expenses incurred for the use of the property, services, facilities or employees during the referendum period is to be declared by a permitted participant in a return to the Electoral Commission. Only expenses of over £200 need be declared. Under sub-paragraph (12), someone who makes a false declaration in the return commits an offence. Notional referendum expenses do not include the costs associated with the transmission of a referendum campaign broadcast, the mailshot of referendum material, or the use of public rooms under paragraphs 7 and 8 for designated organisations. Time or services given voluntarily by an individual are also excluded.

164. Paragraph 12 requires that any expenditure incurred on behalf of a permitted participant must have the authority of the responsible person (e.g. its treasurer or other named officer as defined in schedule 8) or someone authorised in writing by the responsible person. Anyone who spends money without this authority commits an offence.

165. Similarly, paragraph 13 requires that any payment made by the permitted participant in connection with referendum expenses must have the authority of the responsible person or someone authorised in writing by the responsible person and there must be an invoice or receipt for any payment over £200. When a payment of over £200 is made by someone authorised by the responsible person, they must notify the responsible person that the payment has been made and give them the relevant invoice or receipt. If anyone fails to follow these rules they commit an offence.

166. Paragraph 14 requires someone with a claim for payment of referendum expenses to submit it to the permitted participant’s responsible person or someone authorised by the responsible person within 30 days of the date of the referendum. Claims can be submitted beyond the 30 day period if the Electoral Commission agree that there are special circumstances for doing so. All other claims must be paid within 60 days of the date of the referendum. Paying a claim after that time is an offence. Paying a claim that should not be paid is also an offence. Any other rights a creditor of the permitted participant may have in relation to payment (for example right to earlier payment under a contract agreed by the creditor and permitted
participant) are not affected by the timescale for payment of not later than 60 days after the referendum period.

167. Sub-paragraph (8) of paragraph 14 applies section 77(9) and (10) of the Political Parties, Elections and Referendums Act 2000, to prevent the 30 and 60 day periods from ending on a Saturday, Sunday or other national day of thanksgiving, mourning or holiday.

168. Where the permitted participant’s responsible person (or someone allegedly authorised to incur the expenditure) fails or refuses to pay a claim for referendum expenses within 60 days of the date of the referendum, this is known as a ‘disputed claim’. Paragraph 15 allows the person who made the claim to bring a court action to decide whether the claim ought to be paid, whether the 60 day period has passed or not. The court may consider whether there is a special reason for the claim to be paid if it was submitted after the 30 day period was over. Paragraph 16 confirms that the rights of the creditors of permitted participants to receive payments due to them are not affected by a permitted participant having incurred expenditure or spent money when prohibited by the campaign rules in schedule 4 from doing so, so long as the creditor was unaware that the contract or expenditure contravened those rules.

169. Paragraph 17 sets a spending limit of £10,000 in the referendum campaign for individuals or bodies that are not permitted participants. Sub-paragraphs (8) to (10) include within the £10,000 limit the appropriate sum of notional referendum expenses for property, services or facilities incurred before or during the referendum period. If that limit is exceeded, then the individual or body is guilty of an offence, and in the case of a body, the person who authorised the expenses is also guilty of an offence if they knew or should have known that the limit would be exceeded as a result of the payment. It is a defence for an individual or body to show that they complied with a code of practice issued by the Electoral Commission at the time of deciding whether to incur the expense, and in so doing, hadn’t exceeded the spending limit at that time.

170. Paragraph 18 sets out the spending limits for permitted participants. Where a permitted participant is a designated organisation they will have a campaign spending limit of £1,500,000. Permitted participants who are registered political parties and for whom constituency and regional votes were cast in the election for the Scottish Parliament held in 2011 will have a spending limit of either £3,000,000 multiplied by their percentage share, or a minimum of £150,000. Permitted participants who are not political parties will have a limit of £150,000. If a permitted participant is a member of a designated organisation (but not the organisation itself) that will not affect their separate entitlement to incur expenditure up to their own limit. Sub-paragraphs (8) to (10) of paragraph 17 also apply to these spending limits the notional appropriate sum of property, services or facilities incurred before or during the referendum period. Any referendum expenses incurred before the individual or body became a permitted participant also count towards the spending limit and should be noted in an expense return to the Electoral Commission.

171. Breach of the spending limits is treated as an offence, in the case of a political party both by the party itself and by its responsible person or deputy treasurer. If the permitted participant is an individual, then the individual is guilty of the offence and if the permitted participant is some other body, then both the body and the responsible person are guilty of the offence if the spending limits are exceeded. As with those who are not permitted participants, it is a defence to
show that they had complied with a code of practice issued by the Electoral Commission at the
time of deciding whether to incur the expense, and in so doing, had not exceeded the spending
limit at that time.

172. To prevent an organisation or body declaring themselves a permitted participant under a
number of different names in order to take advantage of multiple spending limits, paragraph 19
treats referendum expenses incurred by two or more permitted participants working together to a
common plan or arrangement as counting towards the spending limits of each permitted
participant. This is a common plan or arrangement where more than one individual or body aim
to promote a particular outcome at the referendum and incur expenses in doing so. Such
expenditure also counts towards the spending limit of a non-permitted participant, if one is
involved in the common plan or arrangement.

173. Paragraph 20 requires each permitted participant to provide a report to the Electoral
Commission about its finances including its spending, any disputed claims in which it was
involved, unpaid claims and any relevant donations it has received (with the exception of
registered political parties which are required under UK legislation to submit a return about their
donations to the Electoral Commission). This report or ‘return’ must include all invoices and
receipts in relation to expenditure and a statement identifying the amount of any notional
referendum expenses incurred. The return need not include details of, but must be accompanied
by a declaration of the total amount of, any referendum expenses incurred before the individual
or body became a permitted participant. The Electoral Commission has a power under sub-
paragraph (10) to issue guidance about the form to be used for the return. Those who are not
permitted participants do not need to submit a return to the Commission.

174. Paragraph 21 requires designated organisations that have spent over £250,000 to submit
an auditor’s report on their financial return to the Electoral Commission. If the designated
organisation fails to appoint an auditor within 3 months after the referendum took place, the
Commission has the power to appoint an auditor and recover the costs of doing so from the
designated organisation. The auditor has the right to access the designated organisation’s books
and other paperwork, and the responsible person must provide any relevant additional
information, that the auditor requires for the purposes of the audit. If the responsible person fails
to do so, the Commission may write to them to require them to do so. If the responsible person
fails to comply with the written directions of the Commission, the Commission can apply to the
Court of Session to deal with the person as if they had failed to comply with a court order. A
deliberately misleading, deceptive or false statement, whether oral or in writing by the
responsible person to an auditor about the finances of the designated organisation is an offence.

175. Under paragraph 22, returns to the Commission must be submitted along with any
auditor’s report required within 6 months of the date when the referendum took place. Returns
that do not need an auditor’s report must be submitted to the Commission within 3 months.
Where the Electoral Commission decides that, due to special circumstances, a claim for expenses
that was submitted after the 30 day deadline should be paid (under paragraph 14), the responsible
person must, within 7 days of the payment, submit to the Commission a return detailing the
payment. The responsible person commits an offence by failing to comply with the requirements
of this paragraph.
176. Paragraph 23 requires the responsible person to sign the return and provide a declaration along with it to the effect that he or she has examined the return and to the best of his or her knowledge and belief it is complete and correct and all expenses in the return have been paid by the responsible person or someone authorised by him or her. Where the permitted participant is not a registered political party, the declaration must also state that all relevant donations recorded in the return have been accepted from permissible donors and that no other donations have been accepted. The responsible person commits an offence if he or she knowingly or recklessly makes a false declaration in the return.

177. Paragraph 24 requires the Commission to make a copy of the returns it receives from permitted participants available for public inspection while the return is in the Commission’s possession. The Commission must ensure that where a donor is an individual rather than an organisation, the donor’s address is not made public in the statement of relevant donations. A similar restriction applies where the return contains information about a regulated transaction. If the transaction was entered into with an individual, the individual’s address should not be made public. The Commission has a power to destroy returns and any other papers it receives once two years have passed since it first received them, or else at the responsible person’s request the Commission must send the return and other papers back to the permitted participant.

Part 4: Publications

178. Paragraph 25 provides that, for the 28 day period before the date of the referendum, the Scottish Ministers and certain public authorities in Scotland cannot publish any material providing general information about the referendum, dealing with issues raised by the question to be voted on in the referendum, putting any arguments for or against a particular answer to the question to be voted on, or which is designed to encourage voting in the referendum. However, this rule does not apply to information made available following a specific request, any information from the Electoral Commission, a designated organisation or the Chief Counting Officer or any other counting officer, or to any published information about how the poll is to be held.

179. Under paragraph 26, printed material associated with the referendum cannot be published unless it meets the following requirements:

- If the material is contained on a single side of a printed page, then the name and address of the printer, the promoter and the person on behalf of whom the material is being published must be on the face of the document
- If the printed material is not on a single sided page, then those names and addresses must appear on the first or last page of the document
- If the printed material is a newspaper or periodical advertisement, then the name and address of the printer of the newspaper or periodical must appear on its first or last page and the names and address of both the promoter and the person on behalf of whom the material is being printed must be in the advertisement.

180. The paragraph also prevents any non-printed material associated with the referendum, such as material on the internet, from being published unless it includes the name and address of the person on behalf of whom the material is being published. There is an exception where it is not practical to comply with these requirements; an example might be very small advertisements.
These documents relate to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

181. If any printed material is published without meeting the requirements, then the promoter of the material, the printer, and any person who publishes it are all guilty of an offence. If any non-printed material fails to meet the requirements, then the promoter of the material and publisher are guilty of an offence. In both cases, it is a defence to show that circumstances beyond the person’s control caused the offence to be committed and that they took all reasonable steps to avoid committing an offence.

182. Paragraph 27 applies the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 in relation to the display on any site of an advertisement relating specifically to the referendum as they have effect in relation to the display of an advertisement relating specifically to parliamentary election.

Part 5: Control of donations

183. The Bill deals with controls of donations to permitted participants that are not registered parties or are minor parties. Donations to registered political parties are already subject to a regulatory regime established in the Political Parties, Elections and Referendums Act 2000. The rules set out in Part 5 of schedule 4 to the Bill define what donations are allowed, both by description and by monetary value (or a determination of monetary value), who is allowed to make a donation and what a permitted participant must do to record and report the donations of over £500 that they receive.

184. Paragraph 28 defines a ‘relevant donation’ in this context as meaning a donation to a permitted participant for the purposes of meeting referendum expenses. Under sub-paragraph (6), only permitted participants that are designated organisations can accept donations from registered political parties.

185. Sub-paragraph (7)(a) adds anti-avoidance provisions in order to cover donations provided so that expenses are not incurred, and sub-paragraph (7)(b) provides for a test of reasonably assuming something to be a donation.

186. Sub-paragraphs (8) to (10) provide an explanation of what constitutes a donation in relation to any money spent in paying any referendum expenses incurred by or on behalf of the permitted participant. Sub-paragraph (11) makes it immaterial where a donation is received.

187. Paragraph 29(1) explains what constitutes a donation for the purposes of the referendum. Where the value of the transaction, whether it be in money or other property, services or facilities at less than the market rate, the money or property transferred to a permitted participant is taken to be a gift and therefore a donation made to the permitted participant. Sub-paragraph (3) explains that in order to determine whether property, services or facilities are provided to a permitted participant on terms better than a commercial rate, a comparison is needed with the total sum involved. Further clarification is provided in sub-paragraph (5) which explains that anything given to someone representing a permitted participant that is not for their personal use is assumed to be a donation to the permitted participant.

188. A donation to a permitted participant includes any sponsorship of the permitted participant. Paragraph 30 explains that sponsorship in this context includes any money given to
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the permitted participant in order to help with referendum expenses or to avoid incurring costs in the referendum. This includes the sponsorship of conferences or other events run by or on behalf of the permitted participant, costs associated with a publication by or on behalf of the permitted participant and any study or research it undertakes. However, sponsorship does not include someone paying for admission to a conference, buying a publication or payment for an advertisement where the cost involved is charged at the usual commercial rate.

189. Paragraph 31 outlines other payments that are not donations for the purposes of the Bill. These include a grant from public funds, the rights of a designated organisation to a free mailshot to each voter and to the use of public rooms under paragraphs 7 and 8 of schedule 4, transmission by a broadcaster of referendum campaign broadcasts, the services of someone volunteering to work with or for the permitted participant at no charge or any interest that may accrue on a donation. Any donation with a value of £500 or less is also to be disregarded.

190. Paragraph 32 explains how the value of a donation is to be established. The value of any donation other than money is to be taken as the market value of the property involved. Where goods or services are provided to the permitted participant at a rate preferential to the commercial rate, the value of the donation is taken to be the difference in value between what was actually paid and what would have been paid had the commercial rate been applied. The value of sponsorship is taken as either the money involved, or the market value of any property transferred to the permitted participant. Any value accruing to the sponsor from the sponsorship is to be disregarded. The value of any loan, or property, services or other facilities provided at a rate better than the commercial rate is taken to be the difference between the amount actually paid by the permitted participant and the amount that would have been paid had the commercial rate been applied. If the permitted participant benefits from such a donation over a period of time, for example through paying a lower rent over several months, the donation involved is the total amount saved over those months.

191. Paragraph 33 prohibits permitted participants from accepting certain donations. Only donations from people or bodies listed in paragraph 1(2) of schedule 4 as ‘permissible donors’ can be accepted:

- individuals registered on the electoral register
- companies registered under the Companies Act or incorporated in the EU or that conduct business in the UK
- registered parties that intend to contest an EU election (only designated organisations may receive donations from registered parties, under sub-paragraph 29(6))
- trade unions
- building societies
- limited liability partnerships
- friendly societies
- unincorporated associations carrying on business or other activities wholly or mainly and having their main office in the UK.
192. In addition, donations from exempt trusts are to be counted as relevant donations\textsuperscript{1}. However a donation from a trustee of any property which is not an exempt trust donation, or if the beneficiaries under the trust are not permitted participants or members of an unincorporated association which is a permissible donor, is to be taken as a donation from an impermissible donor, i.e. it should not be accepted by the permitted participant.

193. Where someone provides a donation to the permitted participant on behalf of themselves together with someone else as a ‘principal donor’, or an agent provides a donation on behalf of others, then each donation of over £500 is to be taken as a donation from each of the individuals. In such cases, the responsible person of the permitted participant must be given certain details about the donor. An offence is committed by the principal donor or the agent if the details are not provided. The details to be provided depend on the status of the donor but usually it involves their name and address. These details are to be provided for each donation in the statement of donations to be submitted to the Electoral Commission under paragraph 38.

194. Under paragraph 34, if a donation is accepted by the permitted participant, they should make every effort to verify that the donor is who they say they are and that the donor is a permitted donor and to verify the donor’s name and address. If the permitted participant receives a donation they should not accept, then the donation should be returned within 30 days to whoever provided it. An offence is committed if these steps are not taken within the 30 day period but it is a defence to show that within the 30 days steps were taken to identify the donor and it was concluded that the donation was from a permissible donor.

195. Under paragraph 35, if the donation was provided anonymously, it should be returned to the person who provided it on the anonymous donor’s behalf or the financial institution they used to send it. If that is not possible, the donation should be sent to the Electoral Commission. The Commission would then pay it into the Scottish Consolidated Fund.

196. Under paragraph 36, where a permitted participant accepts a donation that it should not have accepted (because it was given anonymously or by someone other than a permissible donor), a sheriff can, regardless of whether legal proceedings have been brought in connection with an offence, order the permitted participant to forfeit money equivalent to the amount of the donation. The permitted participant can appeal against the sheriff’s decision to the Court of Session. If the amount of the donation is forfeited, then the money is paid into the Scottish Consolidated Fund.

197. If someone deliberately tries in any way to make a donation to a permitted participant when the donor is not a permissible donor, that person commits an offence under the provisions of paragraph 37. An offence is also committed if someone provides deliberately false information to the responsible person of the permitted participant about the amount of a donation or the donor. Similarly, an offence is committed if someone deliberately tries to deceive the

\textsuperscript{1}“Exempt trust donations” are donations received from a trustee where the trust was created before 27 July 1999 and which has had no property transferred to it after that date nor have the terms of the trust varied after that date or it is a donation received from a trustee where the trust was created either by a person who was a permissible donor under section 54 of the Political Parties, Elections and Referendums Act 2000 or created in the will of such a person and no property has been transferred to the trust other than by the person who created or by the will. (See section 162 of the 2000 Act and the definition in paragraph 1(1) of the Bill).
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responsible person of the permitted participant by withholding information about the amount of a donation or the donor.

198. As part of the return to the Electoral Commission, the permitted participant is required by the provisions of paragraph 38 to provide a statement of relevant donations.

199. Paragraph 39 sets out the information to be provided in the statement of relevant donations. For individual donations of over £7,500 or cumulative donations of over £7,500 from the same donor, the statement must include the amount of the donation or its value if the donation was something other than money, the date when it was accepted by the permitted participant and other information about the donor, which, although dependent on the status of the donor, is in most cases the donor’s name and address.

200. The total value of all the other donations which are under £7,500 should also be provided in the statement. Where someone who has an anonymous entry on the electoral register has made a donation, the statement should also include a copy of the evidence that the permitted participant has seen of the anonymous entry.

201. Where a donation has been received by a permitted participant from an impermissible donor in accordance with the rules for such donations in paragraph 33(1)(a), paragraph 40 requires that the statement should record the name and address of the donor, the amount of the donation or its value if the donation was something other than money, the date the donation was received and the date it was sent back to the donor or the person acting on the donor’s behalf in accordance with paragraph 34(3)(a). Where a donation has been received by a permitted participant from an unidentifiable donor in accordance with the rules for such donations in paragraph 33(1)(b), the statement should record the name and address of the donor, the amount of the donation or its value if the donation was something other than money, the date the donation was received and the date it was dealt with in accordance with paragraph 34(3)(b).

202. Paragraph 41 requires that reports are prepared by responsible persons for permitted participants during each 4-week period of the referendum period which include details of donations received of more than £7,500. The final 4-week period ends 7 days before the report is due to the Electoral Commission. If no donations of more than £7,500 were received, this information must also be included in the report. The reports must be delivered to the Electoral Commission within 7 days at the end of each 4-week period, or, in the case of the final 4-week period, by the end of the fourth day before the referendum. It is an offence to fail to make such a report, or if the report does not comply with the requirements of paragraph 41.

Part 6: Control of loans and credit

203. The rules set out in Part 6 of schedule 4 provide for the control of ‘regulated transactions’, i.e. loan or credit transactions entered into by permitted participants who are not registered parties. Paragraph 42 sets out the operation of this Part of the schedule. Paragraph 43 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 or credit to meet referendum expenses. An agreement of this type may also be supplemented by a ‘connected transaction’, where a third party backs up the permitted participant by offering security to the lender. In this case, the connected transaction is also considered to be a regulated
transaction. Agreements where the value is less than £500, and payments which are already covered in statements to the Electoral Commission under paragraph 38, do not count as regulated transactions.

204. Paragraph 44 clarifies the value of regulated transactions. Where the transaction is a loan agreement, the value is the full amount of the money to be lent. Where the transaction is a credit agreement, the value is the maximum credit limit. Both of these exclude any interest provisions in the agreement. Where the transaction is arranged on the basis of a security, the value is the liability under the security.

205. Paragraph 45 prohibits permitted participants from entering into regulated transactions with anyone who is not a permissible donor as defined in paragraph 1(2) of schedule 4.

206. Under paragraph 46, any transaction between a permitted participant and an impermissible donor 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 courts 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 existed.

207. Paragraph 47 provides that where a regulated transaction is void due to impermissibility of the donor as under paragraph 46, any connected transaction as described in paragraph 43(3)(b) is also 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.

208. Paragraph 48 confirms that any attempt by an authorised participant to transfer their interest in a regulated transaction to an unauthorised participant is not valid.

209. Paragraph 49 provides the offences related to regulated transactions, including:

- it is an offence to enter into a regulated transaction in the knowledge (or where it ought reasonably to have been known) that the other party is not an authorised participant
- where a permitted participant has entered into a transaction with an unauthorised participant, but could not reasonably have been expected to know, it is still an offence not to take reasonable steps to repay the money after the impermissibility of the other party becomes apparent
- it is an offence to benefit from or be in line to benefit from a connected transaction which involves an unauthorised participant where their impermissibility was known or could reasonably expect to have been known. It is also an offence, where the impermissibility was not known, to fail to take all reasonable steps to repay the benefits once the impermissibility becomes apparent
- it is an offence to knowingly enter into, or knowingly facilitate any arrangement which is likely to result in the permitted participant being involved in a regulated transaction with an unauthorised participant.
210. The offences include situations where the other party was originally an authorised participant but later ceased to be one. It is a defence for a person who is the responsible person for the permitted participant to show that they took all reasonable steps to prevent the permitted participant entering into the transaction.

211. Paragraph 50 details the penalties associated with the offences listed above, which, depending on the offence, are either a fine or imprisonment for a term of up to 12 months.

212. Paragraph 51 sets out the requirement for permitted participants to include regulated transactions in the statements prepared for the Electoral Commission under paragraph 20. The transaction need only be included in the return where the value exceeds £7,500, or where the aggregate value of the transaction and any other relevant benefits exceeds £7,500.

213. Paragraphs 52 to 54 require the statement to include details of any authorised or unauthorised participants, and details of the transaction in line with Schedule 6A to the Political Parties, Elections and Referendums Act 2000.

214. Under paragraph 55, where there is any change to the agreement, such as different participants, 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.

215. Paragraph 56 requires that the statement also includes the total value of regulated transactions that are not recordable.

216. Paragraph 57 requires that reports must be prepared by the responsible person in relation to permitted participants detailing regulated transactions which have a value exceeding £7,500 entered into during the period of 4 weeks from the start of the referendum period and during each of the 4 weeks during the referendum period. If no such transactions were entered into, the report must state this. It is similar to the requirement in paragraph 41 for donations. Failure to make a report and failure to comply with the requirements of paragraph 57 are offences. Paragraph 58 deals with a situation where the courts, on the application of the Commission, are convinced that a failure to comply with any requirement under this part of the schedule was caused by a person attempting to conceal the existence of, or true value of, the transaction. In this case, the courts may make an order which will return the parties to the same position as if the transaction had never been made.

217. Paragraph 59 makes provision in relation to the court proceedings before the sheriff under paragraphs 46 or 58, confirming that they will take place as civil proceedings, and that orders of the sheriff are appealable to the Court of Session. Rules of court may make provision with respect to court applications or appeals.

218. Paragraph 60 contains definitions of words and phrases used in this schedule.
Monitoring and securing compliance with the campaign rules

219. Section 11 of the Act gives the Electoral Commission responsibility for monitoring and securing compliance with the rules contained in schedule 4. It also gives the Commission power to issue guidance on how to comply with the regulations or restrictions. Schedules 5 and 6 replicate the Commission’s usual investigatory powers and power to impose civil sanctions to help them fulfil their duties under section 11.

220. Under section 12, the Commission must make the register of declarations they hold under schedule 4, paragraph 4, available for public inspection, either in their offices, by arrangement, or by providing a copy. The Commission are entitled to charge a reasonable fee for this service.

221. Section 13 specifies that a person commits an offence by suppressing, concealing, destroying or falsifying any document to circumvent the campaign control provisions of the Act. It is also an offence to withhold information or to fail to provide information to the relevant person without a reasonable excuse, or to provide false information. Offences under this section carry a penalty of, depending on the offence, imprisonment or a fine.

222. Section 14 states that summary proceedings under section 13 or schedules 4 to 6 may be taken in respect of a body at its place of business, and in the case of a person at any place where that person is for the time being. Subsection (2) allows criminal proceedings to be commenced at any time within 3 years after the offence is committed, or within 6 months of the prosecutor having knowledge of sufficient evidence to justify proceedings.

223. Section 15 places an obligation on the courts to notify the Electoral Commission of any campaign offences under the Act as soon as possible after they arise.

Schedule 5: Campaign rules: investigatory powers of the Electoral Commission

224. Schedule 5, introduced by section 11(4), contains the investigatory powers afforded to the Electoral Commission in line with their powers under the Political Parties, Elections and Referendums Act 2000 to allow them to monitor and enforce compliance with the campaign rules.

225. Paragraph 1 allows the Commission, after issuing a ‘disclosure notice’, to require a permitted participant or officer of a permitted participant, to produce or provide documents or an explanation in relation to income or expenditure where reasonably required by the Commission to carry out their functions. Sub-paragraph (4) obliges the person to comply with a requirement set out in a disclosure notice within a reasonable time.

226. Paragraph 2 enables a person authorised by the Commission to enter premises at any reasonable time and inspect relevant documentation, to enable the Commission to carry out their functions. This power can only be exercised after the Commission have obtained a warrant from a sheriff or justice of the peace authorising entry of the specified premises and is restricted so that it can only be used in relation to permitted participants.
227. An inspection warrant will be valid for one month from the day on which it is issued and may not be used in connection with an investigation by the Commission of a suspected breach or offence.

228. Paragraph 3 provides that where the Commission have reasonable grounds for suspecting that an offence under schedule 4 has been committed they may issue a notice to a person requiring that person to produce or provide any documents or explanation reasonably required for an investigation by them of the suspected offence or contravention. Sub-paragraph (5) obliges the person to comply with the notice within a reasonable time. This power is wider than that in paragraph 1 because it is not restricted to documentation or information relating to income or expenditure nor is it restricted to a list of specified individuals or bodies. Sub-paragraph (6) allows an investigator authorised by the Commission to require a person to come and answer in person any questions that the investigator reasonably considers relevant to the investigation.

229. The powers created by paragraph 3 can be used in relation to a person who is also covered by paragraph 1, albeit for a different purpose (i.e. that of investigating purported wrongdoing), and may be used against any other person who holds, or is thought to hold, information reasonably required for an investigation by the Commission. It follows that use of the power may be used in respect of the individual or body suspected by the Commission of having committed an offence or contravention but is not limited to such an individual or body.

230. Paragraph 4 applies where the Commission have given a notice under paragraph 3 requiring documents to be produced. Sub-paragraph (2) allows the Court of Session to issue a document disclosure order against a person following an application from the Commission if satisfied of four things. First, that there are reasonable grounds for believing that there has been an offence under, or other contravention of schedule 4. Second, that documents referred to in the notice under paragraph 3 have not been produced in response to that notice. Third, that the documents are in the custody of the person against whom the order is issued. Finally, that the documents are reasonably required for the purposes of an investigation. The order requires the person to whom it is given to deliver to the Commission documents referred to in the order within the timeframe set out in the order. A document is in a person’s control if they have possession of it, or a right to possession of it. Sub-paragraph (5) stipulates that a person who fails to comply with the order may not be punished for both contempt of court and an offence under paragraph 12 of the schedule.

231. Paragraph 5 applies where the Commission have given notice under paragraph 3 requiring any information or explanation to be produced. The Court of Session can issue an information disclosure order against a person on an application from the Commission if satisfied of the three things. First, that there are reasonable grounds to suspect a person has committed an offence or contravention under schedule 4. Second, that information or an explanation referred to in the notice under paragraph 3 has not been provided and is reasonably required. Third, that the respondent is able to provide the information or explanation. The order requires the person to whom it is given to provide the Commission with information or explanation referred to in the order within the timeframe set out in the order. A person who fails to comply with the order may not be punished for both contempt of court, and an offence under paragraph 12(1) of the schedule.
232. Paragraph 6 specifies that the Commission may retain documents delivered to them in compliance with an order under paragraph 4 for 3 months. However, if during that time any relevant criminal proceedings are begun, or notices are issued or penalties imposed under schedule 6 the documents may generally be retained until they are no longer required in relation to the proceedings or civil sanctions.

233. Paragraph 7 provides that the Commission, or a person authorised by the Commission, may make copies or records of relevant information or explanations obtained under the Schedule.

234. Paragraph 8 requires that any authorisation of a person by the Commission made under this Schedule must be in writing.

235. Paragraph 9 deals with documents held in electronic form. Sub-paragraph (1)(a) gives the Commission a power to require such documents to be made available in a legible form. Sub-paragraph (1)(b) enables a person authorised to inspect documents to require any person on premises being searched to give reasonable assistance to allow the inspector to make legible copies of electronic documents, or records of information contained in them. Under this power such assistance may also be required by an inspector in order to enable him to inspect and check any computer or associated apparatus used in connection with the information.

236. Paragraph 10 exempts information subject to confidentiality of communications from any requirement to produce information (in whatever form) under any power provided by this schedule. The appropriate test is whether a claim to confidentiality of communications could be maintained in legal proceedings in respect of the material in question.

237. Paragraph 11 deals with the admissibility of statements provided under compulsion. A statement made in response to a requirement under the schedule may be used in any proceedings, provided that it complies with any other rules of evidence in those proceedings. But sub-paragraph (2) provides that the statement is not admissible against the maker of the statement in criminal proceedings unless evidence about the statement is relied on, or a question about it is asked, by the maker, or unless the proceedings are for an offence mentioned in sub-paragraphs (3) and (4). (These offences are similar to perjury).

238. Paragraph 12 provides that it is an offence to fail to comply with any requirement imposed under schedule 5 (for example, to refuse to supply the Commission with information requested under paragraph 1 or 3); to obstruct intentionally somebody performing functions under the schedule; or knowingly or recklessly provide false information in response to a requirement imposed under the schedule.

239. Paragraph 13 imposes a duty on the Commission to publish guidance on the matters set out in sub-paragraph (1), which concern the ways in which it will make use of the investigatory powers set out in schedule 5. Sub-paragraph (2) obliges the Commission to keep the guidance under review, and sub-paragraph (3) places a requirement on the Commission to consult such persons as they consider appropriate before publishing guidance or revised guidance. Sub-paragraph (4) requires the Commission to have regard to the guidance or revised guidance in exercising their functions.
240. Paragraph 14 requires the Commission to report on its use of the investigatory powers contained in schedule 5 in its report to the Scottish Parliament under section 24.

241. Sub-paragraph (2) explains what information the Commission must include in the report on the use of their investigatory powers. Sub-paragraph (3) exempts the Commission from having to report any information that, in their opinion, it would be inappropriate to include because it would be unlawful or because it would prejudice an ongoing investigation or proceedings.

Schedule 6: Campaign rules: civil sanctions

242. Schedule 6 of the Bill contains powers to impose civil sanctions enforceable by the Electoral Commission in respect of breaches of the provisions in schedule 4.

Part 1: Fixed monetary penalties

243. Paragraph 1 allows the Electoral Commission to impose fixed monetary penalties where they are satisfied beyond reasonable doubt that a prescribed offence has been committed or that a contravention of a requirement or restriction by virtue of schedule 4 has taken place. The penalties can be imposed either on a person or on a permitted participant where the responsible person for that permitted participant has committed the offence. Sub-paragraph (4) states that where an individual is issued with a fixed monetary penalty for an offence which is triable summarily (whether or not it can also be tried on indictment) and punishable on summary conviction by a fine, the penalty imposed must not be higher than the maximum fine available in summary proceedings.

244. Paragraph 2 sets out the representations and appeals processes. The Commission can serve notice of an intention to impose a fixed monetary penalty on a person. This must offer the opportunity to discharge the penalty by paying a prescribed amount, which cannot exceed the amount of the proposed penalty. Alternatively, the person can opt to make written representations and objections to the Commission against the penalty. If the deadline for making representations and objections passes without the person having paid, the Commission must decide whether to impose the penalty and serve a further notice recording that on the relevant person (sub-paragraph (4)). Sub-paragraph (5) provides that if the person’s representations have raised any matter that leads the Commission to no longer suspect the person of having committed an offence, the Commission may not impose the penalty and enables the Scottish Ministers to prescribe other circumstances in which a penalty may not be imposed. The person may appeal to the sheriff against the decision to impose the penalty on the grounds set out in sub-paragraph (6).

245. Paragraph 3 explains what information the Commission must include when giving notice of an intention to impose a fixed monetary penalty on a person or when giving notice of a subsequent decision to impose the penalty. This must include the grounds for imposition of the sanction, the right to make representations or appeals and the time periods in which these can be made.

246. Paragraph 4 limits the criminal proceedings that can be taken against a person for a prescribed offence or other breach that may be dealt with by way of a fixed monetary penalty. If the Commission notify the person of their intention to impose a fixed monetary penalty for the
breach, no criminal proceedings for the breach can be brought during the period when liability can be discharged under paragraph 2(2). This paragraph also precludes such proceedings being taken against a person who does discharge liability by making the payment. Finally, paragraph 4(2) precludes a person on whom the Commission imposes a fixed monetary penalty under paragraph 2(4) from being convicted of an offence for the breach.

**Part 2: Discretionary requirements**

247. Paragraph 5 allows the Electoral Commission to impose a discretionary requirement on a person where they are satisfied, beyond reasonable doubt, that the person has committed a prescribed offence or contravened a prescribed restriction or requirement by virtue of schedule 4. A discretionary requirement as a sanction can take the form of a monetary penalty or alternatively an instruction to take certain actions designed to either prevent the recurrence of the offence or contravention or restore the position to what it would have been had the offence or contravention not occurred. Sub-paragraph (4) limits the use of discretionary requirements by preventing the Commission from imposing a discretionary requirement on a person more than once for the same act or omission. Sub-paragraph (6) sets the financial limit of a variable monetary penalty for offences which are triable summarily—where such offences are punishable by a fine, the variable monetary penalty must not be greater than the maximum fine.

248. Paragraph 6(1) requires that, where the Commission intend to impose a discretionary requirement on a person for a prescribed offence or other breach, they must first notify the person of their intention. Sub-paragraph (2) allows the person to make written representations and objections to the Commission against the proposed penalty. If anything is raised which leads the Commission to no longer be satisfied that the prescribed offence or contravention took place, the Commission may not impose the penalty (sub-paragraph (4)). In all other cases, the Commission may proceed to serve on the person a notice formally imposing the discretionary requirement, which will specify what the requirement is (sub-paragraph (5)). The person may appeal to a sheriff against the decision to impose the discretionary requirement on the grounds specified in sub-paragraph (6).

249. Paragraph 7 explains what information the Commission must include when giving the initial notice of an intention to impose a discretionary requirement on a person. This includes the grounds for imposing the requirement and the period within which representations and objections may be made (no less than 28 days from the day on which the notice is received). Sub-paragraph (3) sets out the information that must be provided by the Commission when they are imposing a discretionary requirement, such as the grounds for the proposed discretionary requirement, details of any monetary penalty, rights of appeal and the consequences of non-compliance.

250. Paragraph 8 limits the use of other sanctions against a person who has had a discretionary requirement imposed upon them. If a discretionary requirement is imposed on a person, that person cannot be convicted of a criminal offence arising from the same act or omission. However, this protection from future prosecution does not apply in cases where the discretionary requirement imposed was non-monetary, no variable monetary penalty was imposed, and the person failed to comply with the non-monetary discretionary requirement.
251. Paragraph 9 allows the Commission to impose a “non-compliance penalty” on a person who fails to comply with a non-monetary discretionary requirement. It also sets out the grounds and appeal to the sheriff against a non-compliance penalty (sub-paragraphs (3) and (4)).

**Part 3: Stop notices**

252. Paragraph 10 provides that the Electoral Commission can impose a stop notice on a person in order to prevent them from continuing or repeating a particular activity which the Commission reasonably believe is (or is likely to be) a prescribed offence or a contravention of a prescribed requirement or restriction imposed by virtue of schedule 4. A stop notice can also be imposed where the Commission believe that a person’s behaviour is likely to lead to them committing an offence or acting in contravention of a prescribed requirement or restriction. In both cases the Commission must believe that the activity, or potential activity, is seriously damaging to public confidence in the effectiveness of the controls in schedule 4, or significantly risks doing so.

253. Paragraphs 11 to 14 set out the details and limitations of how the stop notice system operates. Paragraph 11 lists the information to be included in a stop notice—the grounds for imposition, rights of appeal and consequences of non-compliance. Paragraph 12 requires the Commission to issue a ‘completion certificate’ once they are satisfied that the person has taken the steps set out in the stop notice (at which point it will cease to have effect). The person upon whom a notice has been imposed may apply for a completion certificate at any time and the Commission must make a decision on the application within 14 days of receipt. Paragraph 13 explains how a person may appeal against the imposition of a stop notice, or against a decision not to issue a completion certificate, and provides that any appeal will be heard by a sheriff. It also sets out the grounds for appeal in both circumstances. Paragraph 14 provides that a person who does not comply with a stop notice is guilty of an offence.

**Part 4: Enforcement undertakings**

254. Paragraph 15 outlines the powers of the Electoral Commission to accept an enforcement undertaking from a person whom the Commission have reasonable grounds for believing has committed a prescribed offence or contravened a prescribed restriction or requirement. An enforcement undertaking may be offered by the person suspected of the offence or contravention and outlines the action they will take (within a specified period). The action may be with a view to preventing the recurrence of the offence or contravention or returning the position to what it would have been had the offence or contravention not taken place or it may be action of a kind that has been prescribed. Sub-paragraph (1)(d) states that the undertaking will take effect only if the Commission accept it. Sub-paragraph (2) provides that a person who has complied with the accepted undertaking will generally be exempt from other sanctions, including criminal proceedings, in relation to the acts or omissions on which the undertaking is based as long as the undertaking is complied with.

**Part 5: Power to make supplementary provision etc. by order**

255. Paragraph 16 gives the Scottish Ministers the power to make orders that are supplementary to, consequential on or incidental to this schedule. Such orders may include transitional provision. This includes the power to amend, repeal or revoke any enactment.
256. Paragraph 17 sets out the consultation process that the Scottish Ministers must carry out prior to making a supplementary order under paragraph 16. As part of this process the Electoral Commission must be consulted, along with other persons that the Scottish Ministers consider appropriate. Under sub-paragraph (2) further consultation is required where, following the outcome of the initial consultation, it is apparent that substantial changes to an order will be necessary.

257. Paragraph 18 sets out the details of what can be included in a supplementary order regarding the Commission’s power to impose financial sanctions, including fixed monetary penalties, variable monetary penalties and non-compliance penalties. In particular, provision made by virtue of this paragraph may include detail about early payment discounts, late payment penalties, late payment interest and enforcement.

258. Paragraph 19 sets out the details of what can be included in a supplementary order in relation to enforcement undertakings. The order may include a wide range of detail about procedural matters relating to undertakings, for example, how undertakings are entered into and in what circumstances undertakings are regarded as having been complied with.

259. Paragraph 20 states that a supplementary order may extend the time available to institute criminal proceedings against a person in certain instances. The first of these is where a non-monetary discretionary requirement (but no variable monetary penalty) has been imposed and the person has failed to comply with the non-monetary discretionary requirement. The second is where there has been a breach of all or part of an enforcement undertaking.

260. Paragraph 21 allows a supplementary order to set out the details of the appeals process in relation to the imposition of a requirement or the service of a notice under this schedule. Such an order may include provision conferring relevant powers on courts (for example, to withdraw the requirement or notice against which there is an appeal).

**Part 6: General and supplemental**

261. Paragraph 22 limits the use of fixed monetary penalties, discretionary requirements and stop notices. It explains that a fixed monetary penalty may not be imposed on a person if they are already subject to a discretionary requirement or stop notice for a breach. Additionally, if a person has had a fixed monetary penalty imposed on them for a breach, or has paid a sum to discharge liability for a fixed monetary penalty, they cannot be given a discretionary requirement or a stop notice in relation to the breach.

262. Paragraph 23 provides that, if someone is required under schedule 5 to make a statement as part of an investigation by the Electoral Commission, the Commission must not take account of that statement when deciding whether to impose a civil sanction on the person. The only exception is for the offence of providing false information set out in paragraph 12(3) of schedule 5.

263. Paragraph 24 stipulates that any financial penalty imposed on an unincorporated association must be paid from its own funds.
264. Paragraph 25 requires the Commission to publish guidance about enforcement of the campaign rules. The guidance must include details of the sanctions available (both civil and criminal), the circumstances in which civil sanctions may be used and the rights of appeal available. Sub-paragraph (7) requires the Commission to carry out consultations with persons that they consider appropriate prior to publishing guidance. Under sub-paragraph (8) the Commission are required to have regard to the guidance when exercising their functions.

265. Paragraph 26 stipulates that the monetary penalties paid to the Commission as a result of the imposition of civil sanctions under schedule 6 must be paid into the Scottish Consolidated Fund.

266. Paragraph 27 requires the Commission to include in their annual report a list of the cases (other than those where sanctions have been successfully appealed against) in which they have imposed fixed monetary penalties, discretionary notices or stop notices; cases in which liability for a fixed monetary penalty has been accepted through payment of a sum; and cases in which an enforcement undertaking has been accepted. Sub-paragraph (2) enables the Commission to exclude information if it might be unlawful for the report to include it or might adversely affect ongoing investigations or proceedings.

267. Paragraph 28 allows the Commission to request information from procurators fiscal or constables in Scotland when exercising the powers under the schedule. It will not enable disclosure where that would breach the Data Protection Act 1998 or Part 1 of the Regulation of Investigatory Powers Act 2000 or in relation to certain reserved enactments. It also provides that other powers of disclosure that are independent of this power are not affected by it.

268. Paragraph 29 sets out definitions of words and expressions used in the schedule.

Referendum agents

269. Section 16 deals with referendum agents. Referendum agents may be appointed by permitted participants for a particular local government area, and notice must be given to the relevant counting officer of the appointment. The notification must give the names and addresses of the permitted participant, of the referendum agent, must be in writing, signed, and received before noon on the 25th working day before the referendum. The counting officer must then publish details of this notification.

Observers

270. Section 17 deals with Electoral Commission observers (anyone who is a member of the Commission, or a member of staff, or is appointed by the Commission for the purposes of this section) and gives them a right to attend any proceedings which are the responsibility of the CCO or a counting officer, or to observe any of their work carried out under this Act.

271. Section 18 allows anyone aged 16 or over to apply to the Commission to be accredited as an observer, which permits them to be present at the issue or receipt of postal ballot papers, proceedings at the poll, or at the count. Accredited observers are subject to all rules contained in the Act regarding their attendance at these proceedings. The application should be made in the form specified by the Commission and, if granted, may be revoked at any time by them.
These documents relate to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

Commission must give reasons for the refusal of an application or for revocation of an accreditation.

272. Section 19 provides for organisations to apply to be accredited to allow them to nominate observers, who may attend the proceedings described in the previous paragraph on their behalf. Any observers so nominated must be members of the organisation and the Commission may specify a limit to the number of nominees. The same provision as in section 18 applies to applications.

273. Section 20 allows a CCO, counting officer, or any person authorised by them, to limit the number of people in attendance at proceedings under sections 18 or 19, or to cancel the entitlement to attend in case of misconduct. The presiding officer has the same power in relation to proceedings at a polling station.

Information, guidance and advice

274. Section 21 allows the Electoral Commission to give voters information on the referendum, the referendum question and voting in the referendum.

275. Section 22 gives the Commission power to issue guidance to the CCO regarding the CCO’s role under the Act, and with the CCO’s consent to issue guidance to counting officers. They may also issue guidance to permitted participants or potential permitted participants on the campaign rules (schedule 4).

276. Section 23 gives the Commission power to offer information to anyone who requests it regarding the application of the Act or any other matter relating to the referendum.

Report on referendum

277. As provided for by section 24, the Commission must prepare a report for the Scottish Parliament on the conduct of the referendum and must publish that report.

Electoral Commission: administrative provision

278. Section 25 deals with the Electoral Commission’s costs in respect of their functions under the Act, which will be refunded by the Scottish Parliamentary Corporate Body (SPCB).

279. Section 26 requires the Commission to estimate their costs and income before the start of each financial year and send this to the SPCB for approval. A revised estimate may be sent during the year.

280. Section 27 confirms that an investigation by the Scottish Public Services Ombudsman into the Electoral Commission’s functions under the Act is not prevented under the Scottish Public Services Ombudsman Act 2002.
Offences

281. Section 28 introduces schedule 7 which contains provisions about offences related to the referendum.

282. Section 29 provides for offences by a body corporate, a Scottish partnership or other unincorporated association under the Act. In this case, where it can be proved that the offence was committed with the consent or connivance, or caused by the neglect of, an individual, the individual, as well as the body, is liable.

Schedule 7: Offences

283. Schedule 7, introduced by section 28, contains details of the offences under the Act. Some are deemed to be ‘corrupt practices’ (such as the ‘personation’ offence in paragraph 1) and carry a penalty of imprisonment for a term not exceeding two years or to an unlimited fine or both. Other offences are ‘illegal practices’ (such as the voting offences in paragraph 2) which are summary offences and the maximum penalty is a £5,000 fine.

284. Schedule 7 includes the following provisions:

- **Personation** (paragraph 1) – this is where any individual votes as someone else (whether that person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or as a proxy. Further, the individual voting can be deemed guilty of personation if they vote as a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing their proxy appointment is no longer valid.

- **Other voting offences** (paragraph 2) – there are a number of voting offences listed in this paragraph. Knowingly causing someone else to commit one of the voting offences below is itself an offence:
  - Voting in person or by post, or applying to vote by proxy or by post knowing that you are subject to a legal incapacity to vote.
  - Applying for the appointment of a proxy, in the knowledge that you or the proxy is subject to a legal incapacity to vote.
  - Voting, whether by proxy or by post, knowing that the voter for whom you are voting as proxy is subject to a legal incapacity to vote.
  - Voting more than once in the referendum (other than as a proxy).
  - Voting in person when entitled to vote by post.
  - Voting in person in the knowledge that someone else has voted by proxy on your behalf or is entitled to vote as proxy postally.
  - Applying for someone to vote as your proxy without cancelling the appointment or application for appointment of someone already appointed as your proxy voter.
  - Voting by proxy for the same voter more than once.
  - Voting in person as proxy for someone when you have opted to vote by post as proxy for that voter.
These documents relate to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

- Voting in person as proxy for a voter in the knowledge that the person has already voted in person.
- Voting as proxy for more than two people of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

- **Imitation poll cards** (paragraph 3) - producing false poll cards which are intended to deceive people, for the purpose of achieving a particular outcome in the referendum, is an offence.

- **Offences relating to applications for postal and proxy votes** (paragraph 4) – it is an offence to try to prevent a vote or gain a vote in the referendum by: applying for a postal or proxy vote as someone else (including a fictitious person), making a false statement in, or providing false information in connection with, a postal or proxy vote application, causing a ballot paper relating to a postal or proxy vote to be sent to an incorrect address or to cause information related to a postal or proxy vote or a postal ballot paper not to be delivered to the correct recipient.

- **Breach of official duty** (paragraph 5) – the Chief Counting Officer and any proper officer of a council, registration officer, counting officer, presiding officer, their deputies or any other person assisting them in the running of the referendum may be guilty of an offence by means of an act or omission in breach of their official duty under the Act.

- **Tampering with ballot papers etc.** (paragraph 6) – it is an offence to:
  - deface or destroy a ballot paper, postal voting statement or official envelope used in postal voting,
  - give someone a ballot paper without proper authority,
  - put any paper into the ballot box other than the authorised ballot paper,
  - remove a ballot paper from a polling station,
  - destroy, take, open or interfere with a ballot box or packet of ballot papers.
  - counterfeit a ballot paper or the official mark on a ballot paper.

- **Requirement of secrecy** (paragraph 7) - everyone involved in the electoral process should be aware of the secrecy of the ballot and should not breach it. The counting officer will give everyone who attends the opening or counting of ballot papers a copy of parts of the requirement of secrecy, as required by rule 16 of schedule 3 to the Bill. Breach of the requirement of secrecy is an offence under paragraph 7(8).

- **Prohibition on publication of exit polls** (paragraph 8) – it is an offence for anyone to publish a statement before the close of the poll about the way voters have voted based on information they provided after voting or to publish a forecast of the result before the close of the poll based on information provided by voters about how they voted.

- **Payments to voters for exhibition of referendum notices** (paragraph 9) – it is an offence for a voter to be paid for exhibiting a poster, advert or notice on their property to promote a referendum outcome, where it is not the voter’s usual course of business.
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- **Treating** (paragraph 10) - a person is guilty of treating if either before, during or after the referendum they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any meat, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.

- **Undue influence** (paragraph 11) - a person is guilty of undue influence if they directly or indirectly use or threaten to use force, violence or restraint, or cause or threaten to cause injury, damage, harm or loss in order to induce or compel any voter to vote or refrain from voting. A person may also be guilty of undue influence if they impede or prevent the voter from freely exercising their right to vote. This latter offence can also be committed where a person intends to impede or prevent the free exercise of a vote even where the attempt is unsuccessful.

- **Bribery** (paragraph 12) - a person is guilty of bribery if they directly or indirectly give money to or procure an office for any voter, in order to induce any voter to vote, or not vote, for a particular outcome; or to vote or refrain from voting. This includes making any gift or procurement in favour of the voter, giving, lending, agreeing to give or lend, offering promising or promising to procure or endeavour to procure any money or valuable consideration. It is an offence for a person to commit bribery in connection with the referendum, and a voter who receives a bribe in connection with the referendum is also guilty of an offence.

- **Disturbances at public meetings** (paragraph 13) – it is an offence deliberately to disrupt a public meeting by causing a disturbance.

- **Illegal canvassing by police constables** (paragraph 14) – it is an offence for a police constable to try to persuade someone to vote or not vote in a particular way.

- **Prosecutions for corrupt practices** (paragraph 15) - this paragraph sets out the penalties for someone guilty of a corrupt practice.

- **Prosecutions for illegal practices** (paragraph 16) - this paragraph sets out the penalty for someone guilty of an illegal practice.

- **Conviction of illegal practice on charge of corrupt practice** (paragraph 17) – this paragraph clarifies that someone charged with a corrupt practice may be found guilty of an illegal practice which attracts a lesser maximum penalty (a person cannot be imprisoned when convicted of an illegal practice and the maximum fine is limited). A person charged with an illegal practice may be found guilty of that offence whether or not the act was a corrupt practice.

- **Incapacity to hold public or judicial office in Scotland** (paragraph 18) – anyone convicted of a corrupt or illegal practice under schedule 7 is not allowed to hold any public or judicial office in Scotland for 5 years from the date of their conviction. If they already hold such an position, they vacate it on conviction.

- **Prohibition of paid canvassers** (paragraph 19) – if someone pays someone else to canvass to promote a particular outcome in the referendum, then the person paying the canvasser and the canvasser are both guilty of illegal employment.

- **Providing money for illegal purposes** (paragraph 20) - someone who provides or replaces money for a payment contrary to the legislation, for any expenses that exceed the spending limits, is guilty of an illegal payment.
• **Prosecutions for illegal employment or illegal payment** (paragraph 21) – this paragraph sets out the penalty for someone found guilty of illegal employment or an illegal payment under paragraphs 19 or 20 (the maximum penalty is a £5,000 fine). A person charged with one of these offences may be convicted of the other.

**Power to make supplementary etc. provisions and modifications**

285. Section 30 confers a power on the Scottish Ministers to make such supplemental, incidental or consequential provision as they consider appropriate for the purposes of the Act, in consequence of it, or to give its provisions full effect. This includes the power to modify enactments, including the Act, by means of an order. Any such order is subject to the affirmative procedure in the Scottish Parliament.

**Legal proceedings**

286. Section 31 provides that any legal challenge to the certification of the votes cast at the referendum must be brought by way of judicial review, and must be lodged with the court within 6 weeks of the last certification of the result.

**Final provisions**

287. Section 32 introduces schedule 8, which contains the definitions of words and expressions used in the Act.

288. Section 33 confirms that the Act comes into force the day after receiving Royal Assent.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Scottish Independence Referendum Bill introduced in the Scottish Parliament on 21 March 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Bill provides the framework for the conduct and regulation of a referendum on Scottish independence, to be held on 18 September 2014. The Bill—
   - sets out the question to be asked in the referendum and the format of the ballot paper;
   - sets out the date of the referendum;
   - sets out how the electorate may vote in the referendum;
   - provides for the Convener of the Electoral Management Board (EMB) to fulfil the role of Chief Counting Officer, to oversee the running of the referendum and appoint counting officers to run the referendum in each local area;
   - sets out the rules for the conduct of the referendum, i.e. the conduct of the poll, the count and declaration of the result;
   - provides for the Electoral Commission to have responsibility for oversight of the referendum, including providing guidance and information about the referendum, overseeing and regulating the campaign leading up to the referendum and reporting on the conduct of the referendum; and
   - includes provisions regulating the campaign prior to the referendum, including provisions limiting the amounts that may be spent on and donated for campaigning by permitted participants and others and provisions requiring them to be accountable to the Electoral Commission.

3. In addition, the Scottish Independence Referendum (Franchise) Bill\(^2\), which was introduced to Parliament on 11 March 2013, establishes the franchise for the referendum. It also provides the framework by which all 16 and 17 year olds who are otherwise eligible will be able to vote in the referendum and ensures that the process for registering them is as straightforward and accessible as possible.

4. A Financial Memorandum (FM) was provided with that Bill on its introduction which set out the costs which are estimated to be incurred as a result of extending the franchise, and those incurred in the course of amending voter registration processes. Therefore, those costs are not

\(^2\)SP Bill 24 Session 4 (2013)
explained in detail in this FM. Relevant figures will be reiterated in this document where appropriate, in order to provide the fullest possible account of the financial implications of the referendum on Scottish independence.

5. The purpose of this FM is to set out best estimates of the administrative, oversight and other costs to which the provisions of the Scottish Independence Referendum Bill will give rise and an indication of the margins of uncertainty in these estimates. It has been developed using the best available evidence and is based on current prices.

6. The costs associated with the provisions of the Bill can be separated into four broad categories—

- costs of running the referendum – incurred by the Chief Counting Officer, local counting officers and electoral registration officers;
- costs of funding the Electoral Commission for overseeing and regulating the referendum campaigns and reporting on the conduct of the referendum;
- publicity costs incurred by the Electoral Commission in the fulfilment of its duty to provide information to voters on how to cast their vote; and
- the costs of allowing each of the main campaign organisations a free mailshot to every voter or household in Scotland.

7. Costs will be incurred during the financial years 2013/14 and 2014/15.

METHODOLOGY

8. The estimated costs and savings in this FM are based on comparisons with the cost of delivering previous elections and referendums across the UK and advice obtained from relevant stakeholders.

VARIATION FROM PREVIOUSLY ESTIMATED COSTS

9. Your Scotland, Your Referendum (January 2012) estimated that the cost of running the referendum would come to around £10 million in total (it did not provide a breakdown of costs). This was based on previous estimates, which had been calculated in preparation for the 2010 draft Referendum (Scotland) Bill on the basis of known costs at that time. Official have since been able to revise these costs to take account of changes to the referendum proposals since the 2012 consultation draft of the Bill, the Electoral Commission’s report on the cost of delivering the Parliamentary Voting System (PVS) referendum in 2011, and the updated estimates provided by key stakeholders. For example:

- The Scotland Act 1998 (Modification of Schedule 5) Order 2013 applies certain provisions under the Political Parties, Elections and Referendums Act 2000 (PPERA)
which will offer designated organisations the choice between an addressed mailshot to every elector, or an unaddressed mailshot to every household. Previous calculations were based on the latter, whereas this FM includes the upper range estimates associated with the addressed mailshot option, which would be significantly more expensive (addressed mailshots for two designated organisations would cost around £1.9 million + VAT whereas mailshots to households could cost around £600,000 + VAT).

- The Electoral Commission’s report on the cost of the 2011 PVS referendum included the Commission’s estimate of counting officer costs for a stand-alone referendum in Scotland, which form the basis of the calculations in this FM (around £8.3 million compared to previous estimate of around £6.42 to £7.2 million).
- The Electoral Commission has recently provided detailed estimates of its expected costs in the referendum, which come to around £2.2 million. These figures were not available when the previous estimates were being prepared for the consultation paper.

10. Current estimates, as set out in this FM, indicate that the cost of running the referendum will come to around £8.6 million and other costs associated with the referendum, including free campaign mailshots and Electoral Commission costs, will come to around £4.7 million. Further detail on these costs and how these figures have been calculated are provided throughout in this FM.

COSTS ON THE SCOTTISH ADMINISTRATION

11. Costs on the Scottish Government will include:
- the cost of allowing each of the designated campaign organisations a free mailshot to every voter or household;
- charges made by the Royal Mail in relation to its role in the referendum;
- reimbursement of costs incurred by the Chief Counting Officer and counting officers;
- reimbursement of preparatory expenditure by the Electoral Commission.

12. Further details on each of these cost categories are provided below. Costs to be met by the Scottish Government, whether upfront payments or reimbursement of costs met by other bodies, will be provided for in the relevant Budget Acts and budget revisions.

Costs of the free postal communication

13. Although not directly provided for in this Bill, designated campaign organisations will each be able to send a free postal communication to every voter or every household, and the mail service provider will be able to recover these postage costs from Scottish Ministers. A designated organisation is a permitted participant (registered campaigner) that has been designated by the Electoral Commission as the lead campaigner for a particular outcome. As there are two possible outcomes in this referendum, there will be a maximum of two designated organisations, though the Commission is not obligated to designate on both sides, or at all if no suitable applications are received.

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14. In the Edinburgh Agreement, the Scottish Government and UK Government agreed that certain provisions relating to designated campaign organisations under PPERA should apply in the case of a referendum on independence. Accordingly, article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 provides that paragraph 1 of Schedule 12 to PPERA should apply in a referendum on Scottish independence. This confers a right on designated campaign organisations to send one postal communication, containing matter relating to the referendum and not exceeding 60 grams in weight, to every household or every voter in the relevant area or electorate, free of any charge for postage. This means that the designated campaign organisations will not need to make funds available for the upfront cost of postage (though they will still need to cover the cost of producing the communication).

15. Under PPERA, the universal mail service provider can recover the cost of postage from the UK Consolidated Fund, and the above Order provides that in the case of the referendum, the universal service provider can recover the cost of postage from Scottish Ministers. The Postal Services Act 2011 provides that the universal service provider is the Royal Mail.

16. The Royal Mail has stated that the current indicative rate which would apply to the door to door delivery of unaddressed mail on this scale would be 11.8p per item. The current rate applicable to postage of addressed items is £200 per 1,000 items for 3 to 5 day delivery, or £230 per 1,000 items for 2 to 3 day delivery. Therefore, the total cost per designated organisation would be around £820,000 or around £943,000, depending on the delivery option chosen (including VAT this would be £984,000 or £1,131,600 respectively). The costs are proportionally higher for addressed mail due to the increase in the number of items to be delivered, the additional resources required to sort and process addressed mail by the Royal Mail and the resources required to achieve a shorter delivery time.

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6This rate applies to items weighing 35-60g. Lower rates would apply to items weighing less than this.
8This figure assumes three years of growth in the number of households, at a rate of 17,300 per year (an increase of 51,900). The increase from 2010-2011 was 10,600. Again see Chapter 9 of “Scotland’s Population 2011: The Registrar General’s Annual Review of Demographic Trends 157th Edition” (published 2 August 2012).
9Figure based on Statistics on the 2011 Electoral Register which came into effect on 1 December 2010, published 23 February 2011, which showed that 3.99 million people were registered to vote. It is not possible to predict how many 16 and 17 year olds will register to vote, but as a reference point, the number of 16 and 17 year olds in Scotland in mid-2011 was around 120,000.
19. Based on the above figures, if two campaign organisations are designated and both choose the most expensive option of an addressed mail to every voter, using the shortest delivery time, the total cost could be around £1,886,000 (£2,263,200 including VAT). Savings would be made if either or both of the designated organisations choose a less expensive option, for example a longer delivery time or lightweight items. These costs would be incurred during the financial year 2014/15.

20. For both of the above scenarios, the costs given are indicative only, due to the variables described, and due to the fact that there will be two revisions of the Retail Price Index between the introduction of the Bill and the referendum campaign period which are likely to lead to increases in the postal delivery rates.

Royal Mail services

21. The Royal Mail will require an administration fee for providing the above service which will be met directly by the Scottish Government. The contract for this work is still to be fully scoped, so it is not possible to provide a viable estimate at this time, but as a comparator, the Royal Mail’s fee for a similar role in the Scottish Parliament elections was around £275,000 (£330,000 including VAT). However, this involved considerably more work, given the large number of candidates involved, who would each have been entitled to issue campaign communications free of postage, as compared with a maximum of two designated organisations in the referendum. For the purposes of estimating costs for the referendum, we have assumed that the administration fee would be closer to around £100,000 (or £120,000 including VAT). This is likely to be incurred during the financial year 2014/15.

22. In addition, the Royal Mail will undertake sweeps of post office sorting centres on the day before the poll to identify any postal votes that have not been processed for delivery, to ensure that they are delivered to the relevant counting officer in time to be counted. Postal sweeps are usually organised locally, by counting officers, although for the PVS referendum the sweep was organised on a national basis. This could allow for some savings to be made as a result of economies of scale. The Royal Mail has suggested that a rough estimation of the cost of a national final day sweep could be in the region of around £25,000 (£30,000 including VAT), which, if organised nationally, would be met by the Scottish Government through reimbursing the Chief Counting Officer.

Chief Counting Officer’s costs

23. Under section 8 of the Bill, the Chief Counting Officer (CCO) and counting officers will be entitled to recover their costs and fees in respect of the referendum directly from the Scottish Government. The maximum amount that the CCO and counting officers will be entitled to recover for the delivery of the vote and the count will be set out in a separate Fees and Charges Order. Information on the costs to be incurred by counting officers are provided in the next section, as these costs will initially be borne by local authorities before being reimbursed by the Scottish Government. In addition, the CCO will incur costs in the course of planning for the referendum and these will also be met directly by the Scottish Government. These will not be covered by the Fees and Charges Order due to the fact that payment will be required before the Order can be made. Further details are provided below at paragraphs 26 and 27.
Conducting the referendum

24. The CCO, who will be the Convener of the Electoral Management Board, is responsible for the overall conduct of the referendum and has oversight of and a power of direction over each counting officer. The CCO will also certify local counts and make the national declaration of the result after local declarations have been made.

25. The maximum level of fees and expenses incurred by the CCO in preparing for the collation of results, managing the national count and making the national declaration will be provided for in the Fees and Charges Order once the role has been fully scoped.

Preparatory activity

26. Preparatory expenditure incurred by the CCO prior to the enactment of the Bill is likely to cover project management activities that will commence during 2013, including the preparation of guidance for counting officers, establishment of performance management arrangements and communications management.

Estimated costs of conducting the referendum and preparatory activity

27. The CCO is likely to require a relatively small team to undertake the activities described above and to work with the Electoral Management Board to plan and oversee the delivery of the vote and the count from a central hub. It is not possible to give precise cost figures at this stage due to the fact that it is not yet known how the CCO will decide to deliver this work, but for the purposes of estimating the cost of the referendum, the CCO’s costs have been estimated to be in the region of around £300,000. This would cover the CCO’s fees and expenses, staffing, project management, publicity and the costs associated with a national event to declare the referendum result. Officials are in ongoing discussions with the Electoral Management Board to ascertain the precise resource requirements of the CCO. These costs are likely to be incurred during financial years 2013/14 and 2014/15.

Preliminary expenditure by the Electoral Commission

28. Between 8 November 2012 and 30 January 2013, the Electoral Commission undertook an assessment of the Scottish Government’s proposed referendum question. The cost to the Electoral Commission was £130,000, which will be paid for by the Scottish Government under the authorisation of a letter issued under section 10 of PPERA, which allows the Commission to provide advice and assistance to certain specified bodies.

COSTS ON LOCAL AUTHORITIES

29. The CCO will most likely appoint existing returning officers to be the counting officers in each local authority area. The persons conducting the referendum will therefore be the local authority officers who are currently responsible for running elections in Scotland, and they will incur the bulk of the cost of running the referendum. As explained at paragraph 23 counting officers’ costs will be reimbursed by the Scottish Government. Therefore, although local authority officers will incur the upfront expenditure, it will be the Government that ultimately bears these costs.
Counting officers’ costs

30. Counting officers will be responsible for the administration of the referendum, including:
   - the issuing of poll cards
   - the provision, staffing and running of polling stations, including the appointment of presiding officers and poll clerks
   - the issue and receipt of postal voting papers
   - the staffing and running of the count in their area
   - the declaration of the local result.

31. The role of counting officer is essentially the same as that of a returning officer in an election: their duties will be very similar to the activities required to run an election, but without the candidate nomination process and with a simple voting system which will require only one round of counting.

32. The Bill provides that the Chief Counting Officer must appoint a counting officer for each local government area, which means that there will be 32 counting officers. This is the same as for Scottish Local Government elections. For Scottish Parliament elections, there are 73 returning officers, and there are 59 in a UK general election. The difference in the number of returning/counting officers for different types of poll does not have a significant impact on the cost of the poll and count because the fees are higher for polls with fewer returning officers, commensurate with the increased number of electors for which they are responsible.

33. Counting officer costs will be set out in a Fees and Charges Order made under an order making power in the Bill, which will provide the maximum level of fees which each individual counting officer can claim. This is likely to be calculated for each voting area (i.e. each local government area). In addition, the order will specify maximum recoverable amounts which counting officers can claim for specified services, which will cover the costs incurred whilst carrying out their duties under the Bill, such as the provision of staff, equipment and venues. These will again be calculated by voting area and will be based on the size of the electorate and assumptions about average spend. Scottish Government officials will work with the Electoral Management Board and counting officers to determine robust figures for inclusion in the Order so that the Order can be made as soon as possible after the Bill is enacted.

34. The Fees and Charges Order will be in place at least six months prior to the date of the referendum, in line with the Gould Report recommendations, so that counting officers will have certainty about the funding available to them before they need to commit resources. Following the process used in the PVS referendum, advance payments of 75% of counting officer expenses may be made prior to the poll with the remaining balance paid once accounts have been settled (advances may be decreased or increased depending on specific circumstances). Payment for counting officer services (fees) will be made in two instalments, with 75% paid the day after the poll, and the remainder paid once accounts are settled.

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These documents relate to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

35. The costs likely to be incurred by counting officers in the course of undertaking these duties will include the categories listed below at paragraphs 36 to 43.

Polling station costs

36. This will include: the cost of polling station venues; the cost of equipment used in polling stations such as polling booths, ballot boxes, stationery and notices; the cost of preparing and transporting polling equipment; the cost of printing ballot papers; and payments to polling station staff, including training.

37. Many of these costs depend on the number of polling stations required, which will depend on the size of the electorate, the availability of venues and the geography of each voting area.

Postal vote costs

38. Costs associated with the issue and receipt of postal votes will include the cost of printing and postage (both outward and return); payments to staff involved in issuing, receiving and checking postal votes; stationery; cost of venues and equipment for postal vote number of postal votes cast in each voting area.

39. Additionally, the Royal Mail often undertakes a ‘sweep’ of mail centres to check for any postal votes that are awaiting delivery to returning officers. In the case of the PVS referendum, it was considered more cost effective to organise this on a national basis, and so the CCO incurred the cost of the postal sweep in that case. The CCO in the referendum may choose to take the same approach. If organised locally, counting officers would incur the cost. Postal sweeps are discussed in more detail at paragraph 22.

Poll card costs

40. Poll cards will be sent to every voter. This will incur costs in relation to the printing and posting of poll cards; the cost of payments to staff; and the cost of equipment and stationery.

Count costs

41. The count will take place as soon as possible following the closure of the polls. Costs will include the cost of hiring count centre venues; the cost of transporting ballot papers from polling stations to count centres; cost of equipment used at count centres; security costs; and payments to count centre staff, including training.

42. For some more remote voting areas, the cost of transporting ballot papers to the count centres will be considerably higher than in other areas. For example, in Argyll and Bute and in the Western Isles, helicopters are required to fly the ballot papers from remote islands to a central count centre. Similarly, counts taking place in some of the larger cities will incur higher count venue costs, particularly in Edinburgh and Glasgow. This will be taken into account in discussions with the Electoral Management Board and others around calculating the maximum recoverable expenses for each counting officer.
Other costs

43. In addition to the above, there will also be general costs incurred by counting officers in the course of managing the poll and the count, including the cost of payments to clerical staff and the cost of materials and services not covered elsewhere.

Comparative costs

44. The closest comparator to help determine the likely cost of running the referendum is the PVS referendum, particularly since the Electoral Commission published a comprehensive report on the costs of this referendum.

45. This report showed that the total costs incurred by counting officers in Scotland in the course of running the poll and count for the PVS referendum was around £6.12 million. A breakdown of these costs is shown in the table below:

<table>
<thead>
<tr>
<th>Category of costs</th>
<th>Amount paid (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Polling station costs</td>
<td>2,861,160</td>
</tr>
<tr>
<td>Postal vote costs</td>
<td>809,447</td>
</tr>
<tr>
<td>Poll card costs</td>
<td>415,651</td>
</tr>
<tr>
<td>Count costs</td>
<td>1,292,336</td>
</tr>
<tr>
<td>Other costs</td>
<td>524,779</td>
</tr>
<tr>
<td>Counting officer fees</td>
<td>213,629</td>
</tr>
<tr>
<td><strong>Total fees and costs incurred by counting officers</strong></td>
<td><strong>6,117,002</strong></td>
</tr>
</tbody>
</table>

46. The PVS referendum was held on the same day as other polls, including the Scottish Parliament elections, which meant that some costs, such as the hire of polling stations, could be shared. This meant that the overall costs were lower than they would have been for a ‘stand-alone’ referendum, which the Scottish independence referendum will be.

47. Actual costs are not yet available for the poll and count at the Scottish Parliament elections held in May 2011. However, the Fees and Charges Order for that election sets out the overall maximum recoverable amounts for returning officers’ services and expenses for both combined poll and stand-alone scenarios. These costs were calculated by constituency, based on the size of the electorate.

48. The order does not provide a breakdown of estimates for each category of cost, but does provide the maximum recoverable amounts for the 2011 Scottish Parliament elections, should these have been taken in a separate poll. The table below shows a comparison of the level of fees and expenses provided for the Scottish Parliament elements of a combined poll, and a Scottish Parliament poll taken alone:

11Returning officer costs for the most recent poll in Scotland, the 2012 Scottish Local Government elections, are not available.
These documents relate to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

<table>
<thead>
<tr>
<th>Maximum recoverable amounts</th>
<th>Scottish Parliament election taken alone</th>
<th>Scottish Parliament election combined with another poll(^{12})</th>
</tr>
</thead>
<tbody>
<tr>
<td>For specified services</td>
<td>£194,208</td>
<td>£194,208</td>
</tr>
<tr>
<td>(returning officer fees)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For specified expenses</td>
<td>£10,104,001</td>
<td>£7,591,309</td>
</tr>
<tr>
<td>Total</td>
<td>£10,298,209</td>
<td>£7,785,517</td>
</tr>
</tbody>
</table>

49. In its report on the costs of the PVS referendum, the Electoral Commission estimated the cost of a ‘stand-alone’ referendum, including estimates for counting officers’ expenses and fees for stand-alone referendums in the rest of the UK. This suggested that the estimated cost for a stand-alone event in Scotland could cost around £8,355 million. This is based on the figures for the 2011 referendum and reversing the factors associated with the combination of polls. The table below indicates the estimated costs broken down by category.

<table>
<thead>
<tr>
<th>Category of costs</th>
<th>Estimated cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Polling station costs</td>
<td>4,978,564</td>
</tr>
<tr>
<td>Postal vote costs</td>
<td>919,424</td>
</tr>
<tr>
<td>Poll card costs</td>
<td>415,651</td>
</tr>
<tr>
<td>Count costs</td>
<td>1,294,471</td>
</tr>
<tr>
<td>Other costs</td>
<td>524,779</td>
</tr>
<tr>
<td>Counting officer fees</td>
<td>198,050</td>
</tr>
<tr>
<td>Solely attributable costs</td>
<td>24,793</td>
</tr>
<tr>
<td><strong>Total fees and costs incurred by counting officers</strong></td>
<td><strong>8,355,732</strong></td>
</tr>
</tbody>
</table>

50. These costs include the fees and expenses incurred by the Regional (or Chief) Counting Officer (estimated at around £38,928 for a Regional Counting Officer). If these costs are removed, the total fees and charges incurred by counting officers would be £8,316,804. Factors that will potentially increase or reduce this figure include changes in the size of the electorate; the effect of inflation on the costs of transport, equipment and postage; the effect of any specific directions made by the CCO as to how the poll or count should be run; and the implications of approaches to deal with specific local circumstances, such as the use of helicopters to fly the ballot papers from remote islands to a central count centre or the higher costs of hiring suitable count venues for larger voting areas. It is expected that this expenditure would be incurred during the 2014/15 financial year.

**Potential savings from a simplified process**

51. As stated above, the poll and count for the referendum will be more straightforward than in the Scottish Parliament elections due to the fact that voters will be asked to make a choice between two options rather than between a number of candidates. It is, therefore, likely that some savings can be made on the above costs. For example, savings could be made in the

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\(^{12}\) These costs reflect the maximum recoverable amounts for the Scottish Parliament elements of a combined poll; there would be a separate Fees and Charges Order providing maximum recoverable amounts for expenses incurred for the other poll taken in combination.
These documents relate to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

printing of ballot papers\(^{13}\) as the form of the ballot paper will be settled once the Scottish Independence Referendum Bill is passed, which will allow orders to be placed with printers far in advance. For elections this has to be postponed until the candidates have been nominated, which can be as late as 16 days before the date of the poll for local government or Scottish Parliament elections. Similarly, the fact that this referendum will offer only two choices means that the count will be simpler than an election with multiple candidates and different voting systems. This could mean that fewer counting staff would be needed in some areas.

**COSTS ON THE ELECTORAL COMMISSION**

52. The Electoral Commission will be responsible for overseeing and regulating the referendum campaign, providing advice and guidance to those running the referendum, providing information to voters, and reporting on the conduct of the referendum after it has taken place. Specifically, this role comprises the following activities:

- Undertaking public awareness activity
- Writing and publishing guidance and giving advice to permitted participants
- Reporting on the referendum process
- Registration of campaigners
- Designating lead campaign organisations
- Regulating campaign spending and donations
- Administering the observers scheme

53. The Commission will be funded by the Scottish Parliamentary Corporate Body (SPCB) in line with the established funding arrangements for the Commission in relation to its role for UK elections and referendums, where it is funded by the Speaker’s Committee in the UK Parliament as a means of demonstrating its impartiality and independence from Government. As the SPCB has not been allocated a budget for such expenditure for the financial year 2013/14, the Scottish Government will reimburse the SPCB by means of a budget transfer for any costs incurred between the commencement of the Act and the start of the following financial year.

54. Any costs incurred by the Commission prior to the commencement of the Act will be met by the Scottish Government. This includes the cost of the question assessment work carried out by the Commission, which came to around £130,000, as discussed at paragraph 28.

55. The Commission has provided cost estimates for its functions under this Bill, based on its previous experience of delivering equivalent or similar functions for referendums and elections. These include external non-pay spend and the cost of additional temporary resource employed to provide advice and guidance. The Commission will not seek funding from the Scottish Parliament in respect of existing staff who will be working on the referendum.

56. The Commission estimates its recoverable costs to be £2.195 million which includes a 5% contingency allowance of £0.104 million. The final amount to be funded will however be

\(^{13}\) Any savings which would be made from the absence of a nominations process would be minimal as these costs are effectively absorbed by local authorities during elections because the costs of processing nominations cannot be specifically claimed for by returning officers.
These documents relate to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

restricted to the cost that is actually incurred. These costs primarily relate to the delivery of public awareness activity (£1.803 million) and registering and giving guidance to campaigners and other permitted participants (£0.181 million). The public awareness activity will involve sending a factual information booklet to every household in Scotland (as happened for the May 2011 Scottish Parliament and 2012 Local Government elections) supported by a TV, radio and online advertising campaign. Registering and giving advice to campaigners will involve the recruitment of additional staff. By way of comparison, the Commission’s expenditure on public awareness for the Scottish Local Government elections in May 2012 was £1,383,886.

57. The remainder of the funding will meet the marginal costs of other agreed Commission functions, namely the regulation of campaign finance, the designation of lead campaigners, administration of the observers scheme and post referendum reporting.

58. Calculations for each of the statutory functions outlined above are shown in the table below (all figures £k):

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>SUBTOTAL (£)</th>
<th>TOTAL (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Undertaking Public Awareness activity</td>
<td>1,803</td>
<td></td>
</tr>
<tr>
<td>Cost of buying media space (TV, newspaper, online)</td>
<td></td>
<td>830</td>
</tr>
<tr>
<td>Design and production of advertising content</td>
<td>603</td>
<td></td>
</tr>
<tr>
<td>Printing and distributing a booklet to all households in Scotland</td>
<td>267</td>
<td></td>
</tr>
<tr>
<td>Call centre</td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>Public research for Campaign evaluation</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td>Writing and publishing guidance, and giving advice to permitted participants</td>
<td>181</td>
<td></td>
</tr>
<tr>
<td>0.5 FTE Lawyer - Additional legal resource, guidance and advice</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>Producing guidance and providing ongoing advice for campaigners</td>
<td>66</td>
<td></td>
</tr>
<tr>
<td>Additional accommodation and travel costs</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Travel / subsistence</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Reporting on the referendum process</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>Research (voters campaigners and Counting Officers) to inform reporting</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>Travel and other costs</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Other administrative costs relating to remaining functions (registration of campaigners, designating lead campaign organisations, regulating campaign spend and donations, administering the observers scheme)</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Total estimated costs</td>
<td>2,091</td>
<td></td>
</tr>
<tr>
<td>Contingency @5%</td>
<td>104</td>
<td></td>
</tr>
<tr>
<td>Recharge estimate as at February 2013</td>
<td>2,195</td>
<td></td>
</tr>
</tbody>
</table>
59. Of these costs, it is likely that the costs for the Electoral Commission’s activities in relation to public awareness and reporting would be incurred in the 2014/15 financial year (a total of £1,860,000). Guidance costs would begin to be incurred earlier on in the process (2013/14) with administrative costs covering the entire referendum period.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Campaign expenses

60. There are no obligations imposed on other bodies, individuals or businesses by this Bill which would result in costs being incurred. However, any person or organisation may voluntarily decide to campaign for a particular outcome in the referendum. Campaign activity does come at a cost which will, of course depend on the nature of the campaign activity undertaken. To ensure that campaign spending is reasonable, fair and equitable, the Bill limits the amount of money that can be spent on campaigning for different categories of permitted participants.

61. Anybody that does not wish to register as a campaigner with the Electoral Commission will not be permitted to spend more than £10,000 on campaigning. A body which is not a political party represented in the Scottish Parliament is entitled to spend up to £150,000 if it registers with the Commission and the political parties represented in the Scottish Parliament will be entitled to spend between £150,000 and £1,344,000, depending on their proportion of the vote. These spending limits are based on recommendations provided by the Electoral Commission in its report published on 30 January 2013.¹⁴

62. The Bill allows the Electoral Commission to designate up to two permitted participants, representing campaigners for each outcome in the referendum (one designated organisation per outcome). The designated organisations will be entitled to incur expenses up to a limit of £1,500,000 that each designated organisation is entitled to spend. A designated organisation is likely to be an umbrella organisation encompassing a number of persons and bodies who pool their resources to campaign for a common outcome. For smaller organisations, joining a designated organisation may be an effective way of contributing to a nationally effective campaign.

Charges and fees

63. The Bill permits the Electoral Commission to charge a reasonable fee for inspection of the register of permitted participants. It will be for the Commission to determine how much this should be set at and the Commission will retain this sum. In addition, the Commission may impose financial penalties as part of the civil sanctions regime. These sums are to be paid into the SCF. The precise income from such penalties is difficult to estimate given the uncertainty as to how many offences are likely to be committed, but advice from the Electoral Commission based on previously referendums suggest that this is not likely to be significant. Further provision on the civil sanctions regime will be set out in a supplementary order by Scottish Ministers.

Referendum campaign broadcasts

64. One of the benefits available to the designated campaign organisations is the right to a referendum campaign broadcast and only those made by or on behalf of designated organisations may be broadcast. Broadcasters are not expected to incur any costs or lost revenue from advertising, because the public broadcaster does not obtain revenue from advertising and the commercial broadcasters are likely to reduce the length of scheduled programmes rather than allocate advertising slots to the referendum broadcasts. However, broadcasters may incur some costs in terms of staff time required to air the broadcasts, but these are not easy to quantify. The Electoral Commission’s report on the PVS referendum suggested that the potential cost of airtime was better described as a benefit to the designated campaigners, rather than as a cost to broadcasters.

OVERALL ESTIMATED COST OF REFERENDUM

Costs associated with running the referendum

65. The table below sets out a summary of the estimated costs associated with the running of the referendum, that is, the work necessary to deliver the poll and the count. Note that these costs are indicative only and rely on a number of assumptions and variables which are discussed throughout this document. In addition, the impact of possible increases in the Retail Price Index has not been factored in.

(all costs are inclusive of relevant VAT and estimates provided are at the top of the potential cost range)

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>SOURCE</th>
<th>2012/13 (£)</th>
<th>2013/14 (£)</th>
<th>2014/15 (£)</th>
<th>TOTAL (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Postal sweeps</td>
<td>Local authorities, reimbursed by Scottish Government if local sweeps; CCO, funded by Scottish Government if national</td>
<td></td>
<td></td>
<td>30,000</td>
<td>30,000</td>
</tr>
<tr>
<td>Chief Counting Officer preparatory expenditure and expenses</td>
<td>Scottish Government</td>
<td></td>
<td>200,000</td>
<td>100,000</td>
<td>300,000</td>
</tr>
<tr>
<td>Counting officer fees and charges</td>
<td>Local authorities, reimbursed by Scottish Government</td>
<td></td>
<td></td>
<td>8,316,804</td>
<td>8,316,804</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£8,646,804</td>
</tr>
</tbody>
</table>
Other costs associated with the referendum (regulation, public awareness)

66. The table below indicates the estimated costs incurred under the section 30 Order, for free campaign mailshots, and Electoral Commission costs for preparation of guidance, reporting and public awareness (which arise under the Bill). Again, note that these costs are indicative only and rely on a number of assumptions and variables which are discussed throughout this document. In addition, the impact of possible increases in the Retail Price Index has not been factored in.

(all costs are inclusive of relevant VAT and estimates provided are at the top of the potential cost range, unless otherwise indicated)

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>SOURCE</th>
<th>2012/13 (£)</th>
<th>2013/14 (£)</th>
<th>2014/15 (£)</th>
<th>TOTAL (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free campaign postal communication</td>
<td>Royal Mail, reimbursed by SG</td>
<td></td>
<td></td>
<td>2,263,200a</td>
<td>2,263,200</td>
</tr>
<tr>
<td>Royal Mail administration fee</td>
<td>Scottish Government</td>
<td>120,000</td>
<td></td>
<td></td>
<td>120,000</td>
</tr>
<tr>
<td>Electoral Commission costs for public awareness and reporting</td>
<td>Scottish Parliament/Scottish Government</td>
<td>1,860,000</td>
<td></td>
<td></td>
<td>1,860,000c</td>
</tr>
<tr>
<td>Electoral Commission costs for guidance and administration</td>
<td>Scottish Parliament/Scottish Government</td>
<td>135,000</td>
<td>200,000</td>
<td></td>
<td>335,000b</td>
</tr>
<tr>
<td>Electoral Commission costs for question assessment</td>
<td>Scottish Government</td>
<td>130,000</td>
<td></td>
<td></td>
<td>130,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>£4,708,200</strong></td>
</tr>
</tbody>
</table>

a Based on two designated organisations both choosing the most expensive mailing option, with estimates provided by the Royal Mail. If both designated organisations chose the unaddressed mailing option, the total cost could be £685,344 (including VAT).
b Based on estimated cost provided by Electoral Commission.

c Costs incurred under the Scottish Independence Referendum (Franchise) Bill

67. In addition to the costs incurred under this Bill, the Scottish Government will also meet the costs associated with the extension of the franchise to include 16 and 17 year olds, and the process by which young people can be registered. The Government will reimburse electoral registration officers for any fees and expenses incurred in the course of undertaking their functions in the referendum. The role and duties of electoral registration officers are provided for in the Scottish Independence Referendum (Franchise) Bill, with estimated costs detailed in the Financial Memorandum which accompanied that Bill.
68. That FM puts the estimated cost of extending the franchise to include all 16 and 17 year olds at around £358,000.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 21 March 2013, the Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Scottish Independence Referendum Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 21 March 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Scottish Independence Referendum Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the Scottish Independence Referendum Bill introduced in the Scottish Parliament on 21 March 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 25–EN.

POLICY OBJECTIVES OF THE BILL

General overview

2. The Bill provides for a referendum to be held on whether Scotland should be an independent country.

3. The Scottish Government believes that the future prosperity and development of Scotland would be best served by it becoming independent. The referendum provided for by the Bill would provide the people of Scotland with the opportunity to vote on whether Scotland should be independent.

4. The main policy objective is for the referendum to be (and to be seen to be) a fair, open and truly democratic process which is conducted and regulated to the highest international standards. There must also be public confidence in the result on a par with that for national elections, which can be achieved by ensuring:

- that the question posed on the ballot paper is clear, intelligible and neutral;
- that entitlement to vote is determined in a fair and consistent manner, and is extended to all those aged 16 or 17 on the date of the referendum poll;
- that the voting and counting processes operate smoothly and effectively, and are subject to sufficient controls and audit to ensure certainty over the legitimacy of the result; and
- that the campaign leading up to the referendum is well regulated by the Electoral Commission, independent of Parliament and Government, has rules in place so that spending by those campaigning is limited to reasonable levels, and that all sides in
This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

the campaign are operating on a level playing field in terms of resources spent on campaigning.

BACKGROUND

5. In 1997, the people of Scotland agreed in a referendum to the establishment of a Scottish Parliament with tax-varying powers. On 1 July 1999, the Scottish Parliament was formally vested with its full responsibilities.

6. In 2007 the Scottish National Party (SNP) was elected as the largest party, but its total number of seats fell short of that required for a majority. From 2007 to 2011 the SNP operated in Parliament as a minority Government. The Government published the white paper Your Scotland, Your Voice, which set out constitutional options and opportunities for Scotland, and brought forward plans for a referendum on Scotland’s constitutional future. However, while there was broad support across Scotland for developing Scotland’s constitutional position, it was clear that the other parties in the Scottish Parliament would not support a referendum on independence, and a Bill was not presented to Parliament.

7. The SNP was re-elected in 2011 with an overall parliamentary majority and a mandate to hold a democratic referendum on Scotland’s constitutional future. In January 2012 the Scottish Government published a consultation paper (Your Scotland, Your Referendum) on its detailed proposals for organising, running and regulating the referendum. That consultation paper noted the Scottish Government’s preference for a short, direct question about independence, and its view that there were suitable questions which would be within the legislative competence of the Scottish Parliament. However, it also noted the UK Government’s publicly stated view that legislation providing for a referendum on independence would be outwith the existing powers of the Scottish Parliament, and the Scottish Government’s willingness to work with the UK Government to resolve this issue.

8. At the same time as the Scottish Government’s consultation, the UK Government published a consultation on a Scottish Referendum, along with an offer to the Scottish Government to negotiate the terms of an Order in Council under section 30 of the Scotland Act 1998 (or to amend the terms of the Scotland Bill then going through the House of Lords) to transfer the necessary powers to the Scottish Parliament to allow it to hold a referendum on independence.

9. The Scottish Government stated that it was ready to work with the UK Government to agree a clarification of the Scotland Act 1998 that would remove any doubts the UK Government had about the competence of the Scottish Parliament and put the referendum effectively beyond legal challenge.

10. The Scottish Government entered into discussions with the UK Government on this issue on the basis that, as a matter of democratic principle, it is for the Scottish Parliament to decide on the timing and terms of the referendum and the rules under which it is to be conducted.

1 http://www.scotland.gov.uk/Publications/2012/01/1006
11. Those discussions culminated on 15th October 2012, when the First Minister of Scotland and the Prime Minister signed the Edinburgh Agreement\(^2\) which paved the way for a referendum on Scottish independence. The governments agreed that the referendum should:
   - have a clear legal base
   - be legislated for by the Scottish Parliament
   - be conducted so as to command the confidence of parliaments, governments and people
   - deliver a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect.

12. The governments agreed to promote an Order in Council under section 30 of the Scotland Act 1998 in the Scottish and United Kingdom Parliaments to allow a single-question referendum on Scottish independence to be held before the end of 2014. The Order\(^3\) was approved by both Parliaments and came into force on 13 February 2013.

13. The Edinburgh Agreement confirms that the referendum should meet the highest standards of fairness, transparency and propriety, informed by consultation and independent expert advice and that the referendum legislation will set out:
   - the date of the referendum
   - the franchise
   - the wording of the question
   - rules on campaign financing
   - other rules for the conduct of the referendum

14. The Bill proposes a referendum asking whether Scotland should be an independent country. The Scottish Government believes that Scotland’s future interests would be best served by it becoming an independent country and assuming all of the responsibilities and rights of a European state. Independence would bring to Scotland the responsibilities that would not be devolved whilst remaining within the UK, such as macroeconomic policy, full European representation, foreign affairs and defence policy.

**Policy objective of the Bill**

15. Specifically, the policy objective is that the Bill should provide for a referendum:
   - that is scheduled to take place on 18 September 2014;
   - that invites voters to answer Yes or No to the question: Should Scotland be an independent country?

\(^2\) [http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence](http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence)

\(^3\) The Scotland Act 1998 (Modification of Schedule 5) Order 2013 (S.I. 2013/242)
in which all those who can currently vote in Scottish Parliament and local
government elections in Scotland will be eligible to vote, as well as those aged 16 or
17 on the day of the poll; and

that will be conducted and regulated to the highest international standards, with the
referendum campaigns being run in a demonstrably fair and transparent manner. In
particular, the referendum will be:

- conducted under the direction of a Chief Counting Officer, appointed by
  the Scottish Ministers, who will be responsible for appointing local
  counting officers reporting to him or her;

- preceded by a 16 week regulated formal campaign period, with set limits
  on the amount of money any registered participant may spend on
  campaigning in the period prior to the referendum; and

- supervised by the independent Electoral Commission, whose powers in
  this regard are set out in the Bill. The Commission will have a regulatory
  role with regard to the campaign spending rules and a role informing the
  public about the referendum.

16. This memorandum deals with the following main issues:

- the ballot paper and voting system, including the referendum question itself, the
  timing of the referendum, and what would follow the referendum;

- the conduct of the referendum poll and counting of votes; and

- the referendum campaign rules, including the role of the Electoral Commission

17. The franchise for the referendum, and the registration arrangements necessary to extend
the franchise to 16 and 17 year olds, are covered in the separate Scottish Independence
Referendum (Franchise) Bill, introduced in the Scottish Parliament on 11 March. These issues
are therefore dealt with in the policy memorandum for that Bill, published as SP Bill 24–PM.

Alternative approaches

18. There is no alternative to primary legislation. While the Political Parties, Elections and
Referendums Act 2000⁴ (PPERA) provides for referendums held under Acts of the UK
Parliament, there is currently no legislation governing the conduct of referendums held under
Scottish Parliament legislation. The Bill is therefore required to put in place the procedures for
the running of the referendum campaign, poll, count, and eventual declaration and certification
of the result.

CONSULTATION

19. The Scottish Government’s consultation paper *Your Scotland, Your Referendum* was
published on 25 January 2012. The consultation set out the Government’s proposals for
inclusion in legislation and asked a series of open questions, aimed at finding out what people

thought about the proposals for running and regulating the referendum. It also included a draft Bill.

20. Among others, comments were received from a wide range of individuals and organisations with interest and experience in electoral matters, such as electoral professionals, academics and political parties. The Scottish Government received just over 26,000 responses, which have been published on the Scottish Government website\(^5\), along with the results of an independent analysis of those responses.

21. A large majority of respondents to the consultation were in favour of holding a referendum, mostly on the grounds that it is the democratic right of the people of Scotland to have their say on their country’s constitutional future.

22. Specific issues raised in the consultation that are relevant to measures included in the Bill are discussed under the relevant section headings within this document, including where alternative approaches were considered. A wide range of views was expressed in the consultation. However, not all were directly relevant to this Bill and so have not been included in this document.

23. In addition to the formal consultation, Scottish Government officials have worked closely with the Electoral Management Board for Scotland (EMB), the Electoral Commission and others to ensure the proposals in the Bill reflect, and build on where necessary, the rules governing elections, and take account of any relevant improvements made in light of Ron Gould’s report on the 2007 Scottish Parliament and Local Government elections\(^6\). The improvements made ahead of the 2012 local government elections were widely seen to have contributed to the successful running of the elections and were highlighted in both the Electoral Management Boards for Scotland\(^7\) and the Electoral Commission\(^8\) reports on these elections.

### THE BALLOT PAPER AND VOTING SYSTEM

#### Policy objectives

24. The Scottish Government drafted - and subsequently asked the Electoral Commission to test - a referendum question to provide voters with a clear opportunity to express their view on whether Scotland should be an independent country. It was developed so that it is (and is seen to be) clear, intelligible, neutral and fair. The ballot paper for the referendum is set out in schedule 1 to the Bill.

\(^5\) [http://www.scotland.gov.uk/Publications/2012/10/3849](http://www.scotland.gov.uk/Publications/2012/10/3849)


Alternative approaches - support for a multi-option referendum

25. *Your Scotland, Your Referendum* made clear that the Scottish Government’s preferred policy is independence, but that it was open to proposals for the inclusion of other options on the ballot paper if there was sufficient support for such a move. The public was asked whether they supported the option of a second question on the ballot paper. The consultation analysis indicated a majority against a second question (62% were against; 32% were in favour) for a variety of reasons.

26. In his evidence to the Scottish Affairs Committee on 17 September 2012, the Secretary of State for Scotland confirmed the UK Government position that, while the – then, ongoing – negotiation of the terms of the section 30 Order should be seen as a package, it was a “red line” for the UK Government that there should only be one question in the referendum.

27. The Edinburgh Agreement, and accompanying section 30 Order provided that there should be a single-question referendum on Scottish independence to be held before the end of 2014. In line with this, and the results of the consultation exercise, the Bill contains only one question.

The wording of the referendum question

28. The proposed referendum question “Do you agree Scotland should be an independent country?” was included in the consultation *Your Scotland, Your Referendum*. The analysis of the consultation shows that the broad weight of opinion was in favour of the Scottish Government’s proposals on the referendum question (64% broadly agreed with the proposed wording of the question, 28% did not, and the remainder had unclear or mixed views). Respondents who agreed with the proposed referendum question generally described it as “clear”, “concise”, “unambiguous”, “simple”, “straightforward”, “to the point” and “easy to understand”.

29. In line with standard practice for PPERA based referendums held across the UK, the Scottish Government asked the Electoral Commission to test the question. The Deputy First Minister wrote to the Commission on 8 November 2012 to “request that the Electoral Commission provide advice and assistance to the Scottish Government by considering the wording of the following proposed question to be included on the ballot paper for the Scottish independence referendum to be held in the autumn of 2014”.

30. To inform its assessment, the Electoral Commission carried out research with members of the public to see how well the proposed question met its guidelines with regard to intelligibility. The Commission also wrote to individuals and organisations including the main political parties represented in the Scottish Parliament and likely campaigners, to seek their views on the proposed question. They also took account of views expressed by other individuals and groups who contacted them, and by members and committees of the Scottish and UK Parliaments.

31. The Commission looked at whether the question was clear, simple and neutral. They concluded that the question was written in plain language and was easy for people to understand and answer, and that it was clear to people what they were being asked to vote on.
However, based on their research and taking into account evidence from organisations and individuals who submitted their views on the question, the Commission considered that, while there was no suggestion that the “Do you agree…?” formulation was intended in such a way, the phrasing could be seen as encouraging a positive response. For that reason, the Commission recommended changing the way the question is introduced. Instead of asking ‘Do you agree..?’ they recommended the following wording:

‘Should Scotland be an independent country? Yes/No’

The Scottish Government accepted the Electoral Commission’s recommendations and announced that it would include the question “Should Scotland be an independent country?” in the Scottish Independence Referendum Bill when it was introduced to Parliament. This is therefore the question on the ballot paper included in the Bill for the Parliament’s consideration.

It will of course be crucial that voters are fully informed about the proposal they will be asked to vote on (i.e. what independence for Scotland will mean). During the next year, the Scottish Government will publish a series of papers setting out the main arguments for independence and how independence would be implemented, followed by a white paper in autumn 2013 that will set out the Government’s proposals for an independent Scotland.

Timing of the referendum

Your Scotland, Your Referendum set out the Scottish Government’s reasons for holding the referendum in the autumn of 2014. The consultation sought views on whether the referendum could be held on a Saturday as a way of increasing voter turnout. While there was some support for this proposal, the consultation also confirmed practical and other reasons why some people could not or would not vote on a Saturday. The Government considers therefore that, in line with the principle that the referendum should be run in a manner which is familiar to voters and electoral administrators, the poll should be held on Thursday. The Bill provides that the referendum will be held on 18 September 2014.

Referendum result

The Edinburgh Agreement confirms that the Scottish and UK governments have agreed to work together to ensure that a referendum on Scottish independence can take place. Among other things, the governments have agreed the importance of ensuring that the referendum delivers a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect. Paragraph 30 of the Edinburgh Agreement commits the two governments to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland and of the rest of the UK.

The referendum will not be subject to any minimum turnout requirement or supermajority threshold, unlike the devolution referendums in 1979. It is well established in the UK and

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9 In the 1979 referendum on establishing a Scottish Assembly, despite a small majority voting in favour of an Assembly, the referendum did not pass because of the ‘40% rule’, which required that 40% of the electorate had to vote in favour of the proposition for the result to be valid.

10 The 1975 UK Referendum on continued membership of the EEC, the 1997 devolution referendums in Scotland and Wales, the 1998 Greater London Authority referendum, the 1998 referendum on the Belfast Agreement in
This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

across Western Europe\footnote{Examples of referendums in western Europe where no minimum turnout requirement or abnormal majority threshold was set are: the 1992 Maastricht treaty referendums in France and Ireland, the 1994 referendum on joining the EU and the 2003 referendum on adopting the Euro in Sweden, the 2005 referendums on the Constitution for the EU in Spain, France and the Netherlands, the 2006 referendum on greater autonomy for Catalonia and the 2008 and 2009 Lisbon treaty Referendums in Ireland.} that referendums should be decided by those who choose to vote on a simple majority basis. The 1997 Scottish devolution referendum was conducted on that basis.

38. The Venice Commission’s 2005 report \textit{Referendums in Europe – An Analysis of the Legal Rules in European States}\footnote{www.venice.coe.int/docs/2005/CDL-AD(2005)034-e.pdf} notes that most European states do not set thresholds for referendums - either in terms of participation or approval - that have to be exceeded for referendum results to be valid. In 2006 the Venice Commission published a voluntary Code of Good Practice for Referendums setting out its guidelines on best practice for referendums. Article 7 of the Code explicitly states that minimum turnout requirements and abnormal majority thresholds are not advisable. In the Scottish Government’s view this is the correct approach and there is no need for any kind of turnout or majority threshold.

**CONDUCT OF THE POLL AND COUNT**

**Policy objectives**

39. The policy objective is to ensure that the referendum poll and count are run in an efficient, transparent and fair manner that will be familiar to voters and to those running it. If the process is seen as simple and familiar to voters it should inspire public confidence in the legitimacy of the process and of the result. The rules about the conduct of the poll and the count are based on the rules applying to the conduct of elections to the Scottish Parliament, UK Parliament, and local councils and at other referendums.

**The referendum poll**

40. The Bill provides that the referendum will be a traditional ballot box poll held on a single day with votes cast at polling stations across the country. The detail of what the ballot paper will contain is set out in schedule 1 to the Bill. Once the counting officer has published notice of the referendum, a poll card will be sent to every eligible voter in the counting officer’s area. Voters will also have the option to vote by post or proxy in the same way as they do for local council or Scottish Parliament elections. The votes will be counted by hand.

41. The Bill sets out the detailed rules relating to the arrangements for voting and the conduct of the poll, including arrangements for polling stations, voting and counting procedure, arrangements for absent voting (i.e. by post or by proxy), and the conduct of the count, which are all in line with the procedures for local council or Scottish Parliament elections. In addition, behaviour which would constitute an offence in an election will constitute an offence in the referendum, and will be dealt with in a similar way.
42. Among those who specifically commented on the conduct of the poll in the consultation, a number agreed that the referendum should be run in the same way as other elections. The Bill provides for that, and the Scottish Government has consulted extensively with a range of electoral professionals to ensure that consistency is delivered in practice.

**Polling list**

43. The Scottish Independence Referendum (Franchise) Bill puts in place the necessary arrangements to enable young people who will be 16 on the date of the poll to register to vote in the referendum. That Bill provides for the details of those who are not yet 16 when they register, but will be by the date of the poll, to be compiled into a Register of Young Voters (RYV), and for strict protections to be placed on the handling of that register. It will be held separately from the local government register, and only Electoral Registration Officers and their staff will be able to access it. More detail on the RYV is set out in the policy memorandum for the Franchise Bill.

44. For use at, and leading up to, the poll, a list of all voters – i.e. those on the local government register and those on the RYV – will be needed. This Bill therefore provides for a single polling list to be compiled, merging the details of voters on the RYV with those of voters on the local government register. The details of young voters will not be distinguished from the details of other voters, and the list will not show dates of birth. This will ensure that young people’s details are treated as securely as possible.

45. The Bill provides for the following groups and organisations to have access to the polling list:

- Counting officers, who need the information in order to administer polling. They also need it to arrange for the printing and distribution of poll cards for all voters, and for the preparation and distribution of postal voting packs to postal voters.

- The two official campaign organisations for the referendum (referred to as the “designated organisations”). The campaign organisations need all voters’ details so that they can send every voter or household a postal communication in advance of the referendum. These communications will be used to set out the campaign groups’ positions on the referendum, so it is important that we ensure young people receive them so they are provided with the same information available to older voters before casting their vote.

- The Electoral Commission, in its capacity as the independent regulator and monitor of the referendum campaign.

46. The version of the polling list received by designated organisations and the Electoral Commission will include only electors’ names and addresses. The version of the merged registers provided to counting officers and to organisations that print and distribute voter materials on behalf of electoral administrators will include electors’ names, addresses and voter numbers.
47. The Bill establishes the office of the Chief Counting Officer (CCO), who will oversee the referendum process and be responsible for the running of the vote on the day of the poll, for the count and for the eventual declaration and certification of the result. The Bill provides that the CCO will be appointed by the Scottish Ministers (reflecting a similar appointment by the Secretary of State for the 1997 referendum), and that the appointed person will be the Convener of the Electoral Management Board for Scotland by virtue of section 2 of the Local Electoral Administration (Scotland) Act 2011. The CCO will operate entirely independently of Government.

48. The CCO will have a number of specific duties, which are set out in the Bill. Most importantly, the CCO must appoint a counting officer for each local authority area. This is most likely to be the returning officer for each area, although the CCO has the power to make a different appointment if he or she wishes. The main duty of the CCO will be to certify the number of ballot papers cast for the whole of Scotland, and to certify the number of votes for each proposition on the ballot paper. Similarly, each appointed counting officer will have to certify the number of ballots cast and the number of votes for each proposition in the local authority area for which they have been appointed, in accordance with any directions given by the CCO.

49. The CCO role is one which has been established at previous referendums in the UK. Their role in the referendum will be similar to that played by the CCO in the 1997 devolution referendums and in the 2004 Regional Assembly and Local Government referendum held in the North East of England.

50. The approach taken in the Bill differs slightly from the 2011 UK referendum on parliamentary voting systems. At that referendum, the CCO was the Chief Executive of the Electoral Commission which was responsible for conducting the poll. The CCO appointed regional returning officers who in turn appointed local counting officers. For this referendum there is no need for the post of regional returning officer; counting officers will report directly to the CCO. The Scottish Government’s planned separation of the responsibility for running the referendum from that of regulating and reporting on the referendum was welcomed in the Government’s consultation.

51. The CCO and the counting officers will claim their fees and expenses from the Scottish Government, under the terms of a Fees and Charges Order to be made under an order making power in this Bill. The Order will be developed in consultation with the Electoral Management Board and others. The fees and charges set out in it will be consistent with recent elections and referendums.

**Overnight counting**

52. The Bill places a duty on individual counting officers to make arrangements for counting votes as soon as reasonably practicable after the close of the poll, but gives some flexibility to take any local circumstances into account. This is consistent with the arrangements for counting at elections. In practice the Scottish Government expects that counting will take place overnight, in line with normal election procedure.
Declaration of result

53. The Bill requires counting officers to provide the CCO with the certified results, information on rejected ballot papers and other information as soon as they are available. The CCO will then authorise the counting officer to announce the local result. When the CCO is in receipt of all certified local results, a national declaration will take place.

Referendum agents

54. The Bill provides for each permitted participant to appoint a “referendum agent” for any local government area. Referendum agents act as the participants’ representatives for the poll. As such they are entitled to attend polling stations, to be present when postal ballot papers are received, and to be present when votes are counted. This is in line with standard practice (for example, the AV referendum, as provided for by the Parliamentary Voting Systems and Constituencies Act 2011).

Observers

55. As mentioned at paragraph 62, the responsibilities the Bill confers on the Electoral Commission include observing the conduct of the referendum at polling stations and the conduct of the count. To enable them to carry out these responsibilities, the Bill gives Electoral Commission observers the right to attend any proceedings which are the responsibility of the CCO or a counting officer, or to observe any of their work carried out under the Bill.

56. The Bill also provides for any individual (over the age of 16) or organisation to apply to the Commission to be appointed as an accredited observer. Accredited observers are permitted to be present at the issue or receipt of postal ballot papers, the poll, and the count. This is in line with standard electoral practice.

Offences

57. The Bill extends standard electoral offences to the referendum.

CAMPAIGN RULES

Policy objectives

58. The Edinburgh Agreement confirms the importance of ensuring that the referendum campaign is subject to regulation that ensures that the referendum is fair and commands the confidence of both sides of the debate. The Scottish and UK Governments agreed that the regulations for the independence referendum campaign should be based on those set out in PPERA.

59. The Bill includes detailed provision for the referendum rules. The objective of putting in place detailed rules governing participation in the referendum campaign is to ensure that the campaigns in support of each referendum outcome are run in a demonstrably fair and transparent manner. The technical rules in the Bill about the conduct of the campaign build on, and are therefore very similar in substance to, the existing UK legislation and rules applying to the
This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

conduct of referendums and elections. They will therefore be familiar to the electoral professionals running the poll, and to those running political campaigns who currently have to adhere to the existing rules governing them. This familiarity will help ensure that there is confidence in the legitimacy of the process and of the result.

60. The aim of the campaign rules is to create a level playing field between campaigns supporting each potential outcome, so as to prevent any political party or organisation from being able to disproportionately influence the campaign by excessive spending.

Consultation

61. The Your Scotland, Your Referendum consultation contained a chapter on Campaign Rules and sought views on the proposed spending limits. A majority of respondents supported the campaign regulation proposals and principles set out in the consultation document. Comments focussed on the principles which should underpin the spending arrangements, such as equitable limits, accountability and transparency.

The Electoral Commission

62. The Scottish Government intends that the referendum is run to the highest possible international standards. It is therefore essential that the referendum campaign rules are adhered to and are properly monitored and policed. The Bill confers a range of guidance, regulatory and monitoring functions on the Electoral Commission including:

- publishing guidance for voters
- publishing guidance for permitted participants
- recording the money spent and donations received by permitted participants and making that information available for public inspection
- observing the conduct of the referendum at polling stations
- observing the conduct of the count
- publishing a report on the conduct and administration of the referendum
- monitoring compliance with the campaign rules, with their investigatory and civil sanction powers available

63. The Electoral Commission will take a fair and balanced approach to its activities. The functions are specified in the Bill in a way which will ensure that the Commission will not be influenced by the Scottish or UK Governments in its affairs. The Commission will report to the Scottish Parliament.

64. The Bill provides that the Scottish Parliamentary Corporate Body will reimburse the Electoral Commission for expenditure incurred in fulfilling its functions under the Bill. This is in line with the established funding arrangements for the Commission in relation to its role for UK elections and referendums, where it is funded by the Speaker’s Committee at Westminster as a means of demonstrating its impartiality and independence from Government. The Commission
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will include details of its expenditure in its report on the conduct and administration of the referendum.

Alternative approaches

65. While most respondents to the consultation were generally supportive of the proposed role for the Electoral Commission, some felt that other arrangements to provide independent oversight of the referendum process should be put in place.

66. The Scottish Government previously considered setting up a separate and one-off Scottish Referendum Commission on the basis that it was essential that the Commission is accountable to the Scottish Parliament, rather than the UK Parliament. At the time, the Electoral Commission reported solely to the UK Parliament on all of its activities. However, the Local Electoral Administration (Scotland) Act 2011 gave the Electoral Commission a statutory role for the first time in Scottish local government elections and established the principle of the Electoral Commission reporting to the Scottish Parliament on the exercise of its functions in Scotland. This arrangement worked successfully during the local government elections in May 2012.

Campaign spending limits

Background

67. For UK-wide referendums, PPERA puts in place spending limits for any groups or individuals wishing to take part in the referendum campaign, and also makes arrangements for referendums held in part of the UK under UK legislation.

68. PPERA spending limits do not apply to the referendum on Scottish independence. It is for the Scottish Government to propose, and the Scottish Parliament to determine, the spending limits for the referendum period (this is the period beginning 16 weeks before the poll). The Scottish Government’s consultation paper Your Scotland, Your Referendum proposed a range of spending limits for participants in the referendum campaign, broadly based on the rules in PPERA, tailored to reflect the context of a referendum held only in Scotland. These proposed limits were designed to ensure a level playing field in terms of the size of campaign available to organisations campaigning for particular outcomes, and to prevent one or a number of organisations from dominating the referendum campaign.

69. Under PPERA, the Electoral Commission is responsible for regulating campaign spending for UK-wide referendums. The Edinburgh Agreement confirmed that the Electoral Commission would be asked to regulate campaign spending for the referendum on Scottish independence as well. The Edinburgh Agreement states that, in setting the spending limits for the referendum period, the Scottish Government will “analyse and consider the responses to its consultation, consult with both existing referendum campaigns […] and have regard to the Electoral Commission’s views”.

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70. On 30 January 2013 the Electoral Commission published a report setting out its recommendations on spending limits for the referendum. Their proposed limits are detailed in column B of the table below. The Commission’s report explained that the spending limits they recommended had been developed taking into account the principles of the Commission’s 2010 paper Key principles for Referendums and its 2011 principles for formulating advice on spending limits for PPERA referendums in particular parts of the UK. The Commission stated that it had sought to apply these principles in a way that recognised the specific context of the independence referendum, including the information the Commission now had about the likely shape and scale of campaigning, the Edinburgh Agreement and (where relevant) lessons learnt.

71. In its response to the Commission’s recommendations, the Scottish Government noted that the limits proposed by the Commission now accepted the need to ensure a level playing field and, as such, represented a move from the Commission’s position in responding to the Government’s consultation in March 2012. The Government accepted the Commission’s recommended limits, and these are therefore the spending limits set out in the Bill.

**Spending limits in the Bill**

72. The table below summarises the spending limits originally proposed in *Your Scotland, Your Referendum* (column A), and those recommended by the Electoral Commission and subsequently accepted by the Scottish Government (column B). The limits in column B are those provided for in the Bill. (In the case of political parties, the Bill does not prescribe the limit for each party but sets out the formula by which each of the party limits below is calculated. The formula is explained at paragraph 80.)

<table>
<thead>
<tr>
<th>Type of participant (each category of participant is explained below)</th>
<th>Column A: Proposed Spending Limit in Consultation draft of Bill</th>
<th>Column B: Revised Spending Limits in Bill as submitted to Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated Organisation</td>
<td>£750,000</td>
<td>£1,500,000</td>
</tr>
</tbody>
</table>
| Political Party represented in the Scottish Parliament | £250,000 flat rate | Scottish National Party £1,344,000  
Scottish Labour £834,000  
Scottish Conservative and Unionist Party £396,000  
Scottish Liberal Democrats £201,000  
Scottish Green Party £150,000 |
| Other Permitted Participants | £50,000 | £150,000 |

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15 Each designated organisation will also be entitled to one free postal communication to every household or voter in Scotland to promote its campaign.
Permitted participants

73. Following the principles established in Part 7 of PPERA for referendums held under UK legislation, the Bill provides that any UK individual or organisation wishing to campaign for a particular outcome in the referendum must make a declaration to the Electoral Commission stating that they wish to be a “permitted participant”. That declaration must also state which outcome they are campaigning for. Unless a person or organisation has declared themselves as a permitted participant they will only be legally allowed to spend £10,000 on campaigning for a particular outcome in the referendum.

74. The purpose of having declared permitted participants is to help to ensure an open campaign where those who wish to publicly support a particular outcome must publicly register that intention, so that it is clear who is campaigning for what. Imposing spending limits on those declared participants will create as far as possible a level playing field with regard to campaign spending and thus prevent individuals or organisations from dominating the referendum campaign.

75. There are three categories of permitted participants in the referendum:
   - designated organisations;
   - registered parties represented in the Scottish Parliament at the start of the referendum period; and
   - other permitted participants or registered campaigners who are not a registered party represented in the Scottish Parliament at the start of the referendum period.

Designated organisations

76. A permitted participant may apply to the Electoral Commission to be the principal campaigner representing one of the outcomes of the referendum. These permitted participants are called “designated organisations” and will in effect be the main campaign bodies for each of the outcomes. In this referendum, there are two possible outcomes: Yes and No. There will therefore be a maximum of two designated organisations.

77. As the main campaigning body for an outcome in the referendum, a designated organisation will have a higher campaign spending limit than other permitted participants. In addition, each designated organisation will be entitled to recover the postage costs of one free mailshot to every household or voter in Scotland to promote its campaign. As at elections and UK referendums, designated organisations will also be entitled to use school rooms or other rooms for holding public campaign meetings during the four week period before the referendum is held.

78. There are no direct precedents for spending limits for designated organisations, political parties and other groups at a Scottish level. However, in its report the Electoral Commission suggested that the lead campaigners at a referendum on Scottish independence should be able to put forward their arguments to voters by campaigning on a similar scale to political parties campaigning at a Scottish Parliament election, which have a spending limit of £1,500,000. This is therefore the spending limit the Commission recommended for the designated organisations, and the limit adopted in the Bill.
Political parties

79. PPERA permits the largest political parties (i.e. those with over 30% of total number of votes cast at the last UK Parliamentary election) to spend the same as the designated organisations.

80. The Electoral Commission recommended that the spending limit for each registered party represented in the Scottish Parliament at the start of the referendum period should be set by reference to the share of the vote that party received at the 2011 Scottish Parliament election. To calculate the suggested limits on this basis, the Commission:

- calculated the limits with reference to the actual share of the vote received by each party, rather than using bands, which the Commission acknowledged can distort the impact of the share of the vote; and
- applied the share of the vote to a maximum value equivalent to the combined value of the limits of the two designated organisations. In other words, the combined spending limits for all political parties represented in the Scottish Parliament is approximately equal to the combined spending limits for the two designated organisations, with each party’s share of that overall limit being determined by their share of the vote at the 2011 Scottish parliament election. This approach is intended to provide party limits sufficiently high to allow parties to carry out a significant national campaign separately from any designated organisation.

81. On this basis, the Commission recommended that the limits for the five registered parties represented in the Scottish Parliament should be:

<table>
<thead>
<tr>
<th>Party</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish National Party</td>
<td>£1,344,000</td>
</tr>
<tr>
<td>Scottish Labour</td>
<td>£834,000</td>
</tr>
<tr>
<td>Scottish Conservative and Unionist Party</td>
<td>£396,000</td>
</tr>
<tr>
<td>Scottish Liberal Democrats</td>
<td>£201,000</td>
</tr>
<tr>
<td>Scottish Green Party</td>
<td>£150,000</td>
</tr>
</tbody>
</table>

Other permitted participants

82. For groups which are not political parties and wish to campaign outside of the designated organisations as permitted participants (whether or not they also form part of such a group) the Electoral Commission recommended that the spending limit be set at 10% of each designated organisation’s spending limit (in other words, £150,000, which represents 10% of the designated organisations’ limit of £1,500,000). This is in line with the Commission’s 2010 paper *Key principles for Referendums*. The limit should be sufficient to allow other groups to have some national impact, while encouraging them to join the designated organisations if they wish to contribute more substantially. The Bill also contains restrictions which prevent campaigners from evading the spending limits by setting up multiple campaigns which work to a common
plan. These restrictions replicate the approach taken in the 2011 UK referendum on parliamentary voting systems.

**Expenses that count towards spending limits**

83. Expenses will count towards the spending limits if they are in relation to activities supporting a referendum campaign or promoting an outcome in the referendum. Such activities include:

- referendum campaign broadcasts\(^\text{16}\);
- advertising;
- unsolicited material addressed to voters;
- any material that provides information about the referendum, its questions, or promotes an outcome;
- market research or canvassing of people’s voting intentions;
- press or media conferences;
- transport costs for the purposes of obtaining publicity about the referendum; and
- rallies and other forms of public meetings.

84. Cost savings associated with property, facilities or services that are provided free of charge or at a preferential rate are also counted as referendum expenses if they exceed £200. These are referred to as “notional referendum expenses” in the Bill and must be declared to the Commission, along with the other expenses.

85. Breach of the campaign spending limits is treated as an offence in the same way as PPERA treats such breaches. It would therefore be an offence for an individual or body which is not a permitted participant to knowingly exceed its spending limit of £10,000. Anyone guilty of this offence would be liable, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum\(^\text{17}\) (or both) and, on conviction on indictment, to imprisonment for a term not exceeding 12 months, or to a fine without limit (or both).

86. Similarly, it is an offence for permitted participants to exceed their spending limits. A person guilty of such an offence would be liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine.

87. To ensure that the referendum campaign is conducted openly, it is crucial that the campaign expenditure incurred is properly accounted for and reported. Those running campaigns must demonstrate that they have maintained control over what they have spent on their campaigns so that their spending can be reported and made public. The Bill therefore puts

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\(^{16}\) Radio and television broadcasts concerning referendums are restricted by the Communication Act 2003. The Bill does not provide for dedicated referendum broadcasts under the campaign rules, though provision is made in the section 30 order.

\(^{17}\) Currently set at £10,000.
in place detailed rules, based on the provisions of PPERA, to ensure that each participant has appropriate procedures in place to authorise and account for its expenses. To ensure maximum transparency, the Bill also requires all permitted participants to provide regular reports to the Electoral Commission ahead of the poll on all donations and loans received.

Donations made to permitted participants in the referendum campaign

88. As set out above, the Bill puts in place detailed rules to ensure that any donations made to permitted participants in support of their campaign – whether in the form of money or other property – are declared and administered appropriately to ensure that the campaigns are run with fairness and transparency.

89. Donations to registered political parties are already subject to a regulatory regime established in Part 4 of PPERA. That regime applies regardless of whether an election or referendum campaign is taking place. There is therefore no need to create an additional set of rules in this Bill regulating donations to registered political parties solely for the purposes of the referendum.

90. The Bill puts in place rules about donations to permitted participants who are not registered parties or are minor parties, and who are therefore not already subject to the relevant PPERA rules. These rules are again based on existing legislation for referendums in the UK, set out in PPERA. In general terms, the rules in the Bill define what donations are allowed, both by description and monetary value (or a determination of monetary value), who is allowed to make a donation, and what a permitted participant must do to record and report the donations of over £500 which they receive (donations under £500 are not regarded as donations to a permitted participant). “A relevant donation” is the term used to describe a donation to a permitted participant for the purposes of meeting their referendum expenses. Such donations would include:

- a gift to the permitted participant of money or other property;
- any sponsorship provided to the permitted participant. Sponsorship in this context can be described as money or other property that is transferred to a permitted participant for the purpose of helping them to meet referendum expenses, or in some cases, not incurring that expenditure;
- any money spent by someone other than the permitted participant themselves in paying any referendum expenses incurred by or on behalf of the permitted participant;
- the provision of any property, services or facilities on anything other than commercial terms for the use or benefit of the permitted participant (including the services of any person);
- any subscription or other fee paid for affiliation to, or membership of, the permitted participant (where a permitted participant is not an individual).
This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

91. Loans and benefits provided to those permitted participants are regulated by similar detailed rules to those on donations as ‘regulated transactions’, drawn from rules which applied at the AV referendum.\(^{18}\)

92. Permitted participants can only accept donations if they are made by “permissible donors”, who are defined in the Bill in accordance with PPERA rules as:

- individuals registered on the electoral register anywhere in the UK;
- companies registered under the Companies Act or incorporated in the EU or that conduct business in the UK;
- registered parties;
- trade unions;
- building societies;
- limited liability partnerships;
- friendly societies; and
- unincorporated associations carrying on business or other activities wholly or mainly and having their main office in the UK.

93. The Edinburgh Agreement confirmed that as is the case under PPERA, permitted participants will not be able to accept certain anonymous donations or certain donations from individuals or organisations from outside the UK.

**Alternative approaches**

94. Using PPERA as the basis for prescribing permissible donors for the referendum, it may be possible to restrict some of the “permissible donors” identified above to those with headquarters or bases in Scotland. However, that approach would be subject to a number of practical inconsistencies and anomalies. For example, such restrictions would mean that only three trade unions and three building societies could become donors.

95. Furthermore, in practice, registered political parties are the main organisations that individuals are likely to donate money to. The PPERA rules apply to registered political parties on a UK-wide basis. It is not possible for the Scottish Parliament to legislate to regulate the donations that registered political parties receive from voters in other parts of the UK and then use in the referendum. In any case, political parties can receive donations at any time and they are not normally specifically earmarked for a particular use. There would be no practicable way to determine whether or not those donations were intended to be used for referendum campaigning. To restrict minor parties and other permitted participants to donations from voters and organisations registered only in Scotland would be unfair to them when the largest political parties can legitimately use money from elsewhere. For these reasons, the Bill adopts the UK-wide definition of permissible donors set out in PPERA.

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\(^{18}\) Held under the Parliamentary Voting System and Constituencies Act 2011 (c.1)
Returns to the Electoral Commission by permitted participants about their campaign finances

96. In addition to the arrangements for pre-poll reporting of loans and donations set out in paragraph 87, the Bill requires permitted participants to provide a report to the Commission about their finances during the campaign. A person designated by a permitted participant as the “responsible person” (in the case of a registered political party, the treasurer) must make a return to the Electoral Commission within 3 months of the date of the referendum, setting out full details of expenses and donations. It is an offence if they do not do so.

97. Permitted participants that spend over £250,000 during the referendum campaign will be required to submit an auditor’s report with their return within 6 months of the date of the referendum. The £250,000 threshold has been added following the Electoral Commission’s response to the consultation on the draft Bill. The threshold is the same as that provided in PPERA.

Supply of registers

98. The Bill provides that, in order to be permissible, donations must be made by permissible donors (defined in similar terms to section 54(2) of PPERA), and that ‘all reasonable steps’ must be taken by the permitted participant receiving the donation to verify that they are such. PPERA sets out the full range of those who are deemed to be permissible donors, including any individual registered in an electoral register. In line with the access provided at referendums held under UK legislation, the Bill provides for all permitted participants to have access to the local government register of electors. This will enable them to verify the permissibility of donors who appear on that register (which covers the great majority of people eligible to vote in the referendum). If they receive a donation from an individual who is not on the local government register, they will be able to check other registers operating in Scotland and the rest of the UK through the normal public access routes.

99. As previously mentioned, the designated organisations will be able to request a copy of the complete polling list, which will include all voters in the referendum (in other words, both those on the local government register and those on the Register of Young Voters). This will give the designated organisations the names and addresses of those who are eligible to vote, enabling them to send a postal communication to every household or voter in Scotland using the free mailshot to which they are entitled under the Bill and the section 30 Order.

Publications and broadcasts during the referendum campaign

100. The Scottish Government’s aim is that the campaign should be seen to be fair and should operate on a “level playing field” for all participants in the referendum. The Scottish Government therefore recognises that there should be no undue political influence on the campaign.

101. In support of this principle, the Bill provides that, for the 28 day period before the date of the referendum, Scottish Ministers, the SPCB and certain public authorities in Scotland cannot publish any material providing general information about the referendum, dealing with issues raised by the questions to be voted on in the referendum, putting any arguments for or against a
This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

particular answer to the questions to be voted on, or which is designed to encourage voting in the referendum. This follows the approach taken in the run-up to elections, set out in PPERA. Under the terms of the Edinburgh Agreement, the UK Government has committed to act according to the same PPERA-based rules during the 28 day period.

102. As the recognised campaign bodies representing the campaign for a particular outcome in the referendum, only designated organisations will be allowed to make referendum campaign broadcasts.

Alternative approaches

103. In its consultation response in March 2012, the Electoral Commission expressed a view that the period should be extended from 28 days to cover the whole referendum period. However, PPERA applies a 28 day period for UK elections and referendums and the Scottish Government has concluded that in this matter the Bill should remain consistent with UK law. This approach was endorsed in the Edinburgh Agreement.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

104. The Bill’s provisions are not discriminatory on the basis of age, gender, race, disability, marital status, religion or sexual orientation. They are intended to ensure equality of opportunity for people in having their say on the options in the referendum. In particular, the Bill places responsibilities on the CCO and counting officers to make provision so that as many people as possible have the opportunity to take part in the referendum. This follows existing legislation and practice for elections.

Age

105. The Bill extends the franchise to 16 and 17 year olds for the first time in a national poll, reflecting the Scottish Government’s policy that young adults should be able to participate fully in the democratic process.

Disability

106. In line with other elections, the counting officer will be required to ensure that polling stations are accessible to all. The Bill includes the following provisions to help people with disabilities to vote:

- if a voter applies to vote with the assistance of someone else on the grounds of blindness, other physical disability or an inability to read, the presiding officer of the polling station must approve the application if the presiding officer is satisfied that the voter and the companion meet the terms of the legislation;
- postal voters must be given information about how to obtain guidance for voters in Braille, pictorial format, audible format or in other formats;
• each polling station must have a sample copy of the ballot papers in large text for voters who are partially sighted, and a ‘tactile voting device’ for enabling voters who are blind or partially sighted to enable them to vote without the need for assistance; and
• an enlarged sample copy of the ballot paper can be displayed at every polling station.

Race
107. The Bill puts in place measures to ensure that those who do not speak English as their first language or who are more comfortable reading directions in their first language, can also take part in the democratic process. Postal voters must be given information about how to obtain guidance for voters in languages other than English, and an enlarged sample copy of the ballot papers translated into other languages must be displayed at every polling station as appropriate.

Human rights
108. The Scottish Government has considered the potential effect of the Bill on human rights. It is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights. The spending limits for regulating the referendum campaigns are set at levels which are proportionate to ensure a level playing field at the referendum. The publicly available register of local electors is used, in line with election law and subject to the necessary safeguards to prevent impersonation and ensure a fair referendum. The Bill also creates criminal offences where necessary, each of which are compatible with Convention rights.

Island communities
109. The Bill has no disproportionate effect on island communities.

Local government
110. The Bill establishes the office of the Chief Counting Officer (CCO). The CCO will be the Convener of the Electoral Management Board and will most likely appoint existing returning officers to be the counting officers in each local authority area. The people conducting the referendum will therefore be the local authority officers who are currently responsible for running elections in Scotland.

111. The CCO and counting officers will claim their fees and expenses from the Scottish Government, under the terms of a Fees and Charges Order to be made under an order making power in this Bill. So, although it is local authority officers who will in effect incur expenditure in running the referendum, there will be no additional pressure on local authority budgets arising as a result of the referendum.

112. Scottish Government officials have worked closely with a range of electoral professionals - local authority returning officers, electoral registration officers and the Electoral Commission – to ensure the proposals in the Bill reflect, and build on where necessary, the rules governing elections, and take account of any relevant improvements to be made in light of Ron Gould’s report on the 2007 Scottish Parliament and local government elections.
This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

113. The accompanying Business and Regulatory Impact Assessment sets out the impact on local government in full.

**Sustainable development**

114. The Bill will have no impact on sustainable development.
SCOTTISH INDEPENDENCE REFERENDUM BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Scottish Independence Referendum Bill. It describes the purpose of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill contains 34 sections and eight schedules. It contains provisions making practical arrangements for running the referendum, including the question to be asked in the referendum, the format of the ballot paper, the date of the referendum and the way in which the electorate may vote in the referendum. The Bill:

- sets out the question to be asked in the referendum and the format of the ballot paper;
- sets out the date of the referendum;
- sets out how people may vote in the referendum;
- provides for the Convener of the Electoral Management Board to fulfil the role of Chief Counting Officer, to oversee the running of the referendum and appoint counting officers to run the referendum in each local authority area;
- sets out the rules for the conduct of the referendum, i.e. the conduct of the poll, the count and declaration of the result;
- provides for the Electoral Commission to have responsibility for oversight of the referendum, including providing guidance and information about the referendum, overseeing and regulating the campaign leading up to the referendum and reporting on the conduct of the referendum; and
includes provisions regulating the campaign prior to the referendum, including provisions limiting the amounts that may be spent on campaigning by permitted participants and provisions requiring them to account for their spending to the Electoral Commission.

4. The Bill also confers powers on the Chief Counting Officer, for example the power to direct local authority counting officers (section 6), and to prescribe various forms, statements etc. (paragraph 44 of schedule 2 and paragraph 41 of schedule 3 refer). Schedules 5 and 6 confer on the Electoral Commission powers of investigation and powers to impose sanctions, to help them to fulfil their role in monitoring and enforcing compliance with the campaign rules under section 11. The Electoral Commission may issue a code of practice on campaign expenses under schedule 4, guidance on other issues under section 11, or guidance to the Chief Counting Officer under section 22. It is considered that these are of an executive rather than legislative nature and as such they are not detailed in this memorandum.

5. Further information about the Bill’s provisions is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 25, and in the Policy Memorandum published separately as SP Bill 25.

**Rationale for subordinate legislation**

6. The Bill contains several delegated powers which are explained in more detail below. In deciding whether legislative provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has had regard to:

- the need for any legislative provisions to be in place in adequate time for the referendum (preferably 6 months before the date of the poll, in accordance with the Gould Report);

- the need to provide the flexibility to respond to changing circumstances, such as the power to make a supplementary order in support of the detailed civil sanctions regime in schedule 6, without the need for further primary legislation;

- the desire to allow adjustments to the technical detail of the arrangements for the referendum to be made without the need for further primary legislation.

**Delegated powers**

7. The Bill contains the following delegated power provisions:

**Section 1 – Referendum on Scottish Independence**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative procedure</td>
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</tbody>
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This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

**Provision**

8. Section 1(6) allows the Scottish Ministers to make an order to change the date of the referendum if they are satisfied that it would be impracticable or impossible to hold the referendum on the date specified under subsection (4), or if to do so would mean that the referendum could not be conducted properly. The power does not extend to bringing the referendum forward; it may only be delayed to a date later than the one specified in subsection (4), and in any case it must be on or before 31 December 2014\(^2\). Subsection (7) provides that the order may include supplementary or consequential provision, and may modify any enactment, including the provisions made by the Bill.

**Reason for taking this power**

9. There is no expectation that this power will be used. The power provides an ability for the Scottish Ministers to delay the referendum in the event that unforeseen circumstances arise which make holding the poll on the date originally planned impractical or impossible.

**Choice of procedure**

10. Any use of this power will require the high level of parliamentary scrutiny attached to the affirmative procedure, given that it is intended for use only in exceptional circumstances and contains the facility to modify primary legislation.

**Section 8 – Expenses of Counting Officers**

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<tr>
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<tbody>
<tr>
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<td>Order</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>No procedure</td>
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</tbody>
</table>

**Provision**

11. Subsections (1) and (2) of section 8 allow the Chief Counting Officer and counting officers to recover any costs associated with their duties in relation to the referendum from the Scottish Ministers. Subsection (3) allows the Scottish Ministers to make an order that sets the maximum costs that may be recovered by the Chief Counting Officer and counting officers in relation to any expenses and charges that they incur arising from their duties in relation to the referendum. Subsection (4)(a) allows the Scottish Ministers the flexibility to set different maximum limits for different functions, cases and areas. Subsection (4)(b) allows the Scottish Ministers to make incidental and supplementary provision.

**Reason for taking this power**

12. This section makes provision for setting a cap on the costs that arise from the activities of both the Chief Counting Officer and counting officers in the referendum. The Scottish Ministers will reimburse the Chief Counting Officer and counting officers for their duties but not exceeding a maximum amount specified in, or calculated using, the order.

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This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

13. A Fees and Charges Order of this type is standard practice for the funding of returning officers at UK elections. They are made in advance of the election so that returning officers can plan delivery of the poll within the prescribed cost limits.

Choice of procedure

14. No parliamentary procedure is considered necessary given that the nature of the power is to make administrative and operational provision in relation to the funding of the referendum. The power is only to specify the maximum amount of recoverable charges and expenses, and associated detail. This is essentially an administrative power, relevant to a limited number of people (the Chief Counting Officer and 32 counting officers). Similar orders are made for other elections without the need for formal parliamentary procedure (for Westminster and Scottish Parliamentary elections, see e.g. S.I. 2010/830 and S.I 2011/1013).

Section 30: Power to make supplementary etc. modifications and provision

<table>
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</table>

Provision

15. Subsection (1) of section 30 empowers the Scottish Ministers to make supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to any provision of the Bill. Subsection (2) confirms that the power in subsection (1) extends to the power to make provision in consequence of, or in connection with, any modification, or proposed modification, of any enactment relating to the conduct of, or campaigning in, any referendum or election.

16. Subsection (3) states that an order under this section may modify any enactment, including the provision made by the Bill, apply any provision of any enactment (with or without modifications), and may include supplementary, incidental, consequential, transitory or transitional provision or savings.

Reason for taking this power

17. There are no current proposals to use this power. The power provides the flexibility to make any necessary adjustments that may arise as timeously as possible.

18. This is important because the Chief Counting Officer, counting officers and the Electoral Commission will need to begin carrying out activity under the legislation shortly after its enactment, and any necessary adjustments to the legislation should be finalised with sufficient time before the referendum takes place (in line with the Gould Report). Providing for the power to modify any relevant enactments without recourse to primary legislation is considered appropriate to provide the adaptability to respond to any future emerging needs. It is possible, for instance, that changes to UK electoral legislation would result in the need for flexibility to alter the arrangements for the referendum.
This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

19. The Government’s intention is that the referendum should be conducted in line with international standards for the conduct of referendums and elections. The power is also taken to allow the possibility of changes to the referendum scrutiny framework to keep pace with developments, in particular given the time which will elapse between the passing of the Bill and the date of the poll, for the reasons noted.

Choice of procedure

20. The Scottish Government recognises this power’s potentially broad application, which includes the facility to modify primary legislation, and to alter the provisions in the Bill (though as with any such power it would require to be exercised within limits). For that reason any use of this power will require the high level of parliamentary scrutiny attached to the affirmative procedure.

Schedule 6, paragraph 16: Supplementary orders: general

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Dependent on type of Order (see below)

Provision

21. Schedule 6 contains a civil sanction regime which allows the Electoral Commission to impose certain sanctions (such as fines, discretionary requirements and stop notices) to fulfil their role in monitoring and securing compliance with the campaign rules. Paragraph 16(1) empowers the Scottish Ministers to make an order which contains provisions supplementary to, consequential on, or incidental to, those contained in schedule 6, and this may include transitional provision. Under sub-paragraph (3) a supplementary order may amend, repeal or revoke an enactment.

22. Before making a supplementary order, the Scottish Ministers are required under paragraph 17 to consult with the Electoral Commission and other appropriate parties.

23. The supplementary order may contain provision by virtue of paragraphs 1 (prescribed offences, restrictions or requirements or amounts for fixed monetary penalties), 2 (prescribed sums for discharge, circumstances in which penalties cannot be imposed and appeal grounds), 5, 6 and 9 (for discretionary requirements), 10 and 13 (stop notices) and 15 (enforcement undertakings) of schedule 6. It can also deal with monetary penalties (paragraph 18), enforcement undertakings (paragraph 19), extensions of deadlines for the purposes of allowing criminal proceedings to take place (paragraph 20), or appeals (paragraph 21).

Reason for taking this power

24. This power provides a mechanism by which the Scottish Ministers can support the Electoral Commission by creating the full detail of the civil sanctions regime. The use of this power will make provision which will flesh out the provision for the civil sanctions regime already contained in schedule 6.
This document relates to the Scottish Independence Referendum Bill (SP Bill 25) as introduced in the Scottish Parliament on 21 March 2013

25. The provisions detailing the regime, and the power to make an order associated with the regime, are common practice in UK elections and the provisions are directly replicated from Schedule 19C to the Political Parties, Elections and Referendums Act 2000 as inserted by the Political Parties and Elections Act 2009.\(^3\)

**Choice of procedure**

26. Supplementary orders under this power are subject to the affirmative procedure if they relate to fixed monetary penalties, discretionary requirements, stop notices, enforcement undertakings, or any provision amending an Act. This will afford a high level of parliamentary scrutiny to the exercise of any such power.

27. Other uses of the supplementary order power are likely to be administrative or technical in nature and would therefore be subject to the negative procedure.

\(^3\) The equivalent UK powers have been exercised in the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 (S.I. 2010/2860).
Referendum (Scotland) Bill Committee

2nd Report, 2013 (Session 4)

Stage 1 Report on the Scottish Independence Referendum Bill

Published by the Scottish Parliament on 26 August 2013
**Executive Summary**

**Report**

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- Parliamentary scrutiny

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- Content of the Bill

**Evidence and Conclusions on the Bill and its Provisions**
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- Schedule 1 (form of ballot paper)
- Section 2 (franchise)
- Section 3 and Schedule 2 (provision about voting etc.)
- Sections 4-8 (Chief Counting Officer, counting officers, and their functions)
- Section 9 and Schedule 3 (conduct rules)
- Section 10 and Schedule 4 (campaign rules)
- Section 11 and Schedule 6 (civil sanctions)
- Sections 13 to 15 (campaign offences)
- Section 16 (referendum agents)
- Sections 17-20 (observers)
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Referendum (Scotland) Bill Committee

Remit and membership

Remit:

To consider matters relating to The Scotland Act 1998 (Modification of Schedule 5) Order 2013, the Referendum (Scotland) Bill, its implementation and any associated legislation.

Membership:

Bruce Crawford (Convener)
Annabelle Ewing
Linda Fabiani
Patricia Ferguson
Rob Gibson
Annabel Goldie
Patrick Harvie
James Kelly (Deputy Convener)
Stewart Maxwell
Stuart McMillan
Tavish Scott

Committee Clerking Team:

Clerk to the Committee
Andrew Mylne

Senior Assistant Clerk
Claire Menzies Smith

Assistant Clerk
Stephen Fricker

Committee Assistant
Carol Mitchell
EXECUTIVE SUMMARY

This report sets out the Committee’s conclusions on the general principles of the Scottish Independence Referendum Bill (“the Referendum Bill”), which was introduced on 21 March 2013.

The main objective of the Bill is to provide for a referendum (to be held on 18 September 2014) on whether Scotland should be an independent country, following a “fair, open and truly democratic process which is conducted and regulated to the highest international standards”. In accordance with the Edinburgh Agreement, the Bill’s provisions are based on those for running a referendum set out in the Political Parties, Elections and Referendums Act 2000 (PPERA).

The Committee has considered the Bill over a six-month period, taking oral evidence at five meetings, and receiving 31 written submissions. This summary sets out the Committee’s conclusions, based on the evidence received. Cross-references are to relevant sections of the main report.

General principles of the Bill (paragraphs 322-323)

The Committee is confident that its Stage 1 inquiry has enabled this important Bill to be subject to a wide-ranging and robust scrutiny process. Inevitably, as with any large and complex piece of legislation, there are some aspects of the Bill that require adjustment, and other points on which clarification is needed. Overall, however, the Committee is confident that this Bill should provide a suitable framework for next year’s referendum.

On this basis, the Committee recommends to the Parliament that the general principles of the Scottish Independence Referendum Bill be agreed to.

The Bill in general (paragraphs 30-39)

The Committee welcomes the principle set out in the Edinburgh Agreement, that the referendum “should be based on PPERA, with particular Scottish circumstances, such as the establishment of the Electoral Management Board and subsequent role of the Electoral Commission, reflected in the Referendum Bill”. We accept that PPERA may not be perfect, but must be taken as the starting point, and we are encouraged that the Electoral Commission has expressed confidence in the robustness of the Bill. We are also encouraged by the extent to which this Bill has already been influenced by the views of the large numbers of people who responded to the consultation. Once the legislative framework is in place, we consider that it will be for the lead campaigns, and for the parties and others on both sides of the argument, to ensure that this becomes a genuine national debate to which individuals and communities across Scotland feel able to contribute.
Section 1 (referendum on Scottish independence) (paragraphs 40-44)

The Committee recognises that the referendum question in the Bill reflects the outcome of the Electoral Commission’s independent testing, and considers it to be straightforward and clear. We note the date proposed for the referendum, which is consistent with the timetable set out by the Scottish Government in the Your Scotland, Your Referendum consultation and with the established practice of holding major electoral events on Thursdays.

Schedule 1 (form of ballot paper) (paragraph 45-56)

Placement of official mark

The Committee notes the concerns expressed about the placement of the official mark, and invites the Scottish Government to clarify whether it will be lodging an amendment to address it.

Ballot paper in Gaelic

We acknowledge the views of those who would like to see the question set out in Gaelic as well as English on the ballot paper. We don’t consider that a persuasive case has been made for a bilingual ballot paper. One of the great virtues of the ballot paper set out in the Bill is that it is simple and clear. As witnesses have pointed out, a Gaelic translation will be available to those who wish to refer to it. We note that there will be translations into other languages widely used in Scotland (including by some voters who cannot read English).

Section 2 (franchise) (paragraphs 57-60)

Children of service personnel

The Committee recognises that the Deputy First Minister has undertaken to see whether there is a practical way of including within the franchise for the referendum any 16 and 17-year olds who will be living outside Scotland with parents serving in the armed forces in September 2014, and we look forward to her further updates on progress on this issue.

Section 3 and schedule 2 (provision about voting etc.) (paragraphs 61-69)

Absent voters – new provision in UK legislation

The Committee notes the new approach to absent voting arrangements in UK election law, and that the Scottish Government is considering whether to incorporate these changes in the referendum legislation. The Committee welcomes this, and asks to be updated as soon as the Scottish Government has reached a conclusion on this issue.

Deadlines for applications for proxy and postal votes

The Committee notes that the Deputy First Minister is currently in discussion with the Electoral Commission on the deadline for proxy and postal votes. On the basis of the evidence, we would be inclined to support a later deadline for proxy voting, in line with normal practice, unless the Scottish Government can explain – before Stage 2 – why the approach taken in the Bill is preferable.
Sections 4-8 (Chief Counting Officer, counting officers, and their functions) (paragraphs 70-74)

The Committee notes the specific points raised in relation to sections 4-7 by witnesses (as outlined in paragraphs 68-70), and invites the Scottish Government to respond, indicating whether any amendments to these provisions are likely to be proposed. We would also welcome early sight of a draft order under section 8, so we can be satisfied that counting officers will be properly reimbursed.

Section 9 and schedule 3 (conduct rules) (paragraphs 75-112)

Provision of polling stations
The Committee, like many witnesses, is hopeful that turnout for the referendum will be high. We are confident that those responsible for administering the referendum have the experience and resources they need to judge appropriately the likely turnout and ensure that sufficient polling stations are provided, and that the polling places are accessible and appropriately located.

Appointment of presiding officers and clerks
The Committee is encouraged by the Electoral Management Board’s evidence on the appointment of presiding officers and clerks, and is content to rely on the “trust and common sense” of counting officers to ensure that candidates for these posts are appropriately vetted as part of the appointment process.

Voting by persons with disabilities
The Committee is content, on the basis of the evidence and legal advice it has received, that these provisions already cover visually impaired as well as blind voters. It is certainly important that they and other voters whose disabilities make it difficult or impossible to vote without assistance get the assistance they need to record their votes. We would therefore invite the Electoral Management Board to give an assurance that guidance to electoral administrators will make clear how the Bill applies to visually impaired voters, so that polling station staff can be properly briefed to provide such assistance whenever it is required.

Attendance at the count
The Committee notes the concerns of the Electoral Management Board about counting officers being required to publish notice of the count and the effect this may have on the general management of the count. We therefore invite the Scottish Government to explain why it has apparently departed from precedent on this point, and to give further consideration to the practical effect of this provision. On attendance of referendum agents at the count, the Committee invites the Scottish Government to discuss further with electoral administrators whether counting officers can be given sufficient powers to prevent any disruption to the counting process without having to resort to excluding referendum agents altogether. The Committee welcomes the indication that electoral administrators are planning on the basis that counting will take place overnight and that any operational issues that might make this difficult in certain areas are being identified and solutions developed.
Declaration of results
The Committee endorses the approach taken in the Bill, which allows local results to be made before the national result, and gives discretion on exact timings to the Chief Counting Officer. Nevertheless, we would expect the Chief Counting Officer, in practice, to authorise counting officers to announce local results without any unnecessary delay, and we would welcome further clarification from the Electoral Management Board as to how these decisions are likely to be made in practice.

Section 10 and schedule 4 (campaign rules) (paragraphs 113-199)

Designation of lead campaigners
The Committee notes the evidence of witnesses who had experience of the 2011 Wales referendum, but considers that the approach to designated organisations provided in the Bill is appropriate in the circumstances of the 2014 referendum.

Application for designation
The Committee also agrees that it is appropriate, particularly given the long lead-in time, for lead campaigners to be designated by the time the 16-week referendum period begins. We invite the Scottish Government to consider how to amend the Bill accordingly, and in particular to consider carefully, in view of the evidence we have received, how far in advance of that period the deadline for applications should be set.

Spending limits
The Committee recognises that any approach to spending limits needs to meet the test set out in the Edinburgh Agreement of securing “rules that are fair and provide a level playing field”, while at the same time protecting free speech and encouraging wide participation in the debate. Having carefully considered the evidence, we think the Electoral Commission recommendations achieve as good an overall outcome as is likely to be possible. In particular, we endorse the principle of giving the political parties limits reflecting their share of the vote in the most recent Scottish Parliament elections, while enabling other permitted participants, without limits on their numbers, to spend the same amount each regardless of which side they support. This reflects the practical reality that we can already be sure which sides the parties will line up on, but we cannot predict – and should not seek to control – the choices made by others who wish to play a part in campaigning. We recognise concerns about multiple participants, each able to spend up to £150,000, funded by a few wealthy individuals, but we also recognise that people should be entitled to campaign freely within the rules, and that absolute parity of funding is never going to be achievable. We believe that a combination of public scrutiny and the oversight of the Electoral Commission should be capable of preventing spending power alone, on either side, unfairly affecting the outcome.

Referendum expenses incurred as part of a common plan
The Committee notes the apprehensiveness of some witnesses regarding the potential for co-ordinated activity to undermine the effectiveness of the spending limits. Having reflected on the evidence provided, however, we are generally satisfied that the statutory provisions are sufficiently robust. All the same, we would welcome further clarification from the Electoral Commission about how they
will in practice ensure that permitted participants stay within both the letter and spirit of these rules.

Restrictions on publication of promotional material ("purdah")
The Committee strongly endorses the principle of a “purdah” period in the immediate run-up to the referendum, based on established precedent. We accept that 28 days is the appropriate period, given the need not to interrupt the normal business of government for longer than is necessary, and given that this is in any case the period endorsed by the two Governments in the Edinburgh Agreement. We recognise that (as with any election) there is limited scope for formal enforcement of these rules, but we are confident that the main practical sanction is the likelihood that any breach would generate publicity more damaging than any perceived advantage gained.

We accept the Deputy First Minister’s view that there is no reason to doubt the good faith of the UK Government’s commitment to observe purdah restrictions equivalent to those imposed on the Scottish Government in the Bill. Nevertheless, there is an asymmetry, and we invite the UK Government to indicate whether it would be prepared to put the purdah restrictions to which it is committed on a statutory footing. We would request that the Scottish and UK Governments each issue guidance to those public bodies for which it is responsible on the limits applicable to them during the 28-day period.

The purdah period is to begin on Thursday 21 August 2014. The Parliament has now agreed recess dates that include a period of recess from 28 June to 3 August 2014 (inclusive) and another from 23 August to 21 September 2014 (inclusive). As a result, there will be a 2-day overlap between the purdah period and a period of Parliamentary business. The Committee draws this to the attention of the Parliamentary authorities.

In terms of the rules on parliamentarians, we recognise these are matters for the relevant authorities, here and at Westminster, and that it is unrealistic to expect these to be directly co-ordinated. Nevertheless, we hope that similar rules will apply. The Committee expects the SPCB to issue clear guidance for all MSPs and invite the Independent Parliamentary Standards Authority to do the same for MPs.

Control of donations
The Committee is generally satisfied with the rules on donations. However, we would invite the Scottish Government to consider further whether a lower threshold for reporting donations would be merited, and whether there should be greater public access to information about donations during the referendum campaign, in the interests of transparency. We would also welcome further clarification on how, in practice, permitted participants are to check donors’ eligibility by reference to electoral registers other than the one register to which they are to be guaranteed access.
Section 11 and schedule 6 (civil sanctions) (paragraphs 200-205)

The Committee considers the civil sanctions regime to be an important part of the regulatory regime established under the Bill. We would therefore welcome early sight of the supplementary order that is to establish its scope, or confirmation that it will be closely based on the equivalent order made under PPERA.

Section 16 (referendum agents) (paragraphs 209-212)

The Committee is content with the timescales for appointing referendum agents.

Sections 17-20 (observers) (paragraphs 213-216)

On the question of whether there should be a statutory requirement for a code of practice for observers, the Committee welcomes the Electoral Commission’s recommendation, notes that it is under discussion and encourages the Scottish Government to seriously consider amending the Bill.

Section 21 (information for voters) (paragraphs 217-235)

Promoting understanding of the question
The Committee is very clear that the Electoral Commission should provide impartial information on the processes surrounding the referendum, and should not seek to provide information on the matters of substance that are at issue between the two sides. We are confident that the Electoral Commission understands this distinction, and that the Bill gives it adequate discretion in deciding how to promote understanding of the question in a manner consistent with its role.

Information from Governments about process following referendum
The Committee acknowledges the Electoral Commission’s recommendation about providing voters with general information about the process that would be followed post-referendum, either in the event of a Yes vote or a No vote. We are encouraged to hear that the Scottish Government and the UK Government are discussing these matters, and would welcome further information about the nature of those discussions, and regular updates on progress.

Section 24 (report on conduct of referendum) (paragraphs 238-243)

The Committee notes the evidence provided by the Electoral Commission, and would welcome further clarification about the reporting timescales the Commission expects to apply in this instance.

Section 32 and schedule 8 (interpretation – meaning of “referendum period”) (paragraph 255-266)

The Committee accepts that 16 weeks is an appropriate length for the regulated period, particularly as altering this would call into question other matters, such as spending limits and the purdah period. We recognise that this means that a lot of campaigning activity is not subject to the formal restrictions in the Bill, and we
welcome the extent to which the two campaigns have already committed themselves to a degree of transparency.

The Committee recognises that for most of the regulated period, public bodies will not be formally restricted by the Bill’s provisions. We accept, however, that there are conventions in place about how such bodies behave. The Committee would wish to have early sight of the Scottish Government’s proposed guidance to those public bodies for which it is responsible – and any equivalent guidance that the UK Government plans to issue to those bodies dealing with reserved matters.

Grants to campaigners (paragraphs 267-278)

The Committee agrees with the Scottish Government’s policy of not providing grants from public funds to the two campaigns. We are confident that the two sides are capable of raising the funds they need in other ways, and that a lack of grants will therefore not compromise the public’s ability to make a well-informed decision.

Electoral timetable and index of conduct rules (paragraphs 279-283)

The Committee sees merit in the suggestion that a timetable and index be included in the Bill to provide clarity for electoral administrators. On the issue of disregarding days of public thanksgiving or public mourning, the Committee notes that the Scottish Government is considering this further and asks it to clarify its position as soon as possible.

Data protection implications (paragraphs 297-301)

The Committee requests the Information Commissioner’s Office to provide a copy of its guidance in relation to the Privacy and Electronic Communications (EC Directive) Regulations 2003 as soon as possible.

Financial implications (paragraphs 307-311)

The Committee notes the issues raised by respondents and the oral evidence provided by Scottish Government officials to the Finance Committee. We are content with the level of detail provided in the Financial Memorandum and that discussions are continuing with the key organisations to refine costs where possible.

Policy Memorandum (paragraphs 312-313)

The Committee considers that the memorandum provides adequate detail on the policy intention behind the provisions in the Bill and explains why alternative approaches considered were not favoured.
Delegated Powers  
(paragraphs 314-321)

The Committee has considered the delegated powers carefully. We note in particular, that the powers delegated by sections 1 and 30 include power to modify enactments, including the Act resulting from the Bill. Such powers, often referred to as Henry VIII powers, can be controversial and merit particular justification. Nevertheless, in both cases, we are content that they are justified.

The delegated power in section 1 is very limited in scope and it is clearly important to have a reserve power to defer the referendum should unexpected events make it impossible or impractical to hold the poll on the planned date.

The delegated power in section 30 is very much wider in scope, and could in theory be used to make substantial changes to the legislation even at a late stage in the process. However, there is no realistic prospect of this, given the need for advance certainty about how the referendum arrangements will work, and a shared interest by all campaigners in ensuring that those arrangements are seen to be fair and balanced. The key point is that the referendum is a one-off event, for which complex and detailed provision is required – so it is reasonable to ensure that there is a mechanism that can be used to correct any problem that emerges in the run-up to the poll. Given that rationale, we accept that the powers delegated to Ministers must be wide enough to deal with whatever issue may arise; and that setting a time-limit on when it may be exercised, or requiring prior consultation, could compromise the purpose of delegating the powers in the first place. For these reasons, we are content with the section 30 powers.

Finally, we note the recommendation of the Delegated Powers and Law Reform Committee on the schedule 6 powers and invite the Scottish Government to indicate whether it is prepared to amend the Bill accordingly.
Referendum (Scotland) Bill Committee

2nd Report, 2013 (Session 4)

Stage 1 Report on the Scottish Independence Referendum Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

The Committee and its role

1. The Referendum (Scotland) Bill Committee was established by the Parliament on 23 October 2012 to scrutinise the legislation that will provide the basis for the referendum on Scottish independence, to be held on 18 September 2014.

2. The Committee has already considered and reported on the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242) (“the section 30 Order”), and has completed its scrutiny at Stages 1 and 2 of the Scottish Independence Referendum (Franchise) Bill (“the Franchise Bill”) which was passed by the Parliament on 27 June.¹

3. This report sets out the Committee’s conclusions on the general principles of the Scottish Independence Referendum Bill (“the Referendum Bill”). This Bill is closely linked to the Franchise Bill and contains most of the detail about how the referendum is to be conducted. In particular, it makes provision for the date of the referendum, the wording of the question and the role and responsibilities of the Electoral Commission and electoral professionals. It also contains rules for the conduct of the referendum, campaign rules (including spending limits) and provision about offences and other sanctions for breach of these rules.

Parliamentary scrutiny

4. The Referendum Bill was introduced into the Scottish Parliament on 21 March 2013. It was accompanied by Explanatory Notes, a Financial Memorandum, and a Policy Memorandum, as required by the Parliament’s Standing Orders.²

¹ The Committee’s previous reports are available from the Scottish Parliament website: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/55799.aspx.
5. The Referendum (Scotland) Bill Committee was confirmed by the Parliamentary Bureau as lead committee on the Bill on 26 March 2013. The only other committees with a role in Stage 1 scrutiny are the Delegated Powers and Law Reform Committee (formerly known as the Subordinate Legislation Committee) and the Finance Committee.

6. The Subordinate Legislation Committee (as it was then known) considered the Delegated Powers Memorandum and reported on 14 May 2013. The Finance Committee took evidence on the Bill’s Financial Memorandum on 29 May 2013, and subsequently wrote to the Committee. The conclusions of these two committees are set out in Annexe A.

Witnesses

7. The Committee took oral evidence on the Bill over the course of five committee meetings during May and June.

8. At the 9 May meeting, the Committee first heard from the Law Society of Scotland and the Faculty of Advocates on the legal aspects of the Bill. It then took evidence from Professor Richard Wyn Jones, Professor of Welsh Politics and Director of the Wales Governance Centre, Cardiff University, and from William Norton from “No to AV”, and Willie Sullivan from “Yes to Fairer Votes”. This latter session enabled the Committee to draw on experiences from two previous referendums – the referendum on extending devolution in Wales, and the referendum on changing the voting system for UK Parliament elections from first-past-the-post to the alternative vote system, both held in 2011.

9. At its meeting on 16 May, the Committee brought together key organisations with responsibility for the administration of the referendum – the Electoral Management Board for Scotland (Electoral Management Board), the Scottish Assessors Association, the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR), and the Association of Electoral Administrators. The Committee also heard from two legal academics, Professor Tom Mullen and Professor Neil Walker.

10. On 23 May, witnesses from the Electoral Commission gave evidence on its role and responsibilities under the Bill, while the Information Commissioner’s Office responded to questions on data protection implications in particular.

11. At the 30 May meeting, the Committee considered the implications for the two organisations expected to be the lead campaigners, or “designated organisations” – Yes Scotland and Better Together. This was followed by a roundtable discussion focussing on issues of voter awareness and civic participation, involving representatives of the Scottish Youth Parliament (SYP), the Scottish Council for Voluntary Organisations (SCVO), the Equality and Human Rights Commission Scotland (EHRC), Inclusion Scotland and the Federation of Small Businesses (FSB), together with Professor Aileen McHarg.

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3 Parliamentary Bureau Minutes for 26 March 2013

12. Finally, at the meeting on 13 June, the Committee heard from Nicola Sturgeon, the Deputy First Minister, and her officials.

13. The Committee also received written evidence in response to a call for evidence it issued immediately after the Bill’s introduction. A total of 31 submissions were received from a wide range of organisations and individuals.

14. Extracts from the minutes of relevant Committee meetings are attached at Annexe B. Links to Official Reports of oral evidence sessions, together with associated written submissions and other written evidence, comprise Annexe C. All the evidence received is available on the Parliament’s website.5

15. The Committee is grateful to all those who provided evidence, whether orally or in writing. The Committee would also like to thank its two advisers, Iain Grant and Professor Stephen Tierney, for their helpful advice and input throughout the scrutiny process.

BACKGROUND TO AND PURPOSE OF THE BILL

16. The purpose of the Bill is to make provision for the referendum on independence that the Scottish Government plans to hold on 18 September 2014.

17. The holding of an independence referendum is a long-standing commitment of the Scottish National Party (SNP). Since the party’s election as a majority administration in May 2011, it has been the Scottish Government’s intention to introduce legislation in the Parliament to provide for a referendum on independence in the autumn of 2014.

18. In January 2012, the Scottish Government published a consultation paper, *Your Scotland, Your Referendum*, which included a draft Referendum Bill. The question proposed in the consultation paper was “Do you agree that Scotland should be an independent country?” Respondents were also asked about whether there should be a second question on a form of extended devolution and about possible ways of making voting easier for people, including holding the poll on a Saturday. The consultation paper set out a timetable for the process leading up to the referendum, and invited comments on a number of other issues, including the option of extending the franchise to those 16 and 17-year olds already able to register as ‘attainers’, and the proposed responsibilities of the Electoral Management Board and the Electoral Commission in overseeing the referendum. Finally, the paper set out suggested spending limits that would apply during the 16-week regulated period before the poll – namely £750,000 for the two designated organisations, £250,000 for political parties, £50,000 for other permitted participants and £5,000 for other individuals or bodies.

19. Over 26,000 valid responses to the consultation were received. Independent analysis revealed substantial support for the proposed referendum question (64% of respondents) and timetable (62% of respondents). However, a majority

of respondents (62%) opposed the idea of including a second question, with only 32% in favour; there were also mixed views (46% in favour, 32% opposed) on the suggestion of holding the referendum on a Saturday.  

20. The Scottish Government’s negotiations with the United Kingdom Government culminated in the signing of the “Edinburgh Agreement” in October 2012, which in turn led to the making of the section 30 Order, referred to above.

21. Under the Agreement, the two Governments agreed that the referendum should have a clear legal base, be legislated for by the Scottish Parliament, be conducted so as to command the confidence of parliaments, governments and people, and deliver a fair test and decisive expression of the views of people in Scotland and a result that everyone will accept.

22. The associated “memorandum of agreement” stated that the referendum should be based on the framework established by the Political Parties, Elections and Referendums Act 2000 (PPERA), adjusted for Scottish circumstances, and that the Electoral Commission should perform most of the same functions as it does in PPERA referendums, reporting to the Scottish Parliament. It also committed both governments to respecting a 28-day period during which Ministers and public bodies refrain from publishing material that would have a bearing on the outcome, and to “continue to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland and of the rest of the United Kingdom”.

23. The section 30 Order amended the Scotland Act 1998 so as to put beyond doubt the Scottish Parliament’s legislative competence to pass the necessary legislation.

24. Following the Edinburgh Agreement, the Scottish Government submitted its proposed question and spending limits to the Electoral Commission for independent testing. The Commission reported on both topics in January 2013, recommending a shorter question and higher spending limits, and that the UK and Scottish Governments clarify in advance the process that will follow either a Yes or No outcome.

25. The Scottish Government accepted the Commission’s recommendations, and the Bill that it introduced uses the Commission’s recommended question and spending limits in place of those proposed in the Scottish Government’s consultation paper. On the day of the Bill’s introduction, the First Minister also

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announced the date on which the referendum is to be held – Thursday 18 September 2014.

Content of the Bill

26. According to the Policy Memorandum, the Bill’s main objective is to provide for a referendum on whether Scotland should be an independent country, following a “fair, open and truly democratic process which is conducted and regulated to the highest international standards”\(^9\).

27. The Bill’s provisions are based on those for running a referendum set out in the Political Parties, Elections and Referendums Act 2000 (PPERA).

28. The Bill consists of 34 sections and eight schedules – with much of the detail included in the latter. The structure of the Bill is as follows:

- **section 1** and **schedule 1** provide for the date of the poll (with a mechanism to defer it in limited circumstances), the question and the form of the ballot paper

- **section 2** cross-refers to the separate Franchise Bill in relation to who is entitled to vote

- **section 3** introduces **schedule 2**, which makes detailed provision about voting (including for absent voting, i.e. proxy and postal voting), registration and the supply of the polling list to various participants

- **sections 4 to 8** govern the role of the Chief Counting Officer (CCO) and other counting officers

- **section 9** introduces **schedule 3**, which sets out rules for the conduct of the referendum, including provision about the hours of polling, the appointment of polling and counting agents, the keeping of order in polling stations, the count and the declaration of the result

- **section 10** introduces **schedule 4**, which sets out the rules governing those campaigning in the referendum, including rules on the donations they may receive and the expenses they may incur, and restrictions on publications by certain public authorities

- **sections 11 to 15** and **schedules 5 and 6** make further provision about campaigning, including the Electoral Commission’s role in monitoring and enforcing compliance with the campaign rules

- **sections 16 to 20** make provision for referendum agents and observers (representing the Electoral Commission or accredited by it)

• sections 21 to 23 require the Electoral Commission to provide information to voters and enable it to issue guidance to counting officers and advice to other persons

• section 24 requires the Commission to report to the Parliament on the conduct of the referendum

• sections 25 to 27 make further provision about the Electoral Commission, including for the reimbursement of its costs

• schedule 7 (introduced by section 28) and section 29 deal with offences in connection with the referendum

• section 30 gives Ministers the power to make supplementary, incidental or consequential provision by affirmative instrument

• section 31 puts a 6-week time limit on any challenge to the number of ballots counted or votes cast brought by way of judicial review

• section 32 introduces schedule 8, which defines terms used in the Bill

• sections 33 and 34 deal with commencement and the Bill’s short title.

EVIDENCE AND CONCLUSIONS ON THE BILL AND ITS PROVISIONS

29. The remainder of this report sets out the evidence received by the Committee, together with the conclusions reached – first on the Bill in general, and secondly on specific provisions within it. The report then examines a number of other topics raised by witnesses that the Committee considers directly relevant to the organisation of the referendum.

The Bill in general

30. The Deputy First Minister explained that the Bill was informed by a large consultation exercise, and “contains the Government’s proposals for the running and regulating of the referendum in a way that will command the confidence of the Parliament, both sides of the campaign and the wider Scottish public”.

She said that it reflected the Electoral Commission’s recommendations on the question and on spending limits, and mirrored as far as possible standard arrangements for Scottish and UK referendums. The Scottish Government “worked very closely with the Electoral Management Board for Scotland, the Electoral Commission, electoral registration officers and others to ensure that the arrangements are fit for purpose, to incorporate lessons from recent polls and to ensure that we are thinking through all the practicalities”.10

31. No to AV said it had been “highly critical” of the draft Bill and welcomed “the fact that many of its deficiencies have been addressed”. The organisation thought it positive that the Bill was largely based on PPERA, but regretted the fact that it carried over some aspects that “ought to have been amended”; it also

10 Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 552.
expressed concern that, “in a number of key areas, the Bill deviates from the PPERA template”.\footnote{No Campaign Ltd (No to AV), written evidence.}

32. On a similar note, Navraj Singh Ghaleigh was disappointed that the Bill “scarcely departs from PPERA’s referendum scheme, and where it does so, it does so ill advisedly.” Although he agreed with the aspiration to have a referendum “conducted and regulated to the highest international standards”, he felt that “whatever else may be said of PPERA, it does not track the highest international standards”. He also cautioned against drawing lessons from previous referendums, saying that “what obtains in a mid to low-salience contest (i.e. practically all of the UK’s referendums to date) will not follow automatically in a competitive, closely fought campaign that holds the nation’s attention”.\footnote{Navraj Singh Ghaleigh, written evidence.}

33. Willie Sullivan welcomed the long lead-in time for the referendum legislation, contrasting this with the much shorter timescales that applied in the case of the 2011 AV referendum.\footnote{Willie Sullivan (Yes to Fairer Votes), written evidence.} In oral evidence, he set out three key principles. First, “no set of interests should have more power and money to influence the outcomes” – and transparency should help to ensure this. Secondly, there should be room for the media and civil society to challenge what the campaigns are saying. Thirdly, there was a need to recognise the paradox that referendums are “elite-driven undertakings”, despite their needing popular support – and people should either be honest about that, or “genuinely try to make it a process in which citizens can take part”.\footnote{Scottish Parliament Referendum (Scotland) Bill Committee, 9 May 2013, Official Report, cols 351-2.}

34. Professor Richard Wyn Jones, who had co-authored a book on the Welsh devolution referendum of 2011, said that the problems with that referendum, which was about “a rather arcane” choice between types of law-making powers, should not apply in the Scottish context, which concerns “a fundamental constitutional issue”.\footnote{Scottish Parliament Referendum (Scotland) Bill Committee, 9 May 2013, Official Report, col 349.}

35. The Electoral Management Board said its aim was to declare “a result that everyone will trust – there must be no question about the integrity or accuracy of the process. To achieve this, guiding principles are that:

- the referendum should be administered efficiently and produce results that are accepted as accurate; and
- there should be no barriers to voters taking part.”\footnote{Electoral Management Board for Scotland, written evidence.}

36. The Electoral Commission said it had been working with the Scottish Government for a number of months and was “pleased that many of our recommendations have been taken on board … we believe that this is a strong piece of legislation that – if it is enacted within the anticipated timetable – will
provide us with the necessary foundation and the time to deliver a referendum that truly puts the voter first and puts the voter at the centre of the planning”.  

37. Blair Jenkins said that Yes Scotland was “acutely aware of the historical importance of the referendum” and was “determined to run the kind of positive campaign that will engage and enthuse people in Scotland”. Later, he added that the process was important, as well as the outcome: “It is hugely important that the people of Scotland feel that they have gone through a very good process.”

38. Craig Harrow of Better Together said that the rules and regulations were “of heightened importance in a once-in-a-lifetime referendum”, and welcomed the Electoral Commission’s recommendations as having delivered a “big step forward in ensuring that we have fair referendum rules”. He also agreed with Willie Sullivan that “essentially, referendums are run by elites. We must ensure that in this referendum we get to as many people as possible.”

39. The Committee welcomes the principle set out in the Edinburgh Agreement, that the referendum “should be based on PPERA, with particular Scottish circumstances, such as the establishment of the Electoral Management Board and subsequent role of the Electoral Commission, reflected in the Referendum Bill”. We accept that PPERA may not be perfect, but must be taken as the starting point, and we are encouraged that the Electoral Commission has expressed confidence in the robustness of the Bill. We are also encouraged by the extent to which this Bill has already been influenced by the views of the large numbers of people who responded to the consultation. Once the legislative framework is in place, we consider that it will be for the lead campaigns, and for the parties and others on both sides of the argument, to ensure that this becomes a genuine national debate to which individuals and communities across Scotland feel able to contribute.

Section 1 (referendum on Scottish independence)

40. Section 1 of the Bill provides for a referendum to be held on Scottish independence on 18 September 2014, or on a later date specified by order if Ministers consider it impossible or impracticable to hold it on that date, or that it could not be conducted properly if held on that date. The section also sets out the wording of the question to be asked and specifies that the ballot paper is to be in the form set out in schedule 1.

41. The Electoral Reform Society (ERS) Scotland commented it was “happy” with the date of the referendum and the wording of the question. ERS Scotland referred to its previous submissions in which it “made clear our support for the Electoral Commission testing and approving the question and we welcome the

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18 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 465 and 481.
19 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 466 and 481.
20 Memorandum of agreement, attached to the Edinburgh Agreement, paragraph 3.
acceptance of their suggested changes. On timing, our experience of the AV referendum in 2011 made it clear that a longer rather than shorter lead-in time to a referendum is to be preferred.\textsuperscript{21}

42. The Scottish Trades Union Congress (STUC) regretted the fact that a second question had been ruled out in the Edinburgh Agreement, but recognised that the wording of the question presented was “clear and fair”.\textsuperscript{22} Similarly, the Scottish Youth Parliament (SYP) said it was pleased that the Scottish Government’s original wording had been independently tested by the Electoral Commission, and it was “content with the wording of the question proposed in the Bill”.\textsuperscript{23}

43. One individual, John Shields, however, was “extremely concerned” about the question as set out in the Bill. He believed that a single yes/no question would “never be able to escape the accusation of being a leading question, and of encouraging one answer over another”, and that this could “cast doubt on the final result”.\textsuperscript{24}

\begin{quote}
44. The Committee recognises that the referendum question in the Bill reflects the outcome of the Electoral Commission’s independent testing, and considers it to be straightforward and clear. We note the date proposed for the referendum, which is consistent with the timetable set out by the Scottish Government in the \textit{Your Scotland, Your Referendum} consultation and with the established practice of holding major electoral events on Thursdays.
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\begin{quote}
\textbf{Schedule 1 (form of ballot paper)}

45. Schedule 1 sets out the form of the ballot paper, with the question and the Yes and No boxes on the front, and other data, including the official mark, on the back. It also includes directions on how the ballot paper is to be printed.

\textbf{Placement of official mark}

46. The Electoral Management Board suggested that (as is usual at elections) the official mark should be printed on the front, rather than the back, of the ballot paper “to facilitate identification of doubtful ballot papers at the count without the need to turn each ballot paper over”.\textsuperscript{25} ERS Scotland agreed with the Electoral Management Board’s suggestion.\textsuperscript{26}

47. The Deputy First Minister explained that the reason for putting the official mark on the back was to enable voters to demonstrate to polling staff that their ballot papers were genuine without revealing how they had voted, but that the Scottish Government was now discussing with returning officers the

\begin{flushleft}
\textsuperscript{21} The Electoral Reform Society Scotland, written evidence. \\
\textsuperscript{22} STUC, written evidence. \\
\textsuperscript{23} The Scottish Youth Parliament, written evidence. \\
\textsuperscript{24} John Shields, written evidence. \\
\textsuperscript{25} The Electoral Management Board for Scotland, written evidence. \\
\textsuperscript{26} Electoral Reform Society Scotland, written evidence.
\end{flushleft}
practicalities of moving the official mark to the front of the ballot paper, in line with the preference of returning officers and with electoral precedent.\(^{27}\)

48. The Committee notes the concerns expressed about the placement of the official mark, and invites the Scottish Government to clarify whether it will be lodging an amendment to address it.

**Ballot paper in Gaelic**

49. The Committee received a number of written submissions advocating a bilingual English-Gaelic ballot paper.

50. Bòrd na Gàidhlig was disappointed that the Scottish Government appeared to have rejected this idea (based on its answer to a parliamentary question\(^{26}\)). It said that the Gaelic Language (Scotland) Act 2005 required Ministers to take steps to secure Gaelic’s “equal status” and that this was a separate issue from the ability of Gaelic speakers to understand English. In view of the number of bilingual voters, the Bòrd thought it would be “ironic as well as unjust” were Gaelic to be “marginalised in the context of the referendum ballot”.\(^{29}\)

51. Arthur Cormack argued that Gaelic should be included in the ballot paper on the basis of the equal respect the language was owed as an “official language of Scotland”. In his view, the fact that Gaelic speakers could comprehend the question in English “misses the point somewhat” since the Electoral Commission had not been asked to test a bilingual question. Nor, in Mr Cormack’s view, was it relevant to cite precedent from the 1997 devolution referendum since that pre-dated the establishment of Gaelic’s official language status and the preparation of a National Gaelic Language Plan.\(^{30}\)

52. No to AV thought it odd that the question and ballot paper were provided only in English, considering this is a “low-level concern from the point of view of voter engagement”. It wondered whether Gaelic-language referendum broadcasts had been considered.\(^{31}\)

53. John McCormick of the Electoral Commission said—

“We tested the question that we were given by the Government, which was in English. During that process, we tested the question with groups of Gaelic speakers in different parts of Scotland to ensure that there were no ambiguities for anyone whose first language is Gaelic and whose second language was English. ... Our public information campaigns and information that will be available in polling places on how to vote and what to do will be available in Gaelic as well as many other languages. However, we have not been asked to consider a question in the Gaelic language. If we were, we

\(^{27}\) Deputy First Minister, Letter to the Convener of the Referendum (Scotland) Bill Committee, 22 June 2013.

\(^{26}\) 25 February 2013, S4W-12829

\(^{29}\) Bòrd na Gàidhlig, written submission.

\(^{30}\) Arthur Cormack, written submission.

\(^{31}\) No Campaign Limited (No to AV), written evidence.
would strongly recommend that it be tested separately from the English language question.”

54. The Deputy First Minister recognised that the issue was not about Gaelic speakers’ ability to understand English, and said the Scottish Government remained committed to promoting the use of Gaelic. However, she said that the priority was to make the voting process familiar to voters, and that an English-only ballot paper followed established practice at elections.

55. We acknowledge the views of those who would like to see the question set out in Gaelic as well as English on the ballot paper. We don’t consider that a persuasive case has been made for a bilingual ballot paper. One of the great virtues of the ballot paper set out in the Bill is that it is simple and clear. As witnesses have pointed out, a Gaelic translation will be available to those who wish to refer to it.

56. We note that there will be translations into other languages widely used in Scotland (including by some voters who cannot read English).

Section 2 (franchise)

57. Section 2 cross-refers to the Franchise Bill for provision about who is entitled to vote in the referendum.

Scots living outside Scotland

58. During its inquiry, the Committee received a few further submissions from those – including individuals born or educated in Scotland but now living elsewhere – unhappy about not being entitled to vote in the referendum. However, as this issue has already been dealt with as part of the Committee’s scrutiny of the Franchise Bill, it is not further referred to in this report.

Children of service personnel

59. The Committee received additional evidence from the Deputy First Minister about an issue that arose during its scrutiny of the Franchise Bill, but which has not been resolved – namely, whether it was possible to extend the franchise to the 16 and 17-year-old children of service personnel who had made a service declaration. The Deputy First Minister explained that it was difficult to obtain data on the number of young people likely to be involved, although it was likely to be at the lower end of a range from zero to the low hundreds. However, she accepted that there was “an issue of principle” and she undertook to “determine whether there is a legislative solution” that could be implemented through the Referendum Bill, and to report to the Committee after the summer recess.

33 Deputy First Minister, Letter to the Convener of the Referendum (Scotland) Bill Committee, 22 June 2013.
34 Charlotte Black, Michael Forbes Smith, the London Scottish Conservative Club and Dylan Thomas, written evidence.
60. The Committee recognises that the Deputy First Minister has undertaken to see whether there is a practical way of including within the franchise for the referendum any 16 and 17-year olds who will be living outside Scotland with parents serving in the armed forces in September 2014, and we look forward to her further updates on progress on this issue.

Section 3 and schedule 2 (provision about voting etc.)

61. Section 3 introduces schedule 2, which makes further provision about the manner of voting (including absent voting – i.e. voting by post or by proxy), the register of electors, and about the supply of certain documents.

Absent voters – new provision in UK legislation

62. The Electoral Registration and Administration Act 2013 introduced a number of changes to absent voting arrangements at future elections in the UK, which will be implemented for the European Parliament elections in May 2014. The Electoral Commission supported these changes on the grounds that they “remove administrative barriers to voting and improve the security of the postal voting system”, and recommended that they should be applied for the referendum. Similar points were made by Highland Council’s returning officer.

63. Brian Byrne of the Scottish Assessors Association agreed that it would be worth considering “whether those changes can be incorporated in the Bill”. He said the changes would provide for the early issue of postal votes and “a mechanism for cancelling a postal vote if a person is no longer registered”.

64. The Deputy First Minister confirmed that the Scottish Government was considering the changes to UK legislation “to determine if and how these should be incorporated into the conduct rules for the referendum”.

65. The Committee notes the new approach to absent voting arrangements in UK election law, and that the Scottish Government is considering whether to incorporate these changes in the referendum legislation. The Committee welcomes this, and asks to be updated as soon as the Scottish Government has reached a conclusion on this issue.

Deadlines for applications for proxy and postal votes (paragraphs 7 and 18)

66. Mr Byrne suggested that there was an error in the bill, since it provided the same cut-off date for applications for proxy votes and postal votes – 5 pm on the eleventh working day before the poll – even though they were “usually a week apart”.

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36 The Electoral Commission, written evidence.
37 The Returning Officer, Highland Council, written evidence.
39 Deputy First Minister, Letter to the Convener of the Referendum (Scotland) Bill Committee, 22 June 2013.
67. The Electoral Commission made a similar point, recommending changing the deadline for a proxy vote application to 5 pm on the sixth day before (the deadline in election legislation). This was because "a deadline closer to polling day gives those who are too late to apply for a postal vote another option". It gave the example of the disruption caused by the Icelandic volcano prior to the 2010 UK general election, when people who suddenly realised they would be unable to vote in person as they had planned still had time to appoint a proxy.41

68. The Deputy First Minister mentioned this issue as one which the Scottish Government was continuing to discuss with the Commission.42

69. The Committee notes that the Deputy First Minister is currently in discussion with the Electoral Commission on the deadline for proxy and postal votes. On the basis of the evidence, we would be inclined to support a later deadline for proxy voting, in line with normal practice, unless the Scottish Government can explain – before Stage 2 – why the approach taken in the Bill is preferable.

Sections 4-8 (Chief Counting Officer, counting officers, and their functions)

70. The Law Society of Scotland (the Law Society) questioned why the criteria in section 4 for removing the Chief Counting Officer (CCO) differs from the criteria in section 5 for removing an individual counting officer, and suggested the Scottish Government “should explain the rationale for this difference”.

71. The Law Society also questioned why section 6 does not match its PPERA equivalent, both by omitting the provision in PPERA that requires a local authority to put its officers at the disposal of the counting officer for its area, and by including an additional obligation on counting officers to certify the number of rejected ballot papers. It suggested the Scottish Government should “explain the rationale for this difference”.

72. The Electoral Commission noted that the Bill (by contrast with election legislation) did not provide either a power or a duty for counting officers to promote voter participation in the referendum. It suggested that “an explicit power or duty would clarify the intention of the Bill and enable counting officers to take forward their local public awareness plans with increased confidence”.

73. Section 8 allows Scottish Ministers to determine, by order, the maximum amount of the charges and expenses which the Chief Counting Officer and counting officers are entitled to have reimbursed by Ministers. The Law Society46 and Highland Council’s returning officer47 wanted to see a draft of the order before the Bill completes its passage.

41 The Electoral Commission, written evidence.
42 Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 553.
43 The Law Society of Scotland, written evidence.
44 The Law Society of Scotland, written evidence.
45 The Electoral Commission, written evidence.
46 The Law Society of Scotland, written evidence.
47 The Returning Officer, Highland Council, written evidence.
74. The Committee notes the specific points raised in relation to sections 4-7 by witnesses (as outlined in paragraphs 68-70), and invites the Scottish Government to respond, indicating whether any amendments to these provisions are likely to be proposed. We would also welcome early sight of a draft order under section 8, so we can be satisfied that counting officers will be properly reimbursed.

Section 9 and schedule 3 (conduct rules)

75. Section 9 introduces schedule 3, which sets out rules for the conduct of the referendum. These rules set out various powers and obligations of counting officers, referendum agents (who appoint polling and counting agents) and presiding officers at polling stations, on matters such as the hours of polling, the use of schools and public rooms for polling and counting of votes, rights of admission to polling stations, the keeping of order in polling stations, the assistance that may be provided to blind and disabled voters and the counting of ballot papers.

Use of schools and public rooms for polling and counting votes (rule 7)

76. The Law Society questioned this provision on the grounds that it would enable the Chief Counting Officer to use, free of charge, meeting rooms maintained by a wide range of Scottish public authorities – and not just those meeting rooms maintained by local authorities (as was the case for the 2011 referendum on the alternative vote). Michael Clancy added in oral evidence: “I doubt very much that, say, the Mental Welfare Commission for Scotland will want a ballot box sitting in its vestibule on 18 September.” The Society raised the same point in relation to paragraph 7 of schedule 4 (use of rooms by designated organisations).

77. Highland Council’s returning officer suggested that the Scottish Government provide a list of the relevant public authorities so that they could be made aware of the responsibilities placed on them by this provision.

78. On a related point, the ERS Scotland wanted voters to be able to choose which of the polling places in their local government area to use, rather than restricting them to the one nearest to where they lived. ERS also wanted “more commonly used venues with higher public familiarity”, such as supermarkets, to be considered as polling places.

79. However, Gordon Blair of SOLAR said that “the last thing that we want to do is to chop and change the polling places.” He noted that a mandatory review of polling places for Westminster elections was due to begin in October 2013, which could impact on all the polls due to be held in 2014 and 2015.

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48 The Law Society of Scotland, written evidence.
50 The Law Society of Scotland, written evidence.
51 The Returning Officer, Highland Council, written evidence.
Provision of polling stations (rule 9)
80. Rule 9 of schedule 3 requires counting officers to provide “a sufficient number of polling stations”. More than one polling station may be provided in the same room (within a polling place such as a school).

81. Mary Pitcaithly of the Electoral Management Board assured the Committee that one of the EMB’s key principles was that “there should be no barriers to people who want to vote”, adding that a situation where, because of the need to queue, people got fed up and left “would not be acceptable”. She said that the EMB would “look carefully at the projected turnout figures when we make our final decision on how many polling stations to have” – although she also pointed out a significant increase in postal voting could offset any increased turnout in terms of the numbers using polling stations on the day. She explained that it was normal practice in elections to plan for turnouts of 70-80%, even though actual turnouts were around 50%, so a high turnout in the referendum would not necessarily create difficulties even if the number of polling stations was the same as for an election. She and Gordon Blair explained that turnout was assessed locally, by returning officers, based on press coverage and feedback from parties and candidates.53

82. Mrs Pitcaithly also explained that the number of polling stations required for the European elections in May 2014 could be lower than for the referendum, given the anticipated difference in turnout, and this was something returning officers would need to consider carefully: “We need to make every effort and take every opportunity to ensure that people understand where they should vote. Where there is a difference between the two sets of elections, we will need to highlight that.” Additional signage and stewarding might also be required.54

83. The Deputy First Minister confirmed that officials were talking to electoral administrators to ensure that each part of the country was “sufficiently resourced to deal with turnouts that may be higher than in a normal election”. She thought it reasonable to hope that turnout in the referendum would be higher than the 70-80% level normally planned for in elections.55

84. The Committee, like many witnesses, is hopeful that turnout for the referendum will be high. We are confident that those responsible for administering the referendum have the experience and resources they need to judge appropriately the likely turnout and ensure that sufficient polling stations are provided, and that the polling places are accessible and appropriately located.

Appointment of presiding officers and clerks (rule 10)
85. The Law Society noted that rule 10 prevents a person being appointed as a presiding officer or clerk if that person “has been involved in campaigning for a particular outcome”, but does not define what “campaigning” involves. The Law Society argued that the restriction in the 2011 AV referendum legislation,
prohibiting the appointment of those who had been employed by or on behalf of a permitted participant, was “narrower and clearer and can be interpreted with more certainty”.  

86. However, Mary Pitcaithly of the Electoral Management Board said that “the intention behind both of these rules is clearly the same, that is to preserve the integrity and, importantly, the appearance of the integrity of polling at the referendum by preventing individuals who are obviously identified with a particular campaign from officiating at a polling station”. She anticipated that anyone offered a job as presiding officer or clerk would be required to “self-certify” that they had not been involved in campaigning for a particular outcome. This put the responsibility on the individual “to be satisfied that they can honestly make such an assertion”, and anyone found to have done so dishonestly would lose their job. “Ultimately”, she concluded, “it is a matter of trust and common sense”.  

87. The Committee is encouraged by the Electoral Management Board’s evidence on the appointment of presiding officers and clerks, and is content to rely on the “trust and common sense” of counting officers to ensure that candidates for these posts are appropriately vetted as part of the appointment process.  

*Admission to polling station (rule 15)*  
88. The Electoral Commission noted that this rule entitles a large number of people to attend polling stations, but allows presiding officers to regulate only the number of voters and their children admitted at the same time. The Commission suggested amending the rule to give priority to voters and polling agents, with presiding officers able to regulate the numbers attending the polling station in various categories, but without being able to exclude them altogether.  

89. The Deputy First Minister pointed out that rule 17 already gave presiding officers power to keep order in the polling station, but said the Scottish Government would discuss with electoral administrators whether any further provision was needed.  

*Keeping of order in polling station (rule 17)*  
90. Gordon Blair explained that presiding officers would be trained to manage and enforce rules and guidance on conduct in and around polling stations – including preventing political material being displayed. Mary Pitcaithly added that training used to be “fairly perfunctory” but the Electoral Management Board had “beefed that up quite a lot in recent years”. She said there would inevitably be some issues to deal with on the day, but the Board’s main concern was “in
ensuring that a consistent approach is taken across the country” based on a single set of guidance.\(^{60}\)

**Voting procedure (rule 21)**

91. Rule 21 includes provision to ensure that anyone who attends a polling station before the end of the polling period (10 pm) is able to vote, even if they are still waiting to do so at that time. This provision was specifically noted and welcomed by the ERS Scotland.\(^{61}\)

**Voting by persons with disabilities (rules 22 and 23)**

92. Rule 22 enables voters who are “incapacitated by blindness or other disability”, or who are unable to read, to ask the presiding officer to mark their ballot papers for them. Alternatively, under rule 23, such voters may apply to the presiding officer for permission to have a companion with them to assist with marking their ballot paper.

93. This aspect of the voting arrangements particularly concerned Inclusion Scotland. Bill Scott initially said that, whereas physically disabled people could seek assistance with voting, the visually impaired could not. He later acknowledged that the Bill did make provision for this in rules 22 and 23, but still felt there might be a problem for people who were not blind, but whose visual impairment meant they could not read the ballot paper.\(^{62}\) He noted that visually-impaired voters could be given a large-print version of the ballot paper for reference, but could not use it to cast their vote.\(^{63}\)

94. The Electoral Commission said that, in relation to the equivalent rules at elections, there was no legal definition of “disability”, and this was “determined via a self-declaration by the voter”. The Commission also referred to the availability of “tactile voting devices”, and said that large print versions of the ballot paper would be provided in polling stations.\(^{64}\)

95. The Deputy First Minister said that the reference in the Bill to “blindness or other physical disability” could apply to people who were partially-sighted, but undertook to consider further whether clarification was needed about how the rules would be applied – for example, on whether presiding officers would always accept a self-declaration or would expect people to provide evidence of their disability.\(^{65}\)

96. The Committee is content, on the basis of the evidence and legal advice it has received, that these provisions already cover visually impaired as well as blind voters. It is certainly important that they and other voters whose disabilities make it difficult or impossible to vote without assistance get the assistance they

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\(^{60}\) Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, cols 383-5.

\(^{61}\) Electoral Reform Society Scotland, written evidence.

\(^{62}\) Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 499 and 501-3

\(^{63}\) Inclusion Scotland, supplementary written evidence.

\(^{64}\) The Electoral Commission, written evidence.

\(^{65}\) Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, cols 570-1.
need to record their votes. We would therefore invite the Electoral Management Board to give an assurance that guidance to electoral administrators will make clear how the Bill applies to visually impaired voters, so that polling station staff can be properly briefed to provide such assistance whenever it is required.

**Attendance at the count (rule 29)**

97. This rule requires counting officers to make arrangements for the counting of votes “as soon as reasonably practicable” after the close of the poll, and to publish notice of the time and place at which the count will begin.

98. The Electoral Management Board suggested that, instead of requiring notice of the time and place of the count to be published, the Bill should simply require such notice to be given to those entitled to attend. This was because publishing the notice “would lead people to believe that they could just turn up at the count and walk in without any accreditation or without fulfilling any of the requirements”.

66 Gordon Blair pointed out that there was not a requirement to publish the notice in the context of an election, adding “if something was good for previous polls, why not have the same approach for this poll?”

99. The Electoral Commission said that the focus of rule 29 should be on ensuring that the count can be conducted efficiently and scrutinised properly. It therefore recommended that counting officers should not be entitled to exclude referendum agents altogether, and that in exercising their general power to exclude people from the count, they should follow any relevant guidelines issued by the Chief Counting Officer or by the Commission.

100. The Deputy First Minister said that counting officers had power only to exclude those whose presence might impede the count, and although it was important that referendum agents were able to observe the count, “the priority should be that the count itself is unimpeded”. She said the Scottish Government would discuss the matter further with returning officers.

101. One individual, Harry Hayfield, was keen to see the count broadcast live on satellite as well as terrestrial TV, and for the count to take place during the following day (rather than overnight) to enable as many people as possible to watch it.

102. However, the Deputy First Minister confirmed that planning was for an overnight count, rather than a next-day count.

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68 The Electoral Commission, written evidence.
69 Deputy First Minister, Letter to the Convener of the Referendum (Scotland) Bill Committee, 22 June 2013.
70 Harry Hayfield, written evidence.
103. The Committee notes the concerns of the Electoral Management Board about counting officers being required to publish notice of the count and the effect this may have on the general management of the count. We therefore invite the Scottish Government to explain why it has apparently departed from precedent on this point, and to give further consideration to the practical effect of this provision. On attendance of referendum agents at the count, the Committee invites the Scottish Government to discuss further with electoral administrators whether counting officers can be given sufficient powers to prevent any disruption to the counting process without having to resort to excluding referendum agents altogether. The Committee welcomes the indication that electoral administrators are planning on the basis that counting will take place overnight and that any operational issues that might make this difficult in certain areas are being identified and solutions developed.

Decisions on ballot paper (rule 33)

104. The Law Society suggested that this provision, which states that the decision of a counting officer in respect of a ballot paper is final, should be made subject to section 31, which limits the right to challenge the outcome of the referendum by judicial review to a six-week period after the result is announced.  

Re-counts (rule 34)

105. Rule 34 of schedule 3 makes provision for counting officers, on their own initiative, or on the instructions of the Chief Counting Officer (CCO), to have the votes cast in their area recounted. However, it does not expressly permit referendum agents appointed by registered campaigners to request a recount at local level in the same way that candidates and election agents can request a recount at other elections.

106. The Electoral Commission recommended the Bill be amended to allow local recounts following reasonable requests from referendum agents appointed for the local authority area or counting agents designated for this purpose – citing the precedent set in the Parliamentary Voting System and Constituencies Act 2011, which legislated for the 2011 AV referendum.

107. Mary Pitcaithly said that she expected the Electoral Management Board to issue guidance to counting officers about their power to order a recount, and that this “would help counting officers in the exercise of their discretion”. She emphasised that “all sorts of processes to double check and triple check results would be gone through before any announcement was made”.

108. The Deputy First Minister added that the Bill already gives counting officers discretion to order a recount, including if requested to do so by a referendum or counting agent, so giving referendum agents a statutory right to make such a
request would make “little practical difference”, since the final decision would still be for the counting officer to make.75

Declaration of results (rule 35)
109. Gordon Blair said that there was no provision in the Bill requiring local results to be declared, adding that “it is clear that the Bill is designed for a national result to be declared first before any local ones”.76 However, when the Committee wrote to the Deputy First Minister on this issue, she said that the Bill “requires counting officers to declare local results as soon as the CCO has authorised them to do so. When the CCO is in receipt of all certified local results, the CCO will make the formal national declaration. To allow flexibility, the Bill does not require that all local totals must have been declared before the national result is announced.” This was a change from the consultation draft, which would have required the national result to be declared before any local ones – an approach which the Electoral Commission and the Electoral Management Board had suggested could be impractical.77

110. The Electoral Commission explained that “the purpose of the local count is absolute certainty. If the Chief Counting Officer is satisfied with the count, they will authorise the local counting officer to declare it locally. And we expect the spirit of that, as contained in the Deputy First Minister’s letter, to be translated into the legislation”.78 In supplementary evidence, the Commission said that normal practice in referendums was for local results to be declared as soon as they were ready and had been checked by the Chief Counting Officer – and it expected the same to apply with the independence referendum.79

111. Mary Pitcaithly said the Electoral Management Board had a workstream to consider the steps involved in collecting and collating local results and co-ordinating the declaration of local and national results.80

112. The Committee endorses the approach taken in the Bill, which allows local results to be made before the national result, and gives discretion on exact timings to the Chief Counting Officer. Nevertheless, we would expect the Chief Counting Officer, in practice, to authorise counting officers to announce local results without any unnecessary delay, and we would welcome further clarification from the Electoral Management Board as to how these decisions are likely to be made in practice.

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75 Deputy First Minister, Letter to the Convener of the Referendum (Scotland) Bill Committee, 22 June 2013.
76 Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, cols 390-1.
77 Deputy First Minister, Letter to the Convener of the Referendum (Scotland) Bill Committee, 20 May 2013.
79 The Electoral Commission, supplementary written evidence.
Section 10 and schedule 4 (campaign rules)

113. Section 10 introduces schedule 4, which sets out rules to govern the conduct of those campaigning in the referendum. Schedule 4 defines who may be a “permitted participant”, and allows such participants to apply to the Electoral Commission to be the “designated organisation” with a lead role in campaigning for one or other outcome. It gives designated organisations certain rights, including a right to use public rooms for meetings. Importantly, under the section 30 Order, the designated organisations will also have the right to express their views in campaign broadcasts and via free mailshots. Schedule 4 also makes detailed provision about the spending limits applicable to designated organisations, other permitted participants and others, and about how referendum expenses are to be accounted for. It imposes restrictions on what certain public bodies may publish in the 28 days before the poll, and sets out detailed rules on receiving and reporting on donations, and on certain transactions (involving loans or credit) between permitted participants and other persons.

Designation of lead campaigners (schedule 4, paragraph 5)

114. Paragraph 5(3) allows the Electoral Commission to designate a permitted participant as lead campaigner on one side only.

115. This was described as a “high-level concern” by No to AV, which described it as a “significant deviation” from the “both-or-neither” rule in PPERA and as something that “creates the risk of an unfair referendum”. In No to AV’s view, a one-sided designation would be very difficult to reconcile with the duty of impartiality on broadcasters; it would also be “clearly wrong in principle” to give only one side a free mailshot to all voters. No to AV suspected the purpose of the provision was to create a disincentive to “tactical non-designation” by one side, but argued that providing grants to both sides was likely to be a better approach to addressing this risk.  

116. Professor Richard Wyn Jones said that the Welsh referendum experience had demonstrated that PPERA “allows for gaming. The no side chose not to apply for official designation, knowing that the impact of that would be that the yes side would then not be allowed official designation” – a decision that resulted in “absurdly tight” spending limits. For him, the lesson of the Welsh experience was that “PPERA is not fit for purpose”. He preferred the approach in the Bill, but agreed with No to AV that grants that can be spent on campaigning would also help.

117. However, the Electoral Commission said that its ability to appoint a lead campaigner on one side only addressed a recommendation it had made based on experience with the 2011 referendums. In its comments on the 2012 draft Bill, the Commission had noted that this approach could raise issues of fairness,

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81 No Campaign Limited (No to AV), written evidence.
but concluded that “in the circumstances of this referendum we are content that the risks of this approach are low”.\textsuperscript{85}

118. Both Yes Scotland and Better Together confirmed their intention to seek designated organisation status. Blair Jenkins said that Yes Scotland would “certainly apply”, while Blair MacDougall said he could not envisage any circumstances in which Better Together would not apply.\textsuperscript{86} The Deputy First Minister agreed that “we pretty much know the designated organisations on both sides”.\textsuperscript{87}

119. The Committee notes the evidence of witnesses who had experience of the 2011 Wales referendum, but considers that the approach to designated organisations provided in the Bill is appropriate in the circumstances of the 2014 referendum.\textsuperscript{88}

\textit{Application for designation (schedule 4, paragraph 6)}

120. A permitted participant wishing to become a designated organisation is required to apply to the Electoral Commission within the first 28 days of the 16-week referendum period, and the Commission must determine the application within a further 14 days.

121. Peter Horne of the Electoral Commission noted that the effect of this was that “the campaign period is actually compressed into 10 or 11 weeks, rather than 16 weeks.” He said that the Commission was “exploring with the Scottish Government the opportunity – which arises specifically because of how well prepared the poll is – to pull the designation timetable for lead campaigners forward”. John McCormick added that such a change would “preserve the purity” of the 16-week regulated period.\textsuperscript{89}

122. In written evidence, the Commission suggested a revised timetable by which lead campaigners would be designated by early May 2014, around a month before the start of the referendum period. This would reduce uncertainty and give the lead campaigners the full duration of the referendum period to make the most effective use of the benefits available to them. It would also simplify the effect of some of the Bill’s rules on donations and campaigning.\textsuperscript{90}

123. Both Yes Scotland and Better Together were keen to have the designation process completed as early as possible. Blair Jenkins summarised his position as “the earlier, the better”, subject to the Electoral Commission following a

\textsuperscript{85} The Electoral Commission, written evidence.  
\textsuperscript{86} Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 467.  
\textsuperscript{87} Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 574.  
\textsuperscript{88} Tavish Scott dissented from this paragraph.  
\textsuperscript{89} Scottish Parliament Referendum (Scotland) Bill Committee, 23 May 2013, Official Report, cols 438-40.  
\textsuperscript{90} The Electoral Commission, written evidence.
proper process. Blair McDougall took a similar view, adding that early designation would “give certainty about status”.91

124. ERS Scotland agreed with the campaign groups that early designation “would be beneficial”, saying that late designation “provokes uncertainty as to status, with implications for donations and spending.” It wanted designation to “run concurrently” with the referendum period, so that spending limits and reporting requirements would “commence at the moment of designation”.92

125. The Deputy First Minister said she was sympathetic to earlier designation, but there was a need to “discuss the practicalities, any unintended consequences and any relationship with other pieces of legislation”.93

126. The Committee also agrees that it is appropriate, particularly given the long lead-in time, for lead campaigners to be designated by the time the 16-week referendum period begins. We invite the Scottish Government to consider how to amend the Bill accordingly, and in particular to consider carefully, in view of the evidence we have received, how far in advance of that period the deadline for applications should be set.

Expenses incurred for referendum purposes (schedule 4, paragraph 10)
127. This paragraph defines the expenditure that qualifies as referendum expenses, which includes the costs of producing referendum campaign broadcasts, advertising costs, the costs of unsolicited mailings to voters, market research, media relations, transport and the costs of organising rallies and other events. It also allows the Electoral Commission to issue a code of practice on what qualifies as referendum expenses.

128. Blair McDougall said that Better Together was, “broadly speaking”, content with what was in the Bill and the guidance provided so far, and would “certainly have no problem with using free mailshots and things like that”.94

129. For Yes Scotland, Blair Jenkins said he was concerned the two campaigns might only be allowed two broadcasts each during the 16-week regulated period, suggesting that four each would be a more appropriate number. He doubted that the two sides could agree on how much to spend on the production costs associated with such broadcasts. Blair McDougall agreed that more airtime would be welcome, and said it was possible to create effective broadcasts even with limited budgets.95

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92 Electoral Reform Society Scotland, written evidence.
93 Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 574.
94 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 479.
95 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 479-80.
130. The Law Society suggested that any code of practice on referendum expenses be laid before the Parliament promptly "so that those who will be campaigning know what expenses they can incur."\[^{96}\]

**Spending limits (schedule 4, paragraph 18)**

131. Paragraph 18 of schedule 4 sets upper limits on the amount of referendum expenses that may be incurred by permitted participants, namely:

- for each designated organisation, £1.5 million
- for political parties, a proportion of £3 million based on their percentage share of the vote at the 2011 Scottish Parliament election, or £150,000 (whichever is greater)
- for other permitted participants, £150,000 each.

132. The Policy Memorandum (paragraph 72) provides an explanation of how the formula for political parties will translate into actual limits for each of the parties represented in the Parliament – as follows:

- Scottish National Party – £1,344,000
- Scottish Labour – £834,000
- Scottish Conservative and Unionist Party – £396,000
- Scottish Liberal Democrats – £201,000
- Scottish Green Party - £150,000.

133. This approach to spending limits was identified in No to AV’s written evidence as one of its "high-level concerns". That evidence included a table suggesting that the main parties opposed to independence would have significantly lower spending limits under the Bill than under PPERA-equivalent rules, while the SNP limit would only be slightly lower, and it doubted that the choice of this approach would do anything to enhance voter trust.\[^{97}\] In oral evidence, William Norton described the PPERA approach, which he preferred, as bottom-up, but said the Bill took “a half top-down approach” – it sought “to cap total spending by the two sides, but it does not apply the logic of that all the way through”, meaning there would still be “an imbalance at the bottom with regard to non-party campaigners, who can be funded by as many donations as they can raise”. He acknowledged that the Electoral Commission’s approach produced a “level playing field”, but said this depended on certain assumptions, including that none of the political parties would change sides or decide not to register on either side.\[^{98}\]

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\[^{96}\] The Law Society of Scotland, written evidence.
\[^{97}\] No campaign Limited (No to AV), written evidence.
\[^{98}\] Scottish Parliament Referendum (Scotland) Bill Committee, 9 May 2013, Official Report, cols 353-4, 357.
134. However, Willie Sullivan (Yes to Fairer Votes) said that “what the Electoral Commission proposed for the Bill provides a more level playing field than PPERA did.”

In written evidence, he said the lower and more equal spending limits in the Bill, compared to those in the AV referendum, would reduce the potential for “wealthy interests” influencing the outcome.

135. Other witnesses also disagreed with the No to AV critique. Professor Wyn Jones said the Bill produced an outcome that was “roughly fair”, whereas the PPERA approach “would not look roughly fair to most people” and could result in there being “huge questions about the legitimacy of the process as a result”.

136. Professor Walker felt that the Bill struck a good balance between the “top-down” and “bottom-up” approaches:

“On the one hand, there is value in having as precise a level playing field as possible; on the other hand, there is an argument for saying that there are so many voices in the referendum debate and that they do not necessarily divide into two obvious camps. … I think that there is a bit of a trade-off between those two ideals or goals. I like the approach that is taken in the Bill, which allows for other permitted participants.”

137. The Electoral Commission explained the principles on which its recommendations (reflected in the Bill) were based:

“Spending limits for a referendum should enable campaigners to campaign and set out their arguments to the voters …; limits should be in place to deter excessive spending; and the limits should not be so low that they encourage campaigns to distort the regulatory approach that is in place.”

138. The Commission had recommended £1.5m limits for designated organisations “having considered what would be a reasonable expectation of campaigners’ spend over a 16-week period”. For political parties, the Commission took the view that the banding approach implied by PPERA would result in an “uneven distribution of funding on either side of the campaign” so instead it recommended limits based on “the share of the vote in the most recent election – the election to the Scottish Parliament”.

139. Although the Commission recognised that “in a free democracy there is clearly the opportunity for other organisations to make their voices heard”, it felt

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100 Willie Sullivan (Yes to Fairer Votes), written evidence.
103 Scottish Parliament Referendum (Scotland) Bill Committee, 23 May 2013, Official Report, col 422.
104 Scottish Parliament Referendum (Scotland) Bill Committee, 23 May 2013, Official Report, col 422.
that “there should be some controls and there should be transparency”. The spending limit of £150,000 was set “by considering what activities organisations might undertake, and what it would be reasonable and appropriate for them to do”. That was 10% of the limit for designated organisations, and aimed to “strike a balance between allowing people to make their views heard but ensuring that they could not be a significant player in the debate without having appropriate electoral support behind them”.106

140. The Commission also said it would be inappropriate for it to seek to limit the number of campaigning organisations on either side, noting there was “a freedom of speech issue”. Peter Horne also pointed out that raising funds for campaigning was difficult and that, although “multiple campaigns might register … my view is that very few as a proportion will reach the limit of £150,000”.107

141. Yes Scotland said that, although its preference had been for a spending limit of only £50,000 for permitted participants, it had accepted the Electoral Commission recommendation for the £150,000 limit that is in the Bill. But Blair Jenkins warned that this was “a lot of money in campaign terms. If a large number of entities come from outside Scotland, for instance, and put such sums of money into the referendum campaign, that would raise legitimate questions”.108

142. Denis Canavan said he could not envisage any of the organisations with which Yes Scotland was in contact having as much as £150,000 to spend, adding that it would be “up to them to decide whether they want to register as permitted participants”.109

143. Blair McDougall said he understood the concern around the £150,000 figure. For him, the issue was about “rich individuals who have no real grass-roots support and who, it is feared, might come in and set up £150,000 funding vehicles”. He said that Better Together would seek to engage with the Commission on that issue.110

144. Blair Jenkins took a similar view, saying that “the position on who can register and then proceed to spend large sums of money is very loose. I agree that it would be pretty difficult to limit that or to put a controlling framework in place in respect of what constitutes a proper organisation to be a registered participant”.111

110 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 472 and 477.
145. The Committee recognises that any approach to spending limits needs to meet the test set out in the Edinburgh Agreement of securing “rules that are fair and provide a level playing field”, while at the same time protecting free speech and encouraging wide participation in the debate.\(^\text{112}\) Having carefully considered the evidence, we think the Electoral Commission recommendations achieve as good an overall outcome as is likely to be possible. In particular, we endorse the principle of giving the political parties limits reflecting their share of the vote in the most recent Scottish Parliament elections, while enabling other permitted participants, without limits on their numbers, to spend the same amount each regardless of which side they support. This reflects the practical reality that we can already be sure which sides the parties will line up on, but we cannot predict – and should not seek to control – the choices made by others who wish to play a part in campaigning. We recognise concerns about multiple participants, each able to spend up to £150,000, funded by a few wealthy individuals, but we also recognise that people should be entitled to campaign freely within the rules, and that absolute parity of funding is never going to be achievable. We believe that a combination of public scrutiny and the oversight of the Electoral Commission should be capable of preventing spending power alone, on either side, unfairly affecting the outcome.

**Referendum expenses incurred as part of a common plan (schedule 4, paragraph 19)**

146. Under paragraph 19 of schedule 4, expenses incurred by one individual or body during the referendum period are to be treated as having also been incurred by any other individual or body if they were incurred as part of “a common plan or other arrangement” between them in relation to their referendum campaigning. This provision only applies where there is a designated organisation for each side of the argument.

147. No to AV noted that this provision is not found in PPERA, and doubted whether it would achieve its purpose – for example, because it would not prevent a group that had reached its spending limit shutting down and then re-registering as a new organisation in order to get a new spending limit. In its view, the better way to address the potential abuse of spending limits by creating dummy organisations would be to strengthen the requirements on registering as a permitted participant, something that it felt would also reduce the administrative burden on the Electoral Commission in enforcing the rules.\(^\text{113}\)

148. Professor Neil Walker doubted that spending limits could be subverted by the creation of dummy organisations. Pointing to the various rules in the Bill’s schedules which aimed to prevent this he said, “I know that none of that is perfect, but often what you are talking about are not clandestine front organisations but ideological fellow travellers who are close in their objectives” – something he would not necessarily want to stop.\(^\text{114}\)

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\(^\text{112}\) Edinburgh Agreement, memorandum of agreement, paragraph 24 (campaign finance).

\(^\text{113}\) No Campaign Limited (No to AV), written evidence.

149. Professor Mullen thought that the donation reporting requirements would help to address the problem, because they would provide evidence during the campaign of where separate organisations were receiving funding from the same source. “If it was thought that organisation A is really organisation B wearing a different hat, the donation trail might help to substantiate the case”.  

150. Peter Horne explained that the Electoral Commission’s approach would be “first, to set out the rules clearly and to help people to understand how we will enforce them ... that helps them to comply because the vast majority of organisations with which we deal are seeking to comply”. The Commission also worked on the principle that “if people know that we have the powers available and that we are serious about using them, they are less likely to breach the rules”. If there was evidence suggesting that organisations were “seeking to work together and breach the rules, we would have the appropriate powers to be able to act” – adding that “we will come down heavily on that sort of activity”. However, Mr Horne conceded that enforcement could take time and that, in a one-off event such as a referendum, there were “incentives for campaigners to do what they can before the event and take the consequences afterwards”.  

151. Peter Horne said there was nothing to prevent wealthy individuals funding a number of separate organisations all campaigning on the same side and each having a spending limit of £150,000 – but “if an individual was seeking to set up multiple organisations and was not only funding them, but controlling them in such a way that their activities were co-ordinated to avoid being duplicative, we would take action”. However, he acknowledged there was “a slightly grey area as to what is egregious working together” and what was legitimate.  

152. Questioned about its staffing resources, the Electoral Commission said that, although it had only around 20 officials to monitor campaigning across the UK, it was confident it would be able to spot abuses. “With the traditional links that the Commission has built up over a decade in Edinburgh and Scotland in general, and the support that we will have from both sides of the campaign as they police their opponents, we will have a lot of information coming in”.  

153. On the theme of common plan expenses, the Committee questioned the two lead campaigns on their structures and relationships with other campaigning groups.  

154. Craig Harrow explained that Better Together’s aim was clarity about which organisations fell under its umbrella. Better Together had its own sectoral groups – including a women’s group, a youth group and a business group – which were politically autonomous, but were not separate in terms of accounting. Blair McDougall added that both they and the local groups were
expected not to have their own bank accounts, so that any expenditure they incurred within the regulated period would be paid for from Better Together’s central bank account. He went on to explain that “if an individual wanted to financially support the work of one of our rural groups, they would donate the money to us rather than directly to the group and we would ring fence it to ensure certainty with regard to accounting”. Mr McDougall later added that it was possible for other organisations to be established outside Better Together and to register as separate permitted participants, but he did not currently anticipate that happening.\(^{119}\)\(^{120}\)

155. Speaking for Yes Scotland, Blair Jenkins said that “the key principle is transparency and ensuring that people understand the difference between the official campaigns and other bodies that might or might not have a view on either side of the argument”. He mentioned Women for Independence and Business for Scotland as examples of groups that advocated a yes vote, but were not part of Yes Scotland – although he did not expect some of these to spend enough to require them to become permitted participants. He said that local yes groups “have not been encouraged to open their own bank accounts”, adding that “there must be clear mechanisms to ensure that we are aware of any spend that is locally incurred by an official yes group”.

156. Both campaign groups felt that the rules on common expenses were workable. For Yes Scotland, Blair Jenkins said it was “fairly clear” what the rules were where there was an intention to co-ordinate on campaigning or to have joint funding: “if we intend to be integrated with a group to that level, or to any extent, the group has to come under the funding limit for Yes Scotland as the designated campaign organisation”.\(^{121}\) Mr Jenkins expected the Commission to “give us very clear advice on what is and what is not permissible”.\(^{122}\)

157. For Better Together, Blair McDougall said that “if an organisation is co-ordinating with us, it will be in house so that there is no risk of our falling foul of that co-ordination issue”.\(^{123}\) He also said that previous Electoral Commission guidance had been “incredibly stringent”, and he was “pretty confident” that the guidance for the referendum would “be strong enough to deter us from co-ordinating”, although he recognised that it was difficult to prevent that “while maintaining people’s right to free speech”. He added that Better Together had concerns, which it was discussing with the Electoral Commission, about whether it was “logical to have such stringent controls” on the relationship between a cross-party campaign and the individual parties within it. He said that the Commission’s guidance would appear to require Patrick Harvie, a Yes

\(^{120}\) Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 467-70 and 472.  
\(^{121}\) Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 473.  
\(^{122}\) Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 475.  
\(^{123}\) Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 472.
Scotland board member, to “forget what he knows about the Yes Scotland strategy when he then runs the Green Party campaign, and must ensure that those two strategies do not connect. Given the cross-party nature of the campaigns, there is a risk of getting into some slightly ridiculous situations in that respect”.  

158. On a similar note, ERS Scotland warned against overly restrictive rules for small campaign groups, saying that “diversity in the debate is important as is a plurality of voices”.  

159. The Deputy First Minister said it was for the Electoral Commission to govern the arrangements for permitted participants, and she was “satisfied that the legislation goes as far as legislation can go to ensure that that system is above board”. She added that “the whole concept of having permitted participants is to allow people – if they are not part of a political party or a designated organisation – to participate and to spend money in support of their participation”. While she would consider suggestions made, she was not planning any amendments to the rules on permitted participants.  

160. The Committee notes the apprehensiveness of some witnesses regarding the potential for co-ordinated activity to undermine the effectiveness of the spending limits. Having reflected on the evidence provided, however, we are generally satisfied that the statutory provisions are sufficiently robust. All the same, we would welcome further clarification from the Electoral Commission about how they will in practice ensure that permitted participants stay within both the letter and spirit of these rules.  

Returns on referendum expenses – delivery to Electoral Commission and public inspection (paragraphs 22 and 24)  

161. Paragraph 20 requires each permitted participant to submit a return to the Electoral Commission in respect of its referendum expenses. Under paragraph 22, if the amount of expenses incurred exceeds £250,000, the return (accompanied by an auditor’s report) must be submitted within 6 months of the end of the referendum period; otherwise, the return must be submitted within 3 months. Criminal sanctions are specified for certain failures to comply. Paragraph 24 requires the Commission to make returns available for public inspection for a period of two years.  

162. The Law Society questioned the effectiveness of the sanctions against a failure to provide the Electoral Commission with a proper return in relation to its referendum expenses, given the length of time between when the expenses are incurred and when the return must be made. It also suggested that returns should be published and not merely made available for public inspection. ERS  

124 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 473 and 476.  
125 Electoral Reform Society Scotland, written evidence.  
Scotland agreed, saying it would “welcome regular reporting of expenditure throughout the campaign” rather than a single report after the event.\textsuperscript{127}

\textit{Restrictions on publication of promotional material (“purdah”) (schedule 4, paragraph 25)}

163. Paragraph 25 of schedule 4 prevents the Scottish Ministers or any other part of the Scottish Government, the Scottish Parliamentary Corporate Body or any Scottish public authority with devolved functions from publishing certain material during the final 28 days before the referendum (sometimes referred to as the “purdah” period). This includes material providing general information about the referendum, as well as material putting the arguments for one side or another, and includes publication in any form and by any means.

164. No to AV noted that this provision matches one in PPERA aimed at preventing undue influence through the use of public resources, but said it was “not fit for purpose”, as it could not be effectively applied against Ministers, and the enforcement machinery was “too obscure and slow-working to provide any remedy even in a case that constitutes a clear breach”. It wanted the purdah period to start earlier, preferably from when the Yes and No campaigns were designated. It also advocated changes to schedules 5 and 6 to allow the Electoral Commission to compel compliance with the purdah provisions, and to apply civil penalties for any breach.\textsuperscript{128-129}

165. Other witnesses also commented on the purdah issue, including on whether the 28-day period was long enough. Blair McDougall of Better Together was concerned that there was a “messiness about the disconnect between purdah and the regulated period. I guess that the counter-argument would be that the business of government has to continue throughout that four-month period”.\textsuperscript{130} Blair Jenkins of Yes Scotland had not given much thought to lengthening the purdah period, but did not see a compelling case for doing so.\textsuperscript{131}

166. The Deputy First Minister said that the 28-day period was “appropriate” and in line with existing electoral law. She did not think the period should be longer, saying “we have to strike a balance between fairness in the referendum period and allowing the Government of the day to get on with the business of being the Government”. She also explained that the purdah restrictions applied to oral as well as written statements made by Ministers when they were acting in that capacity and supported by civil servants, but would not prevent those same Ministers from campaigning in their capacities as party members and politicians.\textsuperscript{132}

\textsuperscript{127} The Law Society of Scotland, written evidence; Electoral Reform Society Scotland, written evidence.
\textsuperscript{128} No Campaign Limited (No to AV), written evidence.
\textsuperscript{129} Scottish Parliament Referendum (Scotland) Bill Committee, 9 May 2013, Official Report, col 364.
\textsuperscript{130} Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 488.
\textsuperscript{131} Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 488.
\textsuperscript{132} Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, cols 554 and 557-8.
167. A number of witnesses questioned the extent to which the UK Government would be bound by similar restrictions, given that its commitment to observing purdah rules was contained only in the non-statutory Edinburgh Agreement.

168. Professor Wyn Jones felt strongly that the same rules should apply to UK Ministers, “because neither Government is a neutral player in this particular fight”, but did not know how to make that happen. He also acknowledged that purdah was “a difficult issue because it makes government difficult”. 133

169. Professor Tom Mullen believed that any breach by the UK Government could be challenged through judicial review proceedings, since there was an argument that the Edinburgh Agreement was enforceable by reference to the legal concept of “legitimate expectation”. However, he felt that “it would be more appropriate if, for both Governments, the purdah period was on a statutory footing” – adding that putting in place the relevant UK legislation “would be straightforward. It is a matter of political will”. 134

170. Professor Neil Walker agreed that the Edinburgh Agreement was probably enforceable, on the basis that it was “a kind of law or a quasi-law” and created a legitimate expectation. However, his conclusion from this was that “UK legislation would be an unnecessary additional hurdle”. 135

171. Dennis Canavan of Yes Scotland wanted the UK Government to be under an equivalent statutory obligation to apply the purdah rules, suggesting that it could be invited “to introduce a statutory instrument or something”. (30/5, col 486) Craig Harrow of Better Together did not have a view on whether such legislation was needed, but noted that “during a Scottish general election, there is an agreement but there is no statute, as there is for when Westminster is in purdah”. 136

172. The Electoral Commission, in its written evidence, said that it would not have a regulatory or sanctioning role in respect of the purdah restrictions. This was “not in itself a concern, provided that both Governments explain to voters how the Edinburgh Agreement commitments will be observed”. In oral evidence, John McCormick said there was “a tradition of Governments accepting and observing” purdah rules. His colleague Andy O’Neill pointed to paragraph 29 of the Edinburgh Agreement, which committed the UK Government to abide by the same purdah rules as the Scottish Government, saying “that commitment is already there in writing”. 137 138

134 Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, cols 411 and 413.
135 Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, col 413.
136 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 486 and 490-1.
137 The Electoral Commission, written evidence.
173. The Deputy First Minister pointed out that the Parliament cannot legislate to apply purdah rules to the UK Government, but said the Edinburgh Agreement made clear the UK Government’s “intention voluntarily to submit to the same rules”. She added: “I fully expect the UK Government to honour that commitment in full, and I have no reason to expect that it will not do so.” She added that it was up to the Committee whether to recommend additional legislation applying purdah rules on the UK Government, and it would be up to the UK Government to respond to any such recommendation.\(^{139}\)

174. The Committee also took evidence from legal experts and others on how the purdah restrictions in the Bill could be enforced.

175. The Electoral Commission, in its written evidence, noted that the approach taken in the Bill was narrower than under PPERA, and did not make any provision for sanctions in respect of breaches.\(^{140}\)

176. According to Professor Mullen, the courts might be willing to say that a breach of purdah constituted an illegal act, but might be reluctant to go further and draw any conclusions about whether it had affected the outcome of the referendum. He also noted that a court ruling issued before the referendum could be “significant beyond its actual legal outcome” since the very fact of the litigation “might create reputational damage for one side or the other”.\(^{141}\)

177. A similar view was expressed by Blair McDougall of Better Together, who said that “the real sanction, or what makes us behave ethically, is the court of public opinion and the increased scrutiny that comes from the media during that time”.\(^{142}\)

178. ERS Scotland was also concerned to ensure that governments did not “use their public resources to their advantage”. Although it acknowledged the points made by other witnesses about “the court of public opinion”, it wanted both the Scottish and UK Governments “to make a public undertaking that they will respect the rules restricting campaigning activity by public bodies, including the Governments themselves, whilst understanding that public money and public bodies should find a way to encourage involvement and debate as part of the democratic process” – saying that, although difficult, this was “not outwith the wit of man to resolve”.\(^{143}\)

179. John McCormick of the Electoral Commission felt that, because the two Governments were on opposite sides, “the monitoring and scrutiny will be quite intense” and there would be “active public scrutiny of whether each side is obeying the rules”. He felt it would be “presumptuous for the Electoral Commission, as a regulator, to comment publicly on the conduct of the

\(^{139}\) Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, cols 554 and 560.

\(^{140}\) The Electoral Commission, written evidence.

\(^{141}\) Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, cols 411 and 412.

\(^{142}\) Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 486.

\(^{143}\) Electoral Reform Society Scotland, written evidence.
Government or the Parliament. That is why we believe that public scrutiny is the best test in this regard.”

180. Graham Fisher (Scottish Government legal directorate) confirmed that judicial review was available as a potential sanction for breaches of the purdah rules. He said that the remedies available if a challenge was upheld would depend on what was sought and on the context of the decision. The Deputy First Minister added that any alleged breach by a Minister in either Government was likely to be seized upon by the other side and so picked up in the media: “The provision is in law because we want to ensure that there is an appropriate restriction, but the public price of breaching the purdah rules operates as a constraint as well.”

181. Concerns were also raised in evidence from No to AV that the purdah restrictions in the Bill were narrower in scope than those in PPERA in that they did not apply to bodies that, although not public authorities, were mostly reliant on public funds (including European Union funds).

182. However, the Electoral Commission pointed out that any individual or organisation, whether or not they receive public funds, would be able to spend up to £10,000 on “promoting or procuring an outcome” at the referendum without being subject to regulation. Organisations that receive public funds would need to comply with any restrictions that apply to their use of those funds, but that would be a matter for the relevant funding body or any appropriate regulator rather than for the Commission.

183. In oral evidence, Peter Horne explained that the scope of the purdah restrictions in the Bill was consistent with the Electoral Commission’s recommendation. He said the rationale for the recommendation was that, while the referendum involved “an intensely important discussion about the nature of democracy in Scotland, ... there will also be a requirement for on-going Government and public administration, and a line needs to be drawn at some point”. He felt the PPERA rules were “so broad that entirely valid activity that was undertaken by organisations could be seen as being covered”. He said it was not the Commission’s role to police what is said by organisations that receive public funds – unless they became permitted participants, in which case “we will regulate them at that point”.

184. On the question of how the purdah restrictions would apply to MSPs and MPs, Peter Horne said that the main restrictions on how public funds could be

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144 Scottish Parliament Referendum (Scotland) Bill Committee, 23 May 2013, Official Report, col 442.
146 The Electoral Commission, written evidence.
147 Scottish Parliament Referendum (Scotland) Bill Committee, 23 May 2013, Official Report, cols 440-1 and 446.
spent came from parliamentary codes of conduct. Any breach of those rules would be dealt with by the appropriate parliamentary authorities.\textsuperscript{148}

185. Blair McDougall of Better Together said that “both Parliaments already have fairly clear rules about what constitutes political campaigning and the use of expenses”.\textsuperscript{149} He believed “similar standards should apply to both Parliaments” and that “both Parliaments will have to look at their procedures and issue new guidance”.\textsuperscript{150} But Dennis Canavan of Yes Scotland was concerned that the Westminster rules “appear to be a bit more flexible” than those of the Scottish Parliament, and suggested that the Speaker of the House of Commons could be asked “to ensure that during the period MPs abide by a code of conduct that is very similar to that which operates in the Scottish Parliament”.\textsuperscript{151}

186. The Deputy First Minister was careful to stress that this was a matter for the relevant parliamentary authorities rather than Ministers, but she hoped that appropriate steps would be taken to ensure there was a level playing field. She also noted that the public were likely to “take a very dim view” of any politician seen to be misusing public funds, and that this created “a self-regulating pressure on politicians”.\textsuperscript{152}

187. Asked about the impact of the purdah restrictions on the SPCB and the implications for Parliamentary business, the Deputy First Minister accepted that the Bill “could preclude the publication of an enormous amount of material that relates to the business of governing Scotland”. While noting that recess times were a matter for the Parliament, she said that for the Parliament to meet during the purdah period “would undoubtedly mean that we would sit with enormous constraints on what the Parliament and the Government could do … it would be difficult to imagine how a normal First Minister’s question time, for example, would proceed in a way that is consistent with the law”.\textsuperscript{153}

188. The Committee strongly endorses the principle of a “purdah” period in the immediate run-up to the referendum, based on established precedent. We accept that 28 days is the appropriate period, given the need not to interrupt the normal business of government for longer than is necessary, and given that this is in any case the period endorsed by the two Governments in the Edinburgh Agreement.\textsuperscript{154} We recognise that (as with any election) there is limited scope for formal enforcement of these rules, but we are confident that the main practical sanction is the likelihood that any breach would generate publicity more damaging than any perceived advantage gained.

\textsuperscript{148} Scottish Parliament Referendum (Scotland) Bill Committee, 23 May 2013, Official Report, cols 444 and 447.
\textsuperscript{149} Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 486.
\textsuperscript{150} Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 491.
\textsuperscript{151} Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 487.
\textsuperscript{152} Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 555.
\textsuperscript{153} Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, cols 555-6.
\textsuperscript{154} Tavish Scott dissented from this sentence.
189. We accept the Deputy First Minister’s view that there is no reason to doubt the good faith of the UK Government’s commitment to observe purdah restrictions equivalent to those imposed on the Scottish Government in the Bill. Nevertheless, there is an asymmetry, and we invite the UK Government to indicate whether it would be prepared to put the purdah restrictions to which it is committed on a statutory footing. We would request that the Scottish and UK Governments each issue guidance to those public bodies for which it is responsible on the limits applicable to them during the 28-day period.

190. The purdah period is to begin on Thursday 21 August 2014. The Parliament has now agreed recess dates that include a period of recess from 28 June to 3 August 2014 (inclusive) and another from 23 August to 21 September 2014 (inclusive). As a result, there will be a 2-day overlap between the purdah period and a period of Parliamentary business. We draw this to the attention of the Parliamentary authorities.

191. In terms of the rules on parliamentarians, we recognise these are matters for the relevant authorities, here and at Westminster, and that it is unrealistic to expect these to be directly co-ordinated. Nevertheless, we hope that similar rules will apply. We expect the SPCB to issue clear guidance for all MSPs and invite the Independent Parliamentary Standards Authority to do the same for MPs.

### Control of donations (schedule 4, Part 5)

192. Part 5 of schedule 4 sets out rules on the control of donations, including a requirement on permitted participants to check that every donation of over £500 is from a permissible donor, and a requirement to report to the Electoral Commission on every donation of over £7,500. Permissible donors are individuals or organisations meeting certain criteria – including (for individuals) being registered in one of a number of electoral registers (listed in para 1(3) of the schedule).

193. Professor Mullen suggested that the donation reporting threshold in the Bill could be lowered, since under the current threshold of £7,500 “quite a lot of substantial donations of several thousand pounds would not have to be disclosed”. Similar points were made by ERS Scotland.

194. For Navraj Singh Ghaleigh, the lack of a requirement to report on donations during the campaign was a “glaring” regulatory gap. Such “ex ante” reporting would allow voters to evaluate donations and their likely impact, and so “allow them to align themselves with or against a campaign on the basis of their published supporters”. Current, voluntary disclosure of donations by the lead campaigns was “laudable” but “very much a second best”. He also argued that

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155 Patricia Ferguson, Annabel Goldie, James Kelly and Tavish Scott dissented from this sentence.
158 Electoral Reform Society Scotland, written evidence.
soliciting donations from people outside the UK risked having “a distortive effect on the campaign, inimical to the statutory concept of the permissible donor”.

195. Peter Horne of the Electoral Commission said the referendum was “the first for which reporting will be introduced for donations more than £7,500 in the regulated period, and so the Bill was “a significant improvement on previous legislation, in that there is transparency prior to the event”. But he acknowledged “it would be possible to reduce that level if there was a view that that would increase transparency.”

196. The Electoral Commission was concerned that the Bill would make it difficult for campaigners to check the permissibility of some donations, since the Bill only requires EROs in Scotland to provide a copy of the local government register to campaigning – unlike in PPERA referendums, where campaigners are entitled to a copy of all the relevant registers. In practice, campaign groups would either have to rely on the donor providing evidence that they are on a register, or try to make arrangements to inspect other registers in person. The Commission said this would be a less robust process and would “place additional and potentially onerous burdens on both campaigners and donors”.

197. The Deputy First Minister said that, although campaigners were entitled to a copy of the Scottish local government register, the Parliament “cannot legislate for the sharing of other registers in operation either in Scotland or in the rest of the UK”. However, she assured the Committee that “even if a donor is not on the local government register there are other ways of checking their eligibility as a donor”.

198. The Deputy First Minister said that the Bill already required campaigners to report to the Electoral Commission, before the poll, on donations received during the referendum period. She said it was important that voters could see how campaigns were funded before deciding how to vote, and that the Scottish Government had discussed with the Commission a possible amendment that would require it to publish promptly the donation reports it received.

199. The Committee is generally satisfied with the rules on donations. However, we would invite the Scottish Government to consider further whether a lower threshold for reporting donations would be merited, and whether there should be greater public access to information about donations during the referendum campaign, in the interests of transparency. We would also welcome further clarification on how, in practice, permitted participants are to check donors’ eligibility by reference to electoral registers other than the one register to which they are to be guaranteed access.

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159 Navraj Singh Ghaleigh, written evidence.
161 The Electoral Commission, written evidence.
162 Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 553.
Section 11 and schedule 6 (civil sanctions)

200. Section 11 sets out the Electoral Commission’s general obligations for monitoring and enforcing compliance with the campaign rules. Schedule 6 gives the Electoral Commission powers to apply civil sanctions (including fixed monetary penalties) for breaches of the campaign rules.

201. Throughout schedule 6, various powers of the Electoral Commission to impose civil penalties are defined according to whether a person has committed a “prescribed campaign offence”. This, in turn, is defined as an offence prescribed in a “supplementary order” made under paragraph 16. As a result, the scope of the Commission’s power to enforce the campaign rules using civil penalties will only become clear once a supplementary order is made by Ministers listing the relevant provisions. The Electoral Commission is also required by paragraph 25 of the schedule to issue guidance on its approach to enforcement, including how it will apply its powers to impose civil sanctions.

202. No to AV noted that this approach was based on PPERA, but said there was no reason in this instance to follow the PPERA model and that the relevant offences and rules should be specified in the Bill, something that “would greatly assist prospective campaigners, election officials and the Commission itself”.163

203. Yes Scotland pointed out that a UK civil sanctions order had been made in 2010, specifying the offences and rules to which the PPERA civil penalties regime applies. In its view, that order gave a good indication of what provisions in the Bill were likely to be subject to civil penalties, so it did not have a strong view on whether the relevant statutory provision for the referendum was made in the Bill or by a later statutory instrument: “The end result would be the same.”164

204. The Electoral Commission explained that it was now normal practice for it to have civil as well as criminal sanctions available. Although the Bill provides for the Commission to consult on its approach, the Commission envisaged relying on established practice in applying the civil sanctions regime.165

205. The Committee considers the civil sanctions regime to be an important part of the regulatory regime established under the Bill. We would therefore welcome early sight of the supplementary order that is to establish its scope, or confirmation that it will be closely based on the equivalent order made under PPERA.

Sections 13 to 15 (campaign offences)

206. Sections 13 and 14 define the scope of campaign offences and specifies the penalties that apply where a person is convicted of such an offence. Section 15 requires the court in which a person is convicted to notify the Electoral Commission.

163 No Campaign Limited (No to AV), written evidence.
164 Yes Scotland, written evidence.
207. The Law Society questioned why some of the offences carried heavier penalties than others, suggesting it may be based on “a proportionality argument”. It also thought it odd that the maximum term of imprisonment for the more serious offences was the same (12 months) whether the offence was prosecuted summarily or on indictment.\footnote{The Law Society of Scotland, written evidence.}

208. The Law Society also said that the offences appeared to be “strict offences” without a defence of reasonable excuse. However, in oral evidence, the Faculty of Advocates pointed out that in fact all the offences were qualified in ways that made allowance for the circumstances, so none imposed strict or absolute liability – a point acknowledged by the Society.\footnote{Scottish Parliament Referendum (Scotland) Bill Committee, 9 May 2013, Official Report, cols 341-2.}

Section 16 (referendum agents)

209. Permitted participants are entitled under section 16 to appoint, for each local authority area, a referendum agent to act on its behalf, and must notify the relevant counting officer of the agent’s details by noon on the 25th working day before the referendum.

210. No to AV pointed out that this deadline was earlier than the 16-day deadline in the AV referendum, suggesting this “increases the inconvenience for campaigners”.\footnote{No Campaign Limited (No to AV), written evidence.}

211. However, Yes Scotland supported the existing provisions in the Bill, pointing out that there would be around 273 days between the Bill being passed and the deadline for appointing referendum agents, compared with only 50 in 2011. There were also differences in scale, with counting taking place in only 32 local authority areas, compared with the 440 voting areas for the AV referendum in 2011. Its conclusion was that it was generally “of benefit to election administrators to know the identity of referendum agents as soon as possible in the process so that they have a local contact to discuss such matters as the arrangements for the opening of postal ballot packs in the area, local polling arrangements and the count”.\footnote{Yes Scotland, written evidence.}

212. The Committee is content with the timescales for appointing referendum agents.

Sections 17-20 (observers)

213. Section 17 entitles Electoral Commission representatives to attend proceedings relating to the referendum, and to observe the working practices of registration and counting officers. Sections 18 and 19 allow individuals or organisations to be accredited as observers by the Commission.

214. The Electoral Commission pointed out that PPERA also required the Commission to prepare and publish a code of practice for observers at
elections, but this requirement only applied to referendums if provided for in the referendum legislation. The Commission recommended amending the Bill to provide for a statutory code of practice in the context of the referendum, as this would demonstrate “a clear commitment to transparency by facilitating international scrutiny of a country’s electoral processes”.

215. The Deputy First Minister said that the issue was under discussion with the Electoral Commission, and she would consider whether the Bill needed to be amended.

216. On the question of whether there should be a statutory requirement for a code of practice for observers, the Committee welcomes the Electoral Commission’s recommendation, notes that it is under discussion and encourages the Scottish Government to seriously consider amending the Bill.

Section 21 (information for voters)

217. Section 21 requires the Commission to take such steps as they consider appropriate to “promote public awareness and understanding” of the referendum, the referendum question and voting in the referendum.

Promoting understanding of the question

218. A number of witnesses singled out for criticism the particular requirement to promote understanding of the referendum question.

219. According to Nigel Smith, this “would be a major change in the conduct of referendums in the UK” departing from previous practice. He said the Electoral Commission had only supervised three major referendums “earning mixed reviews”, but he also opposed the provision in principle. The challenge of providing unbiased information on a referendum question had, he said, “largely defeated referendum commissions around the world”, and most previous efforts had either been dull, valueless or “unwittingly partisan”.

220. No to AV also argued against this provision, saying it would, for example, be “impossible” for the Commission to “explain what it means for Scotland to become an ‘independent country’ without being either subjective or partisan”. In oral evidence, William Norton added that the combination of the question and the duty on the Commission would “create a massive headache for it”, and prompt it to produce “a very bland document”.

221. Willie Sullivan agreed that the Bill gave the Electoral Commission “an impossible job”, adding that both sides in the AV referendum felt that the document the Commission created on that occasion was biased “and that is
going to happen again”. ERS Scotland also felt the task for the Commission was “simply not possible”, and that “proper balanced broadcast media coverage” and a programme of citizen engagement would be a better way of addressing the need for impartial information.

222. The Law Society of Scotland said the section reflected international good practice (established under the Venice Commission), which required authorities to “provide objective information”. Michael Clancy did not think anything in the Bill would make the Electoral Commission’s role in providing objective information more difficult.

223. Asked about the Commission’s role, John McCormick said the organisation was “very clear” about its “role in providing impartial information on the process, as distinct from the campaigning arguments”. He also pointed out that section 21 only required it to take such steps as it considered appropriate, and that it would “not seek to explain to voters what independence means”. Its focus would instead be on information “aimed at ensuring that all eligible electors are registered and know how to cast their vote”.

224. The two lead campaigns differed on whether the duty on the Commission to promote understanding of the question was problematic. Better Together said that “it seems inevitable that attempts to impartially explain political aspects of the referendum question would be extremely difficult (rather than providing basic technical information or educating people on how to participate in the referendum)” – adding that the meaning of the question was “necessarily a matter of contest between the two campaigns”.

225. By contrast, Yes Scotland said that “If the Electoral Commission does not consider a possible step in promoting understanding of the referendum question to be appropriate, there is no duty under the Bill to take it. A clear example of an inappropriate step to take in promoting understanding of the question would be a step which compromised its political neutrality. We consider that it is essentially a matter for the Electoral Commission to take a view on whether it is content with section 21 as it is framed”.

226. The Deputy First Minister said there was “a very clear distinction” between the roles of the Electoral Commission and of the two campaigns: “The Electoral Commission has a responsibility to provide information that will advise people how to register to vote and how to vote, but it will not – nor should it – in any...
way, shape or form stray into providing information that puts the case for one side of the referendum debate or the other, or even for both sides. It is not the Electoral Commission’s role to get into the issues and the arguments behind the debate. That is very much for the two campaigns, and I am pretty sure that both will be working very hard to ensure that they provide the electorate with the information that people need to make their decision.  

227. On the idea of the Commission including text from both sides in its own information material, the Deputy First Minister said that, if the campaigns were in favour of that approach, they would have to discuss it with the Electoral Commission.  

228. The Committee also asked the Commission to comment on this idea. John McCormick confirmed it was “currently considering the merits of doing this” and would “consider the specific context of the Scottish referendum, including the views of campaigners and impact on voters, before reaching a decision”.  

229. The Committee is very clear that the Electoral Commission should provide impartial information on the processes surrounding the referendum, and should not seek to provide information on the matters of substance that are at issue between the two sides. We are confident that the Electoral Commission understands this distinction, and that the Bill gives it adequate discretion in deciding how to promote understanding of the question in a manner consistent with its role.  

Information from Governments about process following referendum  

230. John McCormick explained that the work the Electoral Commission had done to test the referendum question revealed that people “wanted more information on the big issues, such as the economy, the monarchy, defence, immigration and citizenship, before they voted” and some also wanted to know more about what would happen after the referendum. He accepted that the Commission could not produce “genuinely neutral and authoritative information of the type that voters have expressed a desire for, but we believe that clarity on how the terms of independence will be decided would help voters to understand how the competing claims of the campaigns will be resolved.” Such information, if it could be agreed by the two Governments, “might include information on how negotiations would take place between the Governments, the timescales for those negotiations, and so on”. In a follow-up letter, Mr McCormick added that the Commission would expect any such joint position to be included in the leaflet it was planning to send to all households in Scotland, and in its public awareness campaign.  

231. Yes Scotland and Better Together agreed with the Electoral Commission that the Scottish and UK Governments should make clear in advance what process

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184 Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 569.  
185 Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 570.  
186 The Electoral Commission, letter to the Convener, 21 June 2013.  
would follow either a yes or no outcome. Blair Jenkins said that “the two Governments ought to be able to agree on and outline in very clear terms the process that would be followed, as the Electoral Commission suggested.”

232. The Deputy First Minister confirmed that there was “on-going discussion between my officials and counterparts in the UK Government about what a statement of that nature might look like”. She thought there was a duty on both Governments to accept the Electoral Commission’s recommendation, and she offered to report back to the Committee when discussions had concluded.

233. The Committee acknowledges the Electoral Commission’s recommendation about providing voters with general information about the process that would be followed post-referendum, either in the event of a Yes vote or a No vote. We are encouraged to hear that the Scottish Government and the UK Government are discussing these matters, and would welcome further information about the nature of those discussions, and regular updates on progress.

Information in alternative formats

234. Bill Scott of Inclusion Scotland advocated the provision of information for voters in “Easy Read” format. Designed for people with learning impairments, it also worked well for people with low literacy levels and was “a really good way of communicating with the whole electorate”. Easy Read information helped, in particular, to avoid confusion and increase people’s confidence – “they do not want to look a fool in public, going into a polling station and not knowing what to do”.

235. In response, the Electoral Commission stated “We routinely produce key voter information in Easy Read format and we would expect to make any voter information booklet we produce for the referendum available in that format.” It provided as an example its Easy Read information booklet from the 2012 Scottish council elections. The Commission said it also produced voter information in other accessible formats including British Sign Language, Braille, audio format and large print.

Sections 22 and 23 (guidance and advice by Electoral Commission)

236. Section 22 allows the Electoral Commission to issue guidance to the Chief Counting Officer, with the CCO’s consent to counting officers, and to permitted participants and others.
237. The Electoral Commission noted that the Bill does not give the Chief Counting Officer power to issue guidance to counting officers, even though the CCO will be responsible for the overall conduct of the poll. The Commission therefore recommended that “a clear power for the CCO to issue guidance should be inserted in the Bill and the equivalent Commission power removed”. It said the Scottish Government had indicated that it was receptive to this suggestion; the Deputy First Minister confirmed that discussion on this point was on-going.  

Section 24 (report on conduct of referendum)

238. Under section 24, the Electoral Commission must report to the Parliament on the conduct of the referendum “as soon as reasonably practicable after the referendum”.

239. The Law Society questioned whether this timetable was realistic given what it was required to report on, and the timescales for participants to make returns to the Commission on their referendum expenses.  

240. However, the Commission didn’t think there was a problem, explaining that its equivalent report on the referendums that took place in March and May 2011 were presented in July of that year, while its “considered report, with issues arising and recommendations to the Parliament” was made in October. The Commission was discussing with the Scottish Government options for similarly reporting on the referendum in two stages and expected these discussion to conclude “fairly soon”.

241. Prof Wyn Jones said that the Electoral Commission’s report on the Welsh devolution referendum “was an exercise in self-justification – pure and simple” and it “made no real effort to think critically about its own role”. (9/5, col 350) Feedback from those involved included “a lot of critical noise about the Commission, particularly about how incredibly cautious and often opaque its responses to queries were”.

242. However, John McCormick said he was “quite surprised and a bit disappointed” by these comments. He explained that Commission reports were “based on externally verified data”, and had to “survive line-by-line scrutiny by the commissioners, who ensure that they are robust, independent and based on the right kind of data – as you would expect from a public regulator such as the Commission”. He said lessons had been learned from previous referendums, particularly about the need for proper planning and an adequate timescale from

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193 The Electoral Commission, written evidence; Scottish Parliament Referendum (Scotland) Bill Committee, 13 June 2013, Official Report, col 553.
194 The Law Society of Scotland, written evidence.
passing the legislation to polling day. Peter Horne added, as examples of lessons learned, the importance of pre-poll reporting to provide transparency about campaigners’ sources of funding, and the need to enable a lead campaigner to be designated on one side only, as a disincentive to tactical non-designation.\footnote{Scottish Parliament Referendum (Scotland) Bill Committee, 23 May 2013, Official Report, col 436.}

243. The Committee notes the evidence provided by the Electoral Commission, and would welcome further clarification about the reporting timescales the Commission expects to apply in this instance.

Section 30 (power to make supplementary etc. provision)

244. Section 30 gives Ministers power to make further provision, in subordinate legislation, that is “supplementary, incidental or consequential” to the Bill, including provision to modify any enactment (including the Act resulting from the Bill). The exercise of the power is subject to the affirmative procedure – in other words, any instrument made under the power requires to be approved by resolution of the Parliament.

245. No to AV said that the powers in this section could, in theory, be used to re-write everything in the Bill before polling day. It argued that there should be a deadline beyond which the conduct rules could not change, to provide certainty for campaigners and election staff.\footnote{No Campaign Limited (No to AV), written evidence.}

246. The Law Society of Scotland wanted Ministers to be required to consult on any subordinate legislation made under this provision.\footnote{The Law Society of Scotland, written evidence.}

247. The power is further considered under ‘delegated powers’.

Section 31 (power to challenge result)

248. Under this section, any judicial review application seeking to challenge the number of ballot papers counted or votes cast may only be brought within 6 weeks of when the relevant results are certified.

249. Richard Keen of the Faculty of Advocates noted that this time limit was half the three-month period used in other contexts – though he made clear that this was not a criticism.\footnote{Scottish Parliament Referendum (Scotland) Bill Committee, 9 May 2013, Official Report, col 347.}

250. Professor Mullen noted that the provision was similar to those in the legislation for the 2011 referendums on AV and Welsh devolution and in compulsory purchase and planning legislation.\footnote{Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, col 398.} He felt that the six-week period struck an appropriate balance – the period should not be too short, as
the information needed to mount a challenge might not be available immediately, but there was also a clear need to achieve finality about the result. Many things would follow from the outcome and “it would not be in the public interest to unpick all those things six months or a year later”. Professor Neil Walker agreed, noting that “time is of the essence in this particular context”.

251. Both Professors Mullen and Walker believed the purpose of the provision was simply to set a time limit for challenges on specific grounds, and not to restrict the right to judicial review more generally. In Professor Walker’s view, this section was not intended to be “a general ouster clause, which would exclude all other forms of judicial review. Even if it was intended as such, I do not think that it would necessarily have that effect”. However, he also felt that it was very unlikely there could be grounds of challenge other than those made subject to the six-week time-limit in section 31. One reason for this was that a referendum was different to an election, in that a referendum is a single, national poll. As such, the only thing that can really be challenged is the overall result; there is no intermediate option, as there is with an election, of challenging the result in a single constituency.

252. Both professors considered whether a challenge to the outcome could be brought on the grounds that statements made by one side or the other about the subject matter of the referendum were false. Professor Mullen felt that “the risk that people will make outrageous statements simply has to be combatted by non-legal means … any attempt to regulate the distinction between legitimate debate and unfair and false statements is not feasible”. Professor Walker agreed, saying that anyone who tried to regulate such debate would find their neutrality compromised.

253. Professor Mullen also noted that recent case law had established that people could bring judicial review proceedings on public-interest grounds in Scotland, as they have long been able to do in England, without having to establish a direct personal interest – but this remained very unlikely in relation to the referendum result, given the costs of bringing such a challenge and the risk of having to pay the costs involved if the challenge was unsuccessful. Any such challenge was more likely to come from one of the campaign organisations, which already had enough “personal interest” and would not need to establish a public interest as well.

254. For the Scottish Government, Graham Fisher explained that the time-limit set by section 31 applied only to challenges brought in relation to the counting of the votes cast. There was no fixed time limit for judicial review on other

208 Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, cols 404-5.
grounds, and the likelihood of any challenge succeeding would depend on the particular circumstances. The Deputy First Minister added that the Bill aimed to replicate restrictions imposed in previous legislation without “fettering the normal right of access to judicial review”, but it would be “reasonable to consider whether the provision is as tightly drawn as it should be”.209

Section 32 and schedule 8 (interpretation – meaning of “referendum period”)

255. Schedule 8, introduced by section 32, defines various words and expressions used in the Bill. One of these is “referendum period”, which is defined as a 16-week period ending on the date of the referendum. This term describes the regulated period during which permitted participants are subject to the various controls on their spending and corresponding obligations to report to the Electoral Commission.

256. The Committee considered some evidence on whether this was an appropriate duration for these controls to apply.

257. Willie Sullivan wanted the referendum period to be “as long as practicably possible” given that only expenditure during that period was covered by the spending limits, while ERS Scotland wanted the referendum period to begin “as soon as possible after the Bill receives Royal Assent”.210

258. For the Law Society of Scotland, the issue was about the effectiveness of spending limits that apply only during a 16-week period: “As a control on expenditure this is not effective as expenses are currently being incurred without such controls.”211 Similarly, Navraj Singh Ghaleigh felt that the obvious risk of regulating only a 16-week period was that “campaigners could ‘front load’ their expenditure in order to avoid the strictures of the Bill”.212 The STUC also warned that there was “an obvious potential for any inequality of arms in relation to the funding of campaigns to be manifested in the lead up to rather than during that period”.213

259. Professor Walker acknowledged that campaigning for and against independence was already happening – “it is an issue that has been bubbling under in Scottish politics for many years” – but he felt that trying to regulate campaigning “from day 1 … would be a minefield”. He concluded it would be better to leave things as they are, “although a period of 16 weeks is perhaps a bit too short”. However, he also recognised that extending the period would have the complication of overlapping with the European Parliament elections in May 2014.214

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210 Electoral Reform Society Scotland, written evidence.
211 The Law Society of Scotland, written evidence.
212 Navraj Singh Ghaleigh, written evidence.
213 STUC, written evidence.
260. Peter Horne from the Electoral Commission explained that “there is an interlinked relationship between the amount of money that people are allowed to spend and the period of time that is set, so if you were to unpick one you would probably have to unpick the other … the limit of £1.5 million for lead campaigns essentially comes down to a few pence per voter per week. As we extend the regulated period, we start to push that and make it tighter”. Overall, the Commission view was that “16 weeks was a sufficient time for people to build up to a campaign and put their arguments to voters”; there was an argument for extending the period slightly, but he was not convinced.215

261. Better Together agreed with the Electoral Commission’s view that extending the regulated period would affect spending limits. “It would be kind of unpicking things, which we would not recommend”. Yes Scotland said that the “The difficulty of having a longer regulated period is that it would overlap with the European elections next year … we have ended up in the right place, and I am not concerned about the 16 weeks”.216

262. A related issue raised in evidence was that the Bill, in common with established election and referendum practice, did not seek to control the activities of central government or public authorities throughout the 16-week period, but only during the final 28-day purdah period (under paragraph 25 of schedule 4).

263. One witness, Nigel Smith, said that “both governments will be regulated for the first three months of the referendum not by this Bill but ministerial codes and public outcry. And for the last month, by a referendum Commission with few tools in the Bill and its own uncertain will. This is no regulation of government at all”.217

264. The Deputy First Minister noted that a wide range of public bodies – including the Scottish Legal Aid Board, the Scottish Information Commissioner and the Scottish Police Services Authority – fell into the category of bodies that were restricted by the purdah rules but unregulated in the rest of the referendum period. However, she strongly rejected any suggestion that they would behave inappropriately: “Public authorities do not operate in a political way, and they will not do so during the regulated period any more than they do now.” To suggest that such bodies would be “out there campaigning for either side in the referendum … stretches credibility”, she said, adding that the Scottish Government would be issuing guidance to relevant public bodies, and offered to provide a draft to the Committee.218

265. The Committee accepts that 16 weeks is an appropriate length for the regulated period, particularly as altering this would call into question other matters, such as spending limits and the purdah period. We recognise that this

217 Nigel Smith, written evidence.
means that a lot of campaigning activity is not subject to the formal restrictions in the Bill, and we welcome the extent to which the two campaigns have already committed themselves to a degree of transparency.

266. The Committee recognises that for most of the regulated period, public bodies will not be formally restricted by the Bill’s provisions. We accept, however, that there are conventions in place about how such bodies behave. The Committee would wish to have early sight of the Scottish Government’s proposed guidance to those public bodies for which it is responsible – and any equivalent guidance that the UK Government plans to issue to those bodies dealing with reserved matters.

### EVIDENCE AND CONCLUSIONS ON OTHER ISSUES

#### Grants to campaigners

267. During its Stage 1 inquiry, the Committee heard some evidence on other issues not directly covered in the Bill. One of these concerned the lack of provision for any public grants to lead campaigners, as had been provided in some cases.

268. No to AV said the provision of grants to campaigners had been a key recommendation of the Committee on Standards in Public Life. However, it said that the grants available in other recent referendums could not be used to cover the cost of preparing campaign broadcasts or free-post mailings. Its view was not just that grants (capped at £150,000 for each designated organisation) should be available, but that the campaigns should be able to use them to reimburse up to half of their costs in relation to broadcasts and mailshots, to help ensure that the public receives a minimum level of information from both sides. \(^{219}\)

269. In oral evidence, William Norton explained that the grants available to the AV campaigns in 2011 could only be used for things like computers, which was not particularly useful. However, No to AV had had to commit, in advance of being designated, to spending around £1 million on TV broadcasts and leaflets: “in effect I bet my house on being able to raise the moneys”. \(^{220}\)

270. Prof Wyn Jones agreed that, in Wales, “there was money available to pay for stuff that people did not need to pay for” such as computers, whereas the things they needed to pay for, such as leaflets and broadcasts “was all stuff that the campaigners could not spend money on” – making the money “pointless, in a sense”. \(^{221}\)

271. Willie Sullivan (Yes to Fairer Votes) also regretted the lack of provision for grants in the Bill, saying it “would be an additional improvement”. In particular, he felt that those arguing for the status quo would have “a huge advantage” in

\(^{219}\) No Campaign Limited (No to AV), written evidence.

\(^{220}\) Scottish Parliament Referendum (Scotland) Bill Committee, 9 May 2013, Official Report, col 351.

\(^{221}\) Scottish Parliament Referendum (Scotland) Bill Committee, 9 May 2013, Official Report, col 367.
securing donations from vested interests – and described this as “a good reason for having a public grant”.

272. Nigel Smith also favoured grants, mainly as an alternative to requiring the Electoral Commission to provide unbiased information about the referendum question. He said the Scottish Government seemed to see grants “as a random and superfluous use of public money rather than an integral part of the solution”.

273. Navraj Singh Ghaleigh described the absence of public funding as an “oddity”, saying the benefits included “levelling the playing field, providing unfunded voices with the capacity to contribute to the formation of public opinion, and publicly demonstrating the value of viewpoint diversity”. He said that almost all previous UK referendums had provided public funding and those that have not have been justly criticised.

274. ERS Scotland said the lack of public funding set “an unwelcome precedent”. Combined with strict spending limits, grants could “limit the extent to which large donors could be seen to influence or curry favour with politicians and political parties”, it claimed – but it accepted that grants would not be provided for this referendum.

275. However, Professor Walker was sceptical about public grants being required in the circumstances of the referendum, saying “I can imagine situations in which one might be extremely concerned about the asymmetry of resources between the two sides and one might want to do certain things such as provide public funding as a way to resolve that. I might be naïve, but I do not think that we are in that situation ... I do not see this as a situation in which millionaires can buy the result.”

276. Yes Scotland said it was not seeking a grant, adding: “There is no need for public funding for this referendum and absolutely no public appetite for it”.

277. Better Together noted “it seems that the issue of grants to designated organisations is most important when either the issue in the referendum is not emotive enough for campaigns to successfully raise funds or when, as happened in the recent Welsh Referendum on additional powers, there is doubt over whether a campaign to argue the case for one side of the referendum will exist. Clearly neither of these seems to be the case with the referendum”.

278. The Committee agrees with the Scottish Government’s policy of not providing grants from public funds to the two campaigns. We are confident that the two...

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223 Nigel Smith, written evidence.
224 Navraj Singh Ghaleigh, written evidence.
225 Electoral Reform Society Scotland, written evidence.
227 Yes Scotland, written evidence.
228 Better Together, written evidence.
sides are capable of raising the funds they need in other ways, and that a lack of grants will therefore not compromise the public's ability to make a well-informed decision.

Electoral timetable and index of conduct rules

279. The Bill sets out a number of timescales and deadlines for the preparation and holding of the referendum, and the various steps that it requires or permits campaigners and others to take. The Committee's adviser (Iain Grant) helpfully prepared a list of these, showing for each one the dates on which deadlines fall, or periods begin and end.229

280. Mary Pitcaithly of the Electoral Management Board felt that including a timetable in the Bill would be “helpful for administrators” to ensure that “everybody has a clear understanding of all the dates”.230 Gordon Blair agreed, saying that such a timetable “aids understanding of the legislation and minimises the time taken to apply it”. Although he acknowledged a timetable was “cosmetic”, he felt it was “a useful and practical tool”.231 Mr Blair added that an index or contents for the conduct rules in schedule 3 would be normal in electoral legislation and it would aid understanding to have a similar “quick reference” in the Bill.232

281. A related question concerned whether the Bill should provide for days of public thanksgiving or public mourning to be disregarded in the calculation of certain key dates. The Electoral Management Board raised this as an issue in relation to the cut-off date for registering to vote (paragraph 18 of schedule 2), pointing out that the Bill was inconsistent with legislation for local government elections. Similarly, the Law Society of Scotland questioned why such days were not excluded in calculating the deadline for giving notice of the referendum (Rule 1(2) of schedule 3), contrasting this with the legislation for the 2011 AV referendum, and the deadline for appointing polling and counting agents (Rule 14(5)). In oral evidence, Brian Byrne said that such days should be treated in the same way as Saturdays, Sundays and public holidays – that is, as days disregarded in the calculation of timescales. The problem was that such a day could be announced at short notice, leading to unanticipated changes to the dates on which certain deadlines fall. However, as Mr Byrne pointed out, should the days affected include the date of the referendum itself, there was provision in the Bill to defer the referendum to a later day (section 1(6)).233

229 The timetable of key dates is available on the Committee’s web-page:
http://www.scottish.parliament.uk/S4_ReferendumScotlandBillCommittee/Ref_key_dates.pdf
230 Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, col 380
231 Scottish Parliament Referendum (Scotland) Bill Committee, 16 May 2013, Official Report, col 380
282. The Deputy First Minister said the Bill followed precedent from the 1997 devolution referendums, but that the point would be discussed with electoral administrators.  

283. The Committee sees merit in the suggestion that a timetable and index be included in the Bill to provide clarity for electoral administrators. On the issue of disregarding days of public thanksgiving or public mourning, the Committee notes that the Scottish Government is considering this further and asks it to clarify its position as soon as possible.

Encouraging participation and raising awareness

284. A major issue for the Committee throughout its inquiry was establishing from witnesses how all those people who would be entitled to vote could, in practice, be made aware of their right to vote and how to do so, and how active engagement in the debate about the independence question can be encouraged at all levels of society.

285. Blair Jenkins said that Yes Scotland would be “involved with the Electoral Commission—and, I am sure, with Better Together—in any initiative that is aimed at building voter awareness, building public awareness and ensuring a high level of participation. Separately from that, we will do our own things to try to secure greater participation and turnout.”

286. John Downie of the SCVO noted concerns about the low turnout at recent elections, saying it was “clear that many of our citizens are disengaged from the democratic process or politics itself”. It had recently held a round-table session with both of the campaign groups, academics, third sector organisations and others to discuss how this problem could be addressed. The answer, he felt, was not about providing information or raising awareness of the referendum, but about giving local people an opportunity to discuss the issues that matter in their communities. This would be a bottom-up rather than top-down approach:

“We and the STUC believe that the UK and Scottish Governments need to think about how to facilitate that process, for instance by setting up a fund that community organisations can access in order to set up a series of discussions.”

287. Bill Scott of Inclusion Scotland took a similar view, saying there was “a serious degree of disengagement among a lot of people in our most deprived communities and in particular marginalised groups, such as disabled people”. For him, the main challenge was to make people realise that it related to something that was relevant to their lives. What was required was “active participation and drawing people into the process rather than just letting things flow and hoping that people turn up on the day”. People in deprived

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234 Deputy First Minister, Letter to the Convener of the Referendum (Scotland) Bill Committee, 22 June 2013.
235 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 482.
236 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 493-4 and 496.
communities “need to know what the referendum means to their everyday lives, to make it real for them”.237

288. Euan Page of the EHRC agreed, noting that a key conclusion from the SCVO’s round-table meeting was “the idea that, if we want people to engage in debate about the constitution, the last thing that we want to talk about is the constitution”. People were “utterly disengaged from the language and arguments of high constitutional politics” – what was needed was to start with what exercises people – for example, practical problems with the delivery of key public services that they rely on in their personal and family lives.238 (30/5, col 509)

289. Willie Sullivan, from Yes to Fairer Votes, also suggested “giving public money to a process of citizens’ engagement and awareness raising”. For him, the problem was that the campaigns had an electoral incentive to “exaggerate, mislead and misinform voters”, while the political parties faced a loss of legitimacy.239 240

290. Professor Aileen McHarg said that there were “all sorts of reasons why people in deprived communities do not register” to vote – including “fear of being on the register and the publicity that comes with that”. She felt that people were being “turned off by the way in which the debate is currently being conducted”; what was needed was engaging people in a serious way that does not necessarily require jazzy videos and gimmicks”.241

291. Bill Scott agreed on the point about non-registration, adding that a lot of the fear dated back to the 1980s, when people got into the habit of not registering in order to avoid paying the poll tax (community charge).242

292. The SYP said that “information on registering and the voting process, together with impartial information on the issues, should be distributed online, through apps and text messaging”. However, it “would not support designated organisations and political parties producing referendum teaching materials for schools”.243 Kyle Thornton MSYP told the Committee that the referendum had engaged young people’s interest in a way that party politics did not. He said it was “for the campaigns to make the case and for the third sector to help to provide the forum for, and access to, the debate”. He said the SYP could help to mediate debates involving young people, while there was also a need to target groups “that find it harder to engage in the debate” – noting that “a lot of the debate in the media is very detailed and for a lot of people, it just goes over

238 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, col 509.
239 Willie Sullivan (Yes to Fairer Votes), written evidence.
241 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 496 and 508.
243 Scottish Youth Parliament, written evidence.
their heads”. Mr Thornton’s particular concern was that awareness-raising and engagement efforts could be wasted if people did not realise that they needed to be registered in advance, and found themselves unable to vote on the day.244

293. In this context, there was some discussion among witnesses about the role of the Electoral Commission in raising awareness among the public. Most of the participants in the Committee’s round-table session had already had some engagement with the Commission. Euan Page of the Equality and Human Rights Commission said there was an on-going dialogue, but that the two bodies had “not had a sustained conversation thus far”. John Downie of SCVO said it always talked to the Electoral Commission, and had already invited it to its own round-table discussions. Kyle Thornton praised the Commission for its website and videos on voter registration, but felt the Commission needed to do more to engage directly with young people, including through the SYP.245

Manner of voting

294. While the Bill provides for voting to be done in the traditional manner – by marking a cross on a ballot paper (either in person or by proxy) or voting by post – the Committee did hear some evidence on other methods that could be used.

295. Kyle Thornton MSYP advocated greater use of electronic rather than paper communication, for example, using text messages to remind people shortly beforehand that the poll is taking place and where the nearest polling station is. He did not think most young people would mind giving out their phone numbers or e-mail addresses for that purpose.246

296. Colin Borland of the Federation of Small Businesses added that moving to smarter ways of voting – although it wasn’t going to happen for the referendum – could have benefits for business by avoiding “the rather bizarre process of closing down primary schools, which means that working parents have to make alternative arrangements for childcare” – with all the knock-on costs on employees and employers.247

Data protection implications

297. The Committee invited Ken Macdonald of the Information Commissioner’s Office (ICO) to comment on the data protection implications of the Bill and his office’s role in relation to the referendum.

298. According to Mr Macdonald, it was part of the ICO’s role to give guidance to parties and campaigners in elections, and it also took enforcement action for

244 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 495 and 504.
246 Scottish Parliament Referendum (Scotland) Bill Committee, 30 May 2013, Official Report, cols 500-1.
breaches of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), which “covers telephone marketing, spam texting and so forth”. It had already written to Better Together and Yes Scotland “to remind them of their obligations”, and planned also to work with the Electoral Commission, so that issues raised by PECR were covered in the Commission’s guidance to political parties.

299. Mr Macdonald also explained that the ICO had its own monitoring and compliance powers under the Data Protection Act 1988, and could take action if public complaints were made to it. It would be working with the Electoral Commission to ensure the public were aware of the ICO’s role in enforcing the data protection legislation.

300. In relation to the Bill, Mr Macdonald did not have any particular data protection concerns, describing the provisions to protect children and anonymous voters as “quite reasonable” and as appearing to “fit in with the data protection legislation”. Overall, he was “pleased that, in this Bill and in the Franchise Bill, data protection has been taken very seriously”.

301. The Committee requests the Information Commissioner’s Office to provide a copy of its guidance in relation to the PECR Regulations as soon as possible.

Equalities

302. Equalities issues arose at various points during the Committee’s inquiry, including in relation to the use of Gaelic on the ballot paper (schedule 1), and the assistance available to blind and disabled voters (rules 22 and 23 of schedule 3), considered earlier in the report.

303. Inclusion Scotland pointed out that the Scottish Government and the Parliament have a duty, under article 29 of the UN Convention on the Rights of Disabled People, “to ensure that disabled people are enabled to participate equally in political life”. It said that barriers to participation included the physical accessibility of polling stations, and the need to provide electoral information in appropriate formats, such as British Sign Language, and in language suitable for those with learning difficulties. On a similar theme, Glasgow Council for the Voluntary Sector (GCVS) suggested that “an easier to read guide” should be made available by around April 2014, accompanied by a publicity campaign, to allow time for learning providers to work with the individuals it was aimed at.

304. During the Committee’s round-table evidence session on 30 May, it was suggested that the Electoral Commission had the power to order returning officers to make improvements to the accessibility of polling places. The Commission clarified that this was a very specific power which only applied in relation to statutory reviews of polling districts and places. The Commission also

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249 Inclusion Scotland, written evidence.
250 Glasgow Council for the Voluntary Sector, written evidence.
said it provided guidance for returning officers on meeting their accessibility standards, but did not have any powers to enforce compliance. However, the Commission believed that returning officers were subject to the Equality Act 2010 and had a duty to make reasonable adjustments to ensure that people with disabilities were not put at a substantial disadvantage.\textsuperscript{251}

305. The Electoral Commission said it provided “tailored information” for organisations working with disabled people. The Commission’s experience was that “this work is most effective when undertaken in the period immediately prior to any poll, which is when most voters start to think about the voting process and when the accessible resources are available for them to access.” It aimed to provide more detail on its approach to public awareness before the summer recess.\textsuperscript{252}

306. The Committee has no particular recommendations to make on the equalities issues raised in relation to the Bill.

Financial implications

307. Under Rule 9.6.3 of Standing Orders, the Committee is required to report on the Bill’s Financial Memorandum. This estimates the cost of running the referendum at around £8.6 million, with other costs associated with the referendum – including the cost of free campaign mailshots and costs incurred by the Electoral Commission – amounting to a further £4.7 million, making a total of £13.3 million. This does not include the estimated £358,000 directly attributable to those provisions in the Franchise Bill that extend the franchise to 16 and 17-year olds.

308. The Financial Memorandum explains that the £8.6 million figure is based on the Electoral Commission’s estimate (from its report on the 2011 referendum on the alternative vote system for House of Commons elections) of the cost of a stand-alone referendum in Scotland (£8.4 million), and is less than the £10.3 million set aside for the 2011 Scottish Parliament elections (had they been taken in a separate poll).

309. The Finance Committee issued a call for evidence and considered the Bill’s Financial Memorandum at its meeting on 29 May where it took evidence from the Scottish Government bill team as part of its scrutiny. The officials explained to the Finance Committee that the Bill’s costs are separated into four broad categories: “the costs of running the referendum; the costs of funding the Electoral Commission to oversee and regulate the referendum campaigns and report on the conduct of the referendum; the publicity costs incurred by the commission in fulfilling its duty to provide information to voters about the referendum; and the costs of allowing the two campaign organisations a free mailshot to every voter or household in Scotland.”\textsuperscript{253} The Committee asked for clarification on a number of areas: the Chief Counting Officer’s costs, the Fees and Charges Order, comparison of costs with other elections and referenda,

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\textsuperscript{251} The Electoral Commission, further supplementary written evidence.

\textsuperscript{252} The Electoral Commission, further supplementary written evidence.

household communication versus individual letters, postal votes, margins of uncertainty, Electoral Commission costs, Electoral Management Board costs, cost of producing ballot paper in Gaelic, overnight counting costs, and costs associated with 100% checking of postal votes.

310. The Deputy First Minister told the Committee she was satisfied that the estimates in the Financial Memorandum were accurate. At the time the draft bill was published in 2010, the cost of the referendum was estimated at £10 million, and the current estimate was £8.6 million for the referendum itself, plus £4.7 million for the Electoral Commission’s costs and the cost of free mailshots. The Electoral Commission’s experience in overseeing the AV referendum in 2011 had enabled “much more accurate” estimates to be made for its costs, while the estimated costs of free mailshots now reflected the PPERA approach of allowing mailshots to be sent to each elector, and not just to each household.254

311. The Committee notes the issues raised by respondents and the oral evidence provided by Scottish Government officials to the Finance Committee. We are content with the level of detail provided in the Financial Memorandum and that discussions are continuing with the key organisations to refine costs where possible.

Policy Memorandum

312. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the policy memorandum which accompanies the Bill.

313. The Committee considers that the memorandum provides adequate detail on the policy intention behind the provisions in the Bill and explains why alternative approaches considered were not favoured.

Delegated Powers

314. There are four delegated powers in the Bill:

- in section 1, a power, by order, to appoint a later day for the referendum, and to make supplementary or consequential provision (including modifications of enactments) – any such order to be subject to the affirmative procedure

- in section 8, a power, by order, to set maximum amounts for the charges and expenses that counting officers can recover from the Scottish Government, and to make incidental and supplementary provision – any such “fees and charges order” not to be subject to any Parliamentary procedure

- in schedule 6, paragraph 16, a power, by “supplementary order”, to make provision fleshing out the detail of the civil sanctions regime (including fixed monetary penalties, enforcement undertakings, extensions of time for

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criminal proceedings, and appeals) or making other supplementary, consequential or incidental provision — any such order to be subject to the affirmative procedure if it relates to certain aspects of the civil sanctions regime or amends an Act, otherwise to be subject to the negative procedure; and (in either case) only to be made after consulting the Electoral Commission and other appropriate parties.

- in section 30, a general power, by order, to make supplementary, incidental or consequential provision, including modifications of enactments — any such order to be subject to the affirmative procedure.

315. The Delegated Powers Memorandum (DPM) explains that the power in section 8 is not expected to be used, but is there as a fall-back to deal with unforeseen circumstances; that the power in section 8 is modelled on established provision in electoral legislation; that the power in schedule 6 is replicated from PPERA; and that although there are no current plans to use the power in section 30, it is there to deal with any changes to the referendum legislation that may be needed, for example if UK electoral law changes in the interim.

316. The DPM also notes that the Bill delegates other powers, to the Chief Counting Officer and to the Electoral Commission, that are of an executive rather than a legislative nature, including powers to give directions, issue guidance and prescribe forms.

Scrutiny by Delegated Powers and Law Reform Committee

317. The Delegated Powers and Law Reform Committee (when it was known as the Subordinate Legislation Committee) considered the Bill at its meetings on 16 April and 14 May. The Committee determined that it did not need to draw the attention of the Parliament to the powers in sections 1, 8 and 30. On the schedule 6 power, the Committee sought and obtained further explanation from the Scottish Government and, although it was largely satisfied, it recommended that it should be mandatory, rather than optional, for Ministers to specify (by supplementary order) a maximum amount for the “non-compliance penalties” that the Electoral Commission is able to impose on anyone who has breached the campaign rules and then failed to comply with an initial requirement or undertaking.

Committee’s consideration

318. This Committee, too, has considered the delegated powers carefully. We note in particular, that the powers delegated by sections 1 and 30 include power to modify enactments, including the Act resulting from the Bill. Such powers, often referred to as Henry VIII powers, can be controversial and merit particular justification. Nevertheless, in both cases, we are content that they are justified.

319. The delegated power in section 1 is very limited in scope and it is clearly important to have a reserve power to defer the referendum should unexpected events make it impossible or impractical to hold the poll on the planned date.

320. The delegated power in section 30 is very much wider in scope, and could in theory be used to make substantial changes to the legislation even at a late
stage in the process. However, there is no realistic prospect of this, given the need for advance certainty about how the referendum arrangements will work, and a shared interest by all campaigners in ensuring that those arrangements are seen to be fair and balanced. The key point is that the referendum is a one-off event, for which complex and detailed provision is required – so it is reasonable to ensure that there is a mechanism that can be used to correct any problem that emerges in the run-up to the poll. Given that rationale, we accept that the powers delegated to Ministers must be wide enough to deal with whatever issue may arise; and that setting a time-limit on when it may be exercised, or requiring prior consultation, could compromise the purpose of delegating the powers in the first place. For these reasons, we are content with the section 30 powers.

321. Finally, we note the recommendation of the Delegated Powers and Law Reform Committee on the schedule 6 powers and invite the Scottish Government to indicate whether it is prepared to amend the Bill accordingly.

GENERAL PRINCIPLES OF THE BILL

322. The Committee is confident that its Stage 1 inquiry has enabled this important Bill to be subject to a wide-ranging and robust scrutiny process. Inevitably, as with any large and complex piece of legislation, there are some aspects of the Bill that require adjustment, and other points on which clarification is needed. Overall, however, the Committee is confident that this Bill should provide a suitable framework for next year’s referendum.

323. On this basis, the Committee recommends to the Parliament that the general principles of the Scottish Independence Referendum Bill be agreed to.
ANNEXE A: REPORTS FROM OTHER COMMITTEES

Subordinate Legislation Committee

29th Report, 2013 (Session 4)

INTRODUCTION

1. At its meetings on 16 April and 14 May 2013 the Subordinate Legislation Committee considered the delegated powers provisions in the Scottish Independence Referendum Bill at Stage 1 (“the Bill”). The Committee submits this report to the Referendum (Scotland) Bill Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

OVERVIEW OF THE BILL

3. The Scottish Independence Referendum Bill was introduced in the Scottish Parliament by the Scottish Government on 21 March 2013.

4. This Bill is the second of the two Bills which will provide for a referendum to be held on the independence of Scotland from the rest of the United Kingdom. The first Bill (already considered by the Committee) provides the rules for who will be entitled to vote in the independence referendum. This Bill sets out the practical arrangements for the holding of the referendum.

5. In the consideration of the DPM at its meeting on 16 April, the Committee agreed to write to Scottish Government officials to raise a question on the delegated powers. This correspondence is reproduced at the Annex.

DELEGATED POWERS PROVISIONS

6. The Committee considered each of the delegated powers in the Bill.

7. The Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

   Section 1: Referendum on Scottish Independence
   Section 8: Expenses of Counting Officers
   Section 30: Power to make supplementary etc. provision and modifications

8. The Committee’s comments and, where appropriate, recommendations on the other delegated power in the Bill is detailed below.
9. Schedule 6 contains a civil sanction regime which allows the Electoral Commission to impose certain sanctions in connection with its role in monitoring and securing compliance with the campaign rules set out in the Bill. Paragraph 16 provides that the Scottish Ministers may make “supplementary orders” in relation to this regime. The provision of such orders may make transitional, consequential or incidental provision. In addition various matters throughout the schedule may be “prescribed” by the Scottish Ministers in a supplementary order. The scope of such provision and its significance in the context of the overall scheme varies.

10. Supplementary orders may also modify legislation. The procedure which would apply to an order depends on its content. Any order which amends primary legislation would be subject to the affirmative procedure as would any order which prescribes the offences to which fixed penalties, discretionary requirements, stop notices or enforcement undertakings apply or the amount of fixed penalties. Other supplementary orders are subject to the negative procedure. The DPM advises that the scheme is directly replicated from that which is applied in relation to UK elections under Schedule 19C to the Political Parties, Elections and Referendums Act 2000.

11. No justification was given in the DPM for taking these delegated powers beyond the statement that this is the practice in relation to UK elections. That said the Committee does not consider this is to be an unusual or unreasonable use of delegated powers. Since the independence referendum is a one off event it could perhaps have been possible to fix the remaining details of the civil sanction regime at this point based on current practice in UK elections. However, the Committee considers that it is also reasonable to take the view that these matters are not of sufficient priority that would require them to be worked through at this point, or to require the detailed parliamentary scrutiny that placing them in the Bill would engage. The Committee recognises that it would also be sensible to have a means of fine tuning these requirements should the need arise without having to resort to further primary legislation.

12. The Committee is therefore content with the delegation of the powers set out in schedule 6 in principle.

13. The Committee agrees that orders which amend primary legislation or those which specify relevant offences to which the various elements of the scheme apply should be subject to the affirmative procedure. The same reasoning applies to orders which set the amount of the fixed monetary penalty since this is an issue of substance.
14. The Committee queried whether the correct level of scrutiny was to be applied to two matters which could be made by supplementary order. The DPM simply states that “other uses of the power are likely to be administrative or technical in nature” and therefore the negative procedure is appropriate.

15. Under paragraph 2 of the schedule a supplementary order may prescribe the amount of the payment which a person may pay in order to discharge their liability under a notice of intention to impose a penalty. Similarly in paragraph 9 there is a power to prescribe the maximum and minimum amounts of a non-compliance penalty. Both are subject to the negative procedure.

16. The Committee also notes that if no maximum or minimum amounts are specified using the power in paragraph 9 then the Commission will have a complete discretion over the amount of the non-compliance penalty to be charged in any individual case. The Committee does not consider it appropriate for the Commission to be delegated such discretion, considering that control over the range of such penalties a matter which the Parliament should be able to scrutinise.

17. The Committee sought clarification from the Scottish Government as to why the negative procedure was appropriate in each case. The Government repeats that it has mirrored the approach taken to elections and referendums under the Political Parties, Elections and Referendums Act 2000. It also advises that the amount payable to discharge a penalty is less significant than a fixed monetary penalty since it cannot be a greater sum. The power to set the minimum and maximum amounts of the non-compliance penalty which can be imposed by the Commission under paragraph 9 were also considered to be less significant than identifying the circumstances in which the penalty may be payable.

18. The Committee welcomes this clarification and is content with the scrutiny procedures applied in the light of it.

19. The Committee is content with the powers to make supplementary orders in schedule 6 with the following exception. The Committee considers that the delegation of the non-compliance penalty powers to the Commission should be subject to a maximum amount. It therefore recommends that the setting of the maximum amount should be mandatory rather than discretionary.

ANNEX

Correspondence with the Scottish Government

Thank you for the Committee’s letter of 16 April 2013. The Committee asks the Scottish Government:

“Schedule 6 contains a civil sanction regime which allows the Electoral Commission to impose certain sanctions in connection with its role in monitoring and securing compliance with the campaign rules set out in the Bill. Paragraph 16 provides that the Scottish Ministers may make “supplementary orders” in relation to this regime. The provision of such orders may introduce transitional, consequential
or incidental provision. In addition various matters throughout the schedule may be “prescribed” by the Scottish Ministers in a supplementary order.

The Committee asks the Scottish Government:

- to explain why the negative procedure is a suitable level of scrutiny for prescribing the amount payable under an offer to discharge liability for a fixed monetary penalty under paragraph 2 or the minimum and maximum amounts of a non-compliance penalty under paragraph 9 when the affirmative procedure is considered appropriate for the scrutiny of fixing the amount of a fixed monetary penalty.”

As the Committee are aware, the intention behind schedule 6 to the Bill is to replicate insofar as appropriate the civil sanctions regime in and under Schedule 19C to the Political Parties, Elections and Referendums Act 2000.

The Scottish Government considers that negative procedure is appropriate for the two powers the Committee mentions for the following reasons.

- Setting the amount payable to discharge liability for a fixed monetary penalty under paragraph 2 of schedule 6 against fixing that penalty under paragraph 1(3), fixing the penalty is considered more significant as it prescribes the overall penalty which can be imposed. The amount which can be paid to discharge the liability as part of the procedure by contrast must be less than or equal to the penalty. Negative procedure is thought suitable for the discharge amount as a result.
- On maximum or minimum limits on the penalty under paragraph 9 for non-compliance with a non-monetary discretionary requirement, the offence or restriction or requirement in the campaign rules for which such a penalty can be imposed is subject to affirmative procedure under paragraph 5. The Commission could not impose a non-compliance penalty without such affirmative provision by Order having been made. Where Parliament approves the use of discretionary requirements, it is considered important that the Commission has robust sanctions to underpin compliance with the enforcement regime, by allowing the Commission to set (an open) amount payable in paragraph 9(2) itself – the schedule would operate in the absence of any supplementary order setting maximum and minimum limits. In addition, there is a power to appeal a notice served under paragraph 9 if the amount is thought to be unreasonable. In this context the negative procedure is considered appropriate for setting or changing the financial value of the range of that penalty.

The equivalent powers under the 2000 Act take the same procedures, affirmative and negative, at Westminster. However, in practice, each of the powers under the 2000 Act were exercised in a single instrument (S.I. 2010/2860) combining affirmative and negative procedures; the Scottish Government at present proposes to take a similar approach, subject to consultation with the Electoral Commission as required by paragraph 17 of schedule 6. It was however considered appropriate to set the procedures for making provision under the powers the Committee mentions for the reasons noted.
The Finance Committee took oral evidence from Scottish Government officials on the Scottish Independence Referendum Bill’s Financial Memorandum (FM) at its meeting on 29 May. The Committee raised a number of issues in relation to the FM and agreed to refer the Official Report of the evidence session to the lead Committee for consideration in advance of its oral evidence session with the Deputy First Minister on 13 June.

The Official Report can be accessed via the link below:


The Finance Committee will give no further consideration to the Bill’s FM.

Kenneth Gibson MSP
Convener
31 May 2013
ANNEXE B: EXTRACTS FROM THE MINUTES OF THE REFERENDUM (SCOTLAND) BILL COMMITTEE

6th Meeting, 2012 (Session 4), Thursday 29 November 2012

Proposed Government Bills: The Committee provisionally agreed to seek approval for the appointment of an adviser or advisers in connection with scrutiny of forthcoming Government Bills and to consider a shortlist of candidates in private at its next meeting.

7th Meeting, 2012 (Session 4), Thursday 13 December 2012

Proposed Government Bills: The Committee gave preliminary consideration to its approach to scrutiny of proposed Government Bills. It agreed to write to the Deputy First Minister seeking more detail on the proposed "paving Bill" and the main Referendum Bill, and on the expected timescales. It also agreed to take some general evidence ahead of introduction of the proposed Bills from those with experience of electoral administration, particularly where a lower minimum voting age has been applied.

Proposed Government Bills (in private): The Committee considered a list of candidates for the post of adviser. It agreed in principle to appoint one adviser on the practical and technical aspects of the proposed legislation, but to allow more time for further candidates to be identified, and one adviser on the legal and constitutional aspects, subject to confirmation of the availability of its preferred candidate.

1st Meeting, 2013 (Session 4), Thursday 17 January 2013

Work programme: The Committee considered correspondence from the Deputy First Minister and the implications for its timetable for scrutiny of proposed Government Bills. [...] The Committee agreed to write to the Deputy First Minister to seek further explanation of her preferred timescale for Stage 3 of the referendum bill.

Proposed Government Bills (in private): The Committee agreed a ranked list of candidates for appointment as adviser in connection with the practical and technical aspects of scrutiny of proposed Government Bills.

2nd Meeting, 2013 (Session 4), Thursday 31 January 2013

Work programme: The Committee agreed a timetable for scrutiny of the proposed referendum bill [...]
7th Meeting, 2013 (Session 4), Thursday 21 March 2013

**Work programme:** The Committee considered its approach to Stage 1 scrutiny of the Scottish Independence Referendum Bill. It agreed a draft call for evidence and agreed in general terms the witnesses to invite to give oral evidence. The Committee also agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses on the Bill.

8th Meeting, 2013 (Session 4), Thursday 28 March 2013

**Scottish Independence Referendum Bill (in private):** The Committee further considered whom to invite to give oral evidence on the Bill at Stage 1.

10th Meeting, 2013 (Session 4), Thursday 25 April 2013

**Decisions on taking business in private:** [...] The Committee also agreed that its consideration of key themes on its approach to taking oral evidence on the Scottish Independence Referendum Bill, and its consideration of a draft report on that Bill, be taken in private at future meetings.

11th Meeting, 2013 (Session 4), Thursday 2 May 2013

**Scottish Independence Referendum Bill (in private):** The Committee agreed the key themes for its approach to taking oral evidence on the Bill at Stage 1.

12th Meeting, 2013 (Session 4), Thursday 9 May 2013

**Scottish Independence Referendum Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Michael Clancy OBE, Director of Law Reform, The Law Society of Scotland;
- Richard Keen QC, Dean of Faculty, Faculty of Advocates;
- Professor Richard Wyn Jones, Professor of Welsh Politics and Director of the Wales Governance Centre, Cardiff University;
- William Norton, Responsible Person and Referendum Agent, NO to AV;
- Willie Sullivan, Former Director of Field Operations, Yes to Fairer Votes.

13th Meeting, 2013 (Session 4), Thursday 16 May 2013

**Scottish Independence Referendum Bill:** The Committee took evidence on the Bill at Stage 1 from—
Mary Pitcaithly, Convener, Electoral Management Board;

Gordon Blair, Chair of the Elections Working Group, Society of Local Authority Lawyers and Administrators in Scotland (SOLAR);

Brian Byrne, Chair of the Electoral Registration Committee, Scottish Assessors' Association;

Professor Neil Walker, Regius Professor of Public Law, University of Edinburgh;

Professor Tom Mullen, Professor of Law, University of Glasgow.

14th Meeting, 2013 (Session 4), Thursday 23 May 2013

Scottish Independence Referendum Bill: The Committee took evidence on the Bill at Stage 1 from—

John McCormick, Electoral Commissioner for Scotland, Andy O'Neill, Head of Office Scotland, Andrew Scallan, Director of Electoral Administration, and Peter Horne, Director of Party and Election Finance, Electoral Commission;

Dr Ken Macdonald, Assistant Commissioner (Scotland & Northern Ireland), Information Commissioner's Office.

15th Meeting, 2013 (Session 4), Thursday 30 May 2013

Scottish Independence Referendum Bill: The Committee took evidence on the Bill at Stage 1 from—

Dennis Canavan, Chair of the Advisory Board, and Blair Jenkins OBE, Chief Executive, Yes Scotland;

Blair McDougall, Campaign Director, and Craig Harrow, Director, Better Together;

and, in a round table discussion, from—

Professor Aileen McHarg, Professor of Public Law, University of Strathclyde;

Bill Scott, Chief Executive, Inclusion Scotland;

Colin Borland, Head of External Affairs Scotland, Federation of Small Businesses;

Kyle Thornton MSYP, Vice Chair, Scottish Youth Parliament;
Euan Page, Parliamentary and Government Affairs Manager, Equality and Human Rights Commission Scotland;

John Downie, Director of Public Affairs, Scottish Council for Voluntary Organisations (SCVO).

17th Meeting, 2013 (Session 4), Thursday 13 June 2013

Decision on taking business in private: The Committee agreed to review the evidence received on the Scottish Independence Referendum Bill at Stage 1 in private at its next meeting.

Scottish Independence Referendum Bill: The Committee took evidence on the Bill at Stage 1 from—

Nicola Sturgeon, Deputy First Minister, and Graham Fisher, Legal Directorate, Scottish Government.

18th Meeting, 2013 (Session 4), Thursday 20 June 2013

Scottish Independence Referendum Bill (in private): The Committee reviewed evidence received on the Bill at Stage 1.

19th Meeting, 2013 (Session 4), Thursday 27 June 2013

Scottish Independence Referendum Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to, and the Committee agreed to hold an additional meeting in August to further consider the draft report.

20th Meeting, 2013 (Session 4), Thursday 15 August 2013

Scottish Independence Referendum Bill (in private): The Committee considered a revised draft Stage 1 report. Various changes were agreed to, and the Committee agreed the report for publication. The Committee agreed to delegate to the Convener and Deputy Convener responsibility for finalising a news release.
ANNEXE C: ORAL AND WRITTEN EVIDENCE

Please note that all oral evidence and associated written evidence is published electronically only, and can be accessed via the Referendum (Scotland) Bill Committee’s webpages, at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/55798.aspx

Oral Evidence

12th Meeting, 2013 (Session 4), Thursday 9 May 2013

Panel 1:

Michaël Clancy OBE, Director of Law Reform, The Law Society of Scotland

Richard Keen QC, Dean of Faculty, Faculty of Advocates

Panel 2:

Professor Richard Wyn Jones, Professor of Welsh Politics and Director of the Wales Governance Centre, Cardiff University

William Norton, Responsible Person and Referendum Agent, NO to AV

Willie Sullivan, Former Director of Field Operations, Yes to Fairer Votes

13th Meeting, 2013 (Session 4), Thursday 16 May 2013

Panel 1:

Mary Pitcaithly, Convener, Electoral Management Board

Gordon Blair, Chair of the Elections Working Group, Society of Local Authority Lawyers and Administrators in Scotland (SOLAR)

Brian Byrne, Chair of the Electoral Registration Committee, Scottish Assessors’ Association

Panel 2:

Professor Neil Walker, Regius Professor of Public Law, University of Edinburgh

Professor Tom Mullen, Professor of Law, University of Glasgow
14th Meeting, 2013 (Session 4), Thursday 23 May 2013

Panel 1:

John McCormick, Electoral Commissioner for Scotland, Andy O'Neill, Head of Office Scotland, Andrew Scallan, Director of Electoral Administration, and Peter Horne, Director of Party and Election Finance, Electoral Commission

Panel 2:

Dr Ken Macdonald, Assistant Commissioner (Scotland & Northern Ireland), Information Commissioner's Office

15th Meeting, 2013 (Session 4), Thursday 30 May 2013

Panel 1:

Dennis Canavan, Chair of the Advisory Board, and Blair Jenkins OBE, Chief Executive, Yes Scotland

Blair McDougall, Campaign Director, and Craig Harrow, Director, Better Together

Round table discussion featuring:

Professor Aileen McHarg, Professor of Public Law, University of Strathclyde

Bill Scott, Chief Executive, Inclusion Scotland

Colin Borland, Head of External Affairs Scotland, Federation of Small Businesses

Kyle Thornton MSYP, Vice Chair, Scottish Youth Parliament

Euan Page, Parliamentary and Government Affairs Manager, Equality and Human Rights Commission Scotland

John Downie, Director of Public Affairs, Scottish Council for Voluntary Organisations (SCVO)

Clarification of evidence provided by Kyle Thornton, MSYP, Scottish Youth Parliament

17th Meeting, 2013 (Session 4), Thursday 13 June 2013

Nicola Sturgeon, Deputy First Minister, and Graham Fisher, Legal Directorate, Scottish Government
Written Evidence

Charlotte Black
Bòrd na Gàidhlig
Arthur Cormack
Electoral Commission
Electoral Commission (2) (supplementary to oral evidence on 23 May 2013)
Electoral Commission (3) - information on accessibility and awareness raising
Electoral Commission (4) - example of Easy Read leaflet
Electoral Management Board for Scotland
Electoral Reform Society Scotland
Faith in Community Scotland
Navraj Singh Ghaleigh
Glasgow Council for the Voluntary Sector (GCVS)
David Hall
Harry Hayfield
Highland Council (Returning Officer)
Inclusion Scotland
Inclusion Scotland (follow-up to oral evidence on 30 May 2013)
The Law Society of Scotland
The Law Society of Scotland (supplementary to oral evidence on 9 May 2013)
London Scottish Conservative Club
John Macleod
Professor Tom Mullen
NO to AV (William Norton and Matthew Elliott)
Scottish Community Alliance
Scottish Council for Voluntary Organisations (SCVO)
SCVO (supplementary to oral evidence on 30 May 2013, supported by STUC)
Scottish Trades Union Congress (STUC)
Scottish Youth Parliament
Scottish Youth Parliament - clarification of oral evidence on 30 May 2013
John Shields
Michael Forbes Smith
Nigel Smith (relating to Section 21 of the Bill)
Nigel Smith (relating to Schedule 4 to the Bill)
Willie Sullivan (Yes to Fairer Votes)
Dylan Thomas
Jamie Wallace

The written submissions are all available on the following webpage:
I know you are approaching the close of the consultation period and I do want to register my concerns about two aspects of the proposed referendum process.

1. That it should be run independently from the Scottish Parliament by the Electoral Commission – to ensure that everyone throughout the UK believes the result is fair.

2. As a Scot – born, bred and educated in Scotland and a former Westminster parliamentary candidate in Scotland and part of a business with five offices in Scotland today – I feel especially aggrieved that I am not able to vote in the Referendum, which will deliver an irreversible decision and not simply a four year term for a Council or Parliament. Now that I work in London and am registered to vote here - I am disenfranchised in this crucial decision. A special dispensation, as given to 16 and 17 year olds in this election – should also be given to Scots currently registered elsewhere in the UK or abroad who were say, registered to vote in Scotland within the last twenty years.

3 June 2013
I write on behalf of Bòrd na Gàidhlig, which welcomes the opportunity to contribute to the consultation on the Referendum (Scotland) Bill.

The Bòrd would like to express its disappointment at the content of the written reply on 25th February to a Parliamentary Question on the issue of a bi-lingual question in English and Gaelic in the Independence Referendum ballot paper, and the fact that the Bòrd was not consulted by the Electoral Commission on the matter.

Under the provisions of the Gaelic Language (Scotland) Act 2005, one of the functions of Bòrd na Gàidhlig is to provide advice to Ministers, and the Bòrd is required to exercise its functions “...with a view to securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language”. The issue of equal respect relates to the status of Gaelic as an official language of Scotland, a different issue to the question of comprehension of English by Gaelic speakers which was what was tested by the Electoral Commission.

In relation to comprehension of English by Gaelic speakers, research into the attainment of bi-lingual children in Gaelic–medium education shows that they tend to perform better in English by the age of twelve than their monolingual counterparts: there will be a significant number of bi-lingual voters in the referendum whose comprehension of English and Gaelic will be more than adequate. It would be ironic as well as unjust if, by dint of their bi-lingualism, the status of one of their languages, an official language in Scotland, is marginalised in the context of the referendum ballot.
Na dhòigh fhèin bha Achd na Gàidhlig (Alba) 2005, nuair a chaithd i a stèidheadadh, na clach-mhile nar n-eachdraidh, a’ comharrachadh mar a thàinig co-aonta politigeach gu bith ann an Alba a bha cothromach, lèirisinneach, agus com-pàirteach. Bha iad ag aithneachadh an t-àite buinateach a th’ aig Gàidhlig mar phàirt de dhearbh-aithne na h-Alba agus am feum a th’ ann cor a’ chànan a dhaingneachadh san uine a tha ri thiginn, mar dhìoladh airson lìnntean de mhùchadh is dearmad. Thathar a’ gabhail ris gur e baileat an reifreinn a’ cheist as motha a tha air a bhith mu choinneamh a’ phobaill an Alba o chionn tri cheud bliadhna. Nam biodh a’ cheist sin ann an Gàidhlig agus Beurla, shealladh sin gu soilleir an t-adhartas a tha Alba air a dhèanamh o chionn ghoirid agus i a’ togail bratach a cultair fhèin às urch, agus shealladh e gu bheillear a’ toirt aithne do Achd na Gàidhlig (Alba) 2005.

In its own way the establishment of Gaelic Language (Scotland) Act 2005 was an act of historic note, emphasising the emergence of a fair, progressive, inclusive political consensus in Scotland, recognising the integral role of Gaelic in Scotland’s identity and the need to consolidate it in the future, counterbalancing centuries of institutional repression and neglect. The referendum ballot is widely acknowledged to be the single most significant event in Scottish public life in three hundred years. Its articulation in both Gaelic and English would emphasise how far Scotland has come in recent years in reasserting its own identity, as well as recognising the significance of the Gaelic Language (Scotland) Act 2005.

Sin as coireach gun deach molaidhean a dhèanamh do Bhuidheann Thar-phàrtaidh na Gàidhlig sa Phàrlamaid le buill na buidhne, agus mar thoradh air sin chuir Cathraiche na Buidhne Ceist sa Phàrlamaid.

This is why representations were made to the Cross Party Parliamentary Gaelic Group by its constituent members, prompting a Parliamentary Question by the Group Chair.

’S e an tuigse a bh’ aig a Bhòrd gun robhar a-nis a’ cur priomhchas air cumhachdan Achd na Gàidhlig (Alba) 2005, co-cheangailte ri inbhe oifieil agus spèis cho-ionann, an àite co-dhùnaidhean a rinneadh roimhe a thaobh cleachdadh chànan ann an suidheachaidhean mar bhailtean. A’ togail air Achd 2005, tha Plana Gàidhlig aig an Riaghaltas fhèin a-nis le geallaidhean taic a chumail ris a’ Ghàidhlig.

The Bòrd’s understanding was that the precedents of linguistic convention in matters like ballots had been superseded by the provisions of the Gaelic Language (Scotland) 2005 Act in relation to the official status of the language and the issue of equal respect. Following from the 2005 Act the Scottish Government has its own Gaelic Plan with commitments to support Gaelic.

Tha reachdas Achd 2005 a’ stiùireadh na tha ann am Plana Gàidhlig Pàrlamaid na h-Alba, agus tha sin agus na puingean gu h-àrd a’ sealtainn carson a tha an fhreagairt a fhuaras sa Phàrlamaid air 25 Gearran – a thaobh Gàidhlig sa phàipèar baileat airson Reifreann air Neo-eisimeileachd – na adhbhar-dragha don Bhòrd.

The provisions of the 2005 Act underpin the Scottish Parliament’s own Gaelic Language Plan, and, taken with the points made above, illustrate why the Bòrd is concerned about the negative response given in Parliament on 25 February to the question on the use of Gaelic in the Independence Referendum ballot paper.
For your information and consideration, I enclose a draft version of how a bilingual Independence Referendum Ballot Paper might look. I hope you find this helpful.

I thank you for your attention, and look forward to your response.

Yours sincerely,
John A MacKay
CEO
25 April 2013
<table>
<thead>
<tr>
<th>BALLOT PAPER</th>
<th>PÀIPEAR BAILEIT</th>
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<tbody>
<tr>
<td><strong>Vote (X) ONLY ONCE</strong></td>
<td><strong>Bhòt (X) AON UAIR A-MHÀIN</strong></td>
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<tr>
<td>Should Scotland be an independent country?</td>
<td>Am bu chòir do dh’Alba a bhith na dùthaich neo-eismeileach?</td>
</tr>
<tr>
<td><strong>YES</strong></td>
<td><strong>BU CHÒIR</strong></td>
</tr>
<tr>
<td><strong>NO</strong></td>
<td><strong>CHA BU CHÒIR</strong></td>
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I am aware of your call for evidence in relation to the above Bill to be submitted by 6 June. I shall endeavour to submit more fully, but would like to offer this interim submission to the Committee.

It is my position that the ballot paper for the referendum on Scottish independence should be available in Gaelic as well as in English. A bilingual version of the ballot paper would be best for reasons of cost-effectiveness as well as ensuring Gaelic is seen by all who participate in the vote.

My position would give the referendum a uniquely Scottish flavour, would support legal requirements and the implementation of the National Gaelic Language Plan. Not to include Gaelic in a historical process such as the referendum, to pass up an opportunity such as this, calls into question why there are measures in place to promote Gaelic.

The Gaelic Language (Scotland) Act 2005 confirms Gaelic’s status as an official language of Scotland and calls for equal respect for Gaelic with English. Raising the status of the language is one of the key things that needs to happen if Gaelic is to be revitalised in Scotland. Visibility of the language is also extremely important and its exclusion from the ballot paper may lead some to question whether the ballot promotes equal respect for Gaelic with English.

Nevertheless, it is the Scottish Government’s position that it proposes to follow ‘normal practice’ for elections and print the ballot paper in English only. The referendum is not like a normal election where there may be multiple candidates standing in a constituency. In those circumstances I could see the burden of translating all the names, party names etc might be onerous and expensive. In the referendum everyone will be asked the same question, which should make Gaelic’s inclusion much more straightforward.

It is the Scottish Government’s position that it proposes to make public information and other explanatory materials available in other languages, including Gaelic. This position fails to acknowledge the status enjoyed by Gaelic in Scotland. Gaelic should not be treated like "other languages". Unlike "other languages", Gaelic is an official language of Scotland and should be used as widely as possible in official documents and in national events, of which the forthcoming referendum is certainly an example.

In correspondence on these matters, the Deputy First Minister’s officials have cited the precedent of the 1997 devolution referendum. In 1997, Gaelic was not an official language of Scotland, there was no National Gaelic Language Plan in place, nor a Scottish Government that had a Gaelic Language Plan of its own outlining the measures it would take to ensure Gaelic is promoted.

The Scottish Government’s current position follows the Electoral Commission’s conclusion that, in tests, people who speak Gaelic as a first language could understand the question easily and experienced no difficulties in completing the ballot paper and voting the way they intended. Using this conclusion as evidence to support Gaelic’s exclusion from the ballot paper misses the point somewhat. The Electoral Commission acknowledged it had not been asked by the Scottish Government to test a bilingual version of the ballot paper. That it was not asked can only be down to a lack of knowledge, on the part of the officials involved, as to Gaelic’s status.

I am a Gaelic speaker and, of course, I could understand the question if it were posed in English only. But this is less about ability in Gaelic or English, or any other language, and more about ensuring Gaelic is used as widely as possible in Scottish public life. It is about acknowledging Gaelic’s status in Scotland and promoting its use, acting within the spirit of the Gaelic Language (Scotland) Act 2005 as well as delivering the outcomes called for in the latest National Gaelic Language Plan.
Language Plan. It about the ability to choose to use one of Scotland’s official languages, my language of choice and that of many others, in voting on Scotland’s future.

Now that the referendum question has been set I can see no reason at all as to why a bilingual version of the question should cause anyone any difficulty. It could look like this:

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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<tbody>
<tr>
<td>BU CHÓIR</td>
<td>CHA BU CHÓIR</td>
</tr>
</tbody>
</table>

Should Scotland be an independent country?  
Am bu chóir do dh’Alba a bhith na dùthaich neo-eisimeileach?

I believe Bòrd na Gàidhlig has suggested the version on the following page. There are many ways in which Gaelic and English can co-exist on a piece of paper whatever design ends up being used.

The important point, however, is about the principle of the use of Gaelic. Strengthened policy on Gaelic over recent years should have a positive bearing on how Gaelic is treated in 2013, as opposed to the way it was treated in 1997. If an Act of Parliament and various plans is not going to change the way Gaelic is treated and promoted, why have them?

- Perhaps the Committee could ask Ministers to reconsider proposals to follow an outdated precedent and to, instead, follow the lead provided by the Gaelic Language (Scotland) Act 2005 and the National Gaelic Language Plan.
- Perhaps the Committee could look to the experience of other countries, such as Wales, where I am quite certain a referendum on any issue would not take place without the inclusion of the Welsh language.
- Perhaps the Committee could suggest that the Electoral Commission be asked to test a bilingual version of the referendum question.

I shall, hopefully, be in a position to put forward a fuller submission but would be grateful if you could acknowledge receipt of this interim submission, which I am content to be made public.

Leis gach deagh dhùrachd

7 May 2013
BALLOT PAPER
PÁIPPEAR BAILEIT

Vote (X) ONLY ONCE
Bhòt (X) AON UAIR A-MHÀIN

Should Scotland be an independent country?
Am bu choir do dh’Alba a bhith na dùthaich neo-eismeileach?

YES
BU CHÎIR

NO
CHA BU CHÎIR
SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM THE ELECTORAL COMMISSION

1. The Electoral Commission is an independent body set up by the UK Parliament. We regulate party and election finance and set standards for well-run elections and referendums. We work to support a healthy democracy, where elections and referendums are based on our principles of trust, participation and no undue influence. For council elections in Scotland we undertake a number of roles relating to the administration of the elections for which we report directly to the Scottish Parliament.

2. We provided guidance and technical advice to Scottish Government officials during the drafting of the legislation drawing on our experience of overseeing two referendums in short succession in 2011. We are pleased to note that the majority of our recommendations have been included in the published Bill and we believe the legislation will provide a sound foundation for a referendum run to the highest standards which produces a result which is accepted.

3. There are a small number of issues which we have identified in the Bill which give us cause for concern and we continue to progress these with Scottish Government officials. This briefing sets out the areas of the Bill where we are yet to resolve our concerns and the Committee may wish to give these areas their consideration.

Code of practice on attendance of observers

4. The United Kingdom is a party to a number of international instruments that endorse electoral observation as an important verification method to assess electoral arrangements against internationally accepted norms and standards. Sections 17 to 20 of the Bill provide for Commission representatives and accredited observers to observe proceedings at the referendum.

5. The Political Parties, Elections and Referendums Act 2000 (PPERA) gives the Commission responsibility for accrediting individuals and organisations who wish to observe elections in the UK. We are required to prepare and publish a code of practice for observers that details the application process for accreditation and also sets out the rights and responsibilities of accredited observers, including the proceedings of the poll which they have the right to observe. This code of practice helps to ensure that elections in the UK meet the highest international standards of transparency by supporting full independent scrutiny of our electoral processes.

6. While PPERA provides for the code of practice for electoral observers to be published on a statutory basis in respect of all elections in Scotland, it does not apply to referendums unless provided for in the referendum legislation. A statutory code of practice demonstrates a clear commitment to transparency by facilitating international scrutiny of a country’s electoral processes. We recommend that the Bill be amended to statutorily apply the Commission’s published code of practice to the referendum.
Public Awareness

7. As the Committee is aware, section 21 of the Bill requires us to take such steps as we consider appropriate to promote public awareness and understanding in Scotland about the referendum, the referendum question, and voting in the referendum. Since our creation in 2000 we have been responsible for running public awareness campaigns ahead of all major elections in the UK and for referendums held under PPERA, including both referendums held in 2011. The aims of our public awareness campaigns are to:

   a. Ensure as many eligible people as possible are registered to vote
   b. Ensure voters have enough information to cast their vote confidently on polling day

8. We have developed a substantial level of knowledge and experience in how to plan and deliver effective public information campaigns. However, no two polls are the same and our approach to public awareness for the referendum will be informed by research with the public, including evidence from our assessment of the referendum question which showed that people want factual information in advance about what will happen after the referendum. The Committee will be aware that we have asked the UK and Scottish Governments to provide that clarity and we will then make sure it is part of our public awareness campaign. Ensuring 16 and 17 year olds are able to participate will also be an important aspect of our plans and we have been working with others to develop these, including Education Scotland, the Association of Directors in Education in Scotland, School Leaders Scotland and Electoral Registration Officers (EROs).

9. We note and welcome the Committee's interest in how we are developing our public awareness plans. Our planning for public awareness is well underway and we intend to set out our approach on this in more detail before summer recess.

Guidance for Counting Officers

10. Section 22 of the Bill currently provides the Commission with a power to issue guidance to Counting Officers about their functions at the referendum, with the consent of the Chief Counting Officer (CCO). However, the Bill does not provide the CCO with an equivalent explicit power to provide guidance for Counting Officers, even though the CCO will be responsible for the conduct of the poll, counting of votes, certifying the result of the referendum and ensuring that the referendum is well-run. The CCO will also have a power of direction over Counting Officers and would need to be able to provide guidance on how to comply with any directions issued. Given the importance of clear lines of accountability and responsibility for the conduct of the referendum we have recommended to Scottish Government officials that a clear power for the CCO to issue guidance should be inserted in the Bill and the equivalent Commission power removed. They have indicated that they are willing to do so.
Deadline for applications to vote by proxy

11. The normal deadline for applications to vote by proxy is 5pm on the sixth working day before polling day. The effect of paragraph 7 as read with paragraph 18 is that the deadline for such applications for the referendum will be 5pm on the eleventh day before the poll.

12. A deadline closer to polling day gives those who are too late to apply for a postal vote another option by which to cast their vote. This has been an important option in the past where unexpected events, such as the eruption of the Icelandic volcano prior to the 2010 UK general election, have meant that people would have been unable to cast their vote in person as they had planned. We therefore recommend that these paragraphs be amended so that the deadline for applications to vote by proxy is the sixth day before the poll.

Access to the full polling list for campaigners

13. Our written evidence to the Referendum Bill Committee on the Scottish Independence Referendum (Franchise) Bill noted our concern that the restrictions set out in Schedule 2 paragraph 48 on the availability of the polling list would mean that registered campaigners other than the designated lead campaigners would not have access to the names and addresses of those voters on the Register of Young Voters.

14. We think it is important that all campaigners should be able to get their messages to all those eligible to vote. Potential voters would then have access to the full range of information available to help them make an informed decision when voting. This would bring the provision in line with those that apply to campaigners at PPERA referendums, and political parties at elections.

15. However, we recognise that access to the Register of Young Voters raises issues about child protection. It is of course for those with expertise in this area to advise about the associated risks and for the Scottish Parliament to determine what course to follow.

Access to registers for compliance checks

16. The Bill follows PPERA in requiring that registered campaigners must ensure that donations and loans over £500 for campaigning in the referendum period are from permissible sources. Campaigners can only accept donations from individuals if they are on an electoral register. We are concerned that the Bill will make it difficult for campaigners to check the permissibility of some donations.

17. Schedule 4 paragraph 1(2) of the Bill provides that permissible donors include those individuals who are registered in an electoral register. Schedule 4 paragraph 1(3) defines an ‘electoral register’ as a register in any part of the UK of (i) parliamentary or local government electors, (ii) relevant citizens of the European Union, and (iii) peers. Individuals on the Register of Young Voters are not included.
At PPERA referendums, campaigners are entitled to a copy of all the relevant registers to enable them to check permissibility of donations. However, the Bill only requires Electoral Registration Officers (EROs) in Scotland to provide a copy of the register of local government electors to registered campaigners. The Representation of the People (England and Wales) Regulations 2001 do not allow EROs from other parts of the UK to supply the register to campaigners for the purposes of the independence referendum.

In practice this means that campaigners will have to either rely on the donor providing evidence that they are on a register, or try to make arrangements to inspect the register in person. This will be a less robust permissibility checking process and will place additional and potentially onerous, burdens on both campaigners and donors.

We appreciate that the Scottish Parliament cannot change the law in the other parts of the UK, but given these concerns, we recommend that the Scottish and UK Governments arrange for campaigners to be given access to all the registers which include permissible donors at the referendum.

Schedule 3

Admission to polling stations and counts

Rule 15 of Schedule 3 entitles a large number of people to attend at each polling station, including the polling station staff, voters, polling agents of campaigners, elected representatives for the area, accredited observers and Electoral Commission representatives. The rules as currently drafted enable the Presiding Officer of each polling station to regulate the number of voters and their children coming into the polling station but not any other category of attendee.

We believe that priority should be given to ensuring voters are able to cast their vote without any undue hindrance and that polling agents are able to effectively scrutinise the polling station processes. We recommend that the rules providing for the rights and regulations of those attending polling stations be amended to give priority to voters and polling agents. Presiding Officers should be able to regulate attendance of all other attendees at the polling station. This should be limited to regulating the number of people in the polling station in each category, but not excluding all such people.

Rule 29 entitles the Counting Officer to exclude all referendum and counting agents appointed by registered campaigners, elected representatives and accredited observers from the count centre. We believe the focus of this Rule should be on ensuring that the Counting Officer and their staff can count the votes efficiently and the referendum and counting agents can scrutinise that process and satisfy themselves that the correct figures are certified by the Counting Officer. We recommend that the Counting Officer should not be entitled to exclude the referendum agents appointed by each campaigner to scrutinise the conduct of the count. Where a Counting Officer can exclude some of those entitled to attend the count, they should follow any guidelines for doing so issued
by the Chief Counting Officer or, in relation to the attendance of accredited
observers and Commission representatives, guidance issued by the Electoral
Commission in the code of practice for electoral observers.

24. Where access to the polling station or count is regulated it should be done in
accordance with any guidelines for doing so issued by the Chief Counting Officer,
local Counting Officer or, in relation to the attendance of accredited observers
and Commission representatives, guidance to be issued by the Electoral
Commission in the code of practice for electoral observers which we have
recommended be applied.

Requesting local recounts

25. A referendum has one result which is built from local count totals. Consequently,
campaigners must have confidence in each local count total in order to have
confidence in the referendum result. Rule 34 of Schedule 3 makes provision for
both the Counting Officer and the CCO to instruct a recount of votes in a local
authority area where they believe it is appropriate to do so. However, it does not
allow referendum agents appointed by registered campaigners to request a
recount at local level in the same way that candidates and election agents can
request a recount at other elections. We believe the Bill should reflect the
provisions that applied in the Parliamentary Voting System and Constituencies
Act 2011.

26. We recommend the Bill be amended to allow local recounts following reasonable
requests from referendum agents appointed for the local authority area or, in their
absence, a counting agent who was designated for this purpose when originally
appointed. This would require amendments to Rule 14 to include the ability to
designate a particular counting agent for the purpose of requesting a recount.

Applying new provisions for absent voting

27. The Electoral Registration and Administration Act 2013 introduced a number of
changes to absent voting arrangements at future elections in the UK. These
include:

- publishing additional electoral registers prior to an election
- extending the emergency proxy provisions to those suddenly called away
  on business or military service
- enabling postal votes to be dispatched earlier
- increasing the proportion of personal identifiers on postal voting
  statements to be checked to 100%
- notifying postal voters whose postal votes were rejected of the reasons for
  this.

28. We supported these changes because we believe they remove administrative
barriers to voting and improve the security of the postal voting system. These
changes will be in effect at the European Parliament Elections in May 2014.
These provisions are not included in the Bill. We recommend that they should be
applied for the referendum on independence for Scotland to ensure that voters
receive a consistently high standard of service and can have the same confidence in the security of the process.

Counting Officers duty to promote participation

Section 69 of the Electoral Administration Act 2006 gave Returning Officers in Scotland a duty to promote the participation of voters in Scottish, UK and European Parliamentary elections. Section 26 of the Local Electoral and Registration Services Act 2006 provides a power to promote participation in respect of local government elections in Scotland. However, the Bill does not provide either a power or a duty for Counting Officers to promote voters’ participation in the referendum. Although the Bill specifically exempts the Chief Counting Officer and Counting Officers from the restriction on the publication of promotional material about the referendum by public bodies during the 28-day pre-referendum period, we believe that an explicit power or duty would clarify the intention of the Bill and enable Counting Officers to take forward their local public awareness plans with increased confidence.

Schedule 4

Designation of lead campaigners

Once registered, campaigners are able to apply to the Commission to be designated as a lead campaigner for one of the outcomes. Following the 2011 referendums, we recommended that at future PPERA referendums the UK Government should take steps to reduce the potential advantages to a prospective lead campaigner of deciding not to apply for designation. The Bill addresses this recommendation by allowing us to designate a lead campaigner on only one side of the debate if there is no suitable applicant on the other side. In our 2012 consultation response to the draft Bill we noted that this approach could raise issues of fairness. However, in the circumstances of this referendum we are content that the risks of this approach are low.

Schedule 4 paragraph 6(2) provides for the designation application process to start at the beginning of the 16 week referendum period. The process is made up of a four week application period followed by a maximum of two weeks for the Commission to make its decision. The process therefore potentially takes up the first six weeks of the referendum period.

However, the independence referendum will be the first referendum where the enabling legislation is expected to receive Royal Assent significantly in advance of the start of the referendum period. In view of this we think there would be significant benefit in taking the designation decision earlier, so that the lead campaigners are designated shortly before the start of the referendum period. This would reduce uncertainty and give the lead campaigners the full duration of the referendum period to make the most effective use of the benefits available to them. It would also simplify the effect of some of the Bill’s rules on donations and campaigning. For example, political parties cannot donate to referendum campaigners other than designated lead campaigners; early designation would
make it easier for the lead campaigners to manage donations from parties. It would also make it easier for lead campaigners to plan the way in which they work with others, since the rules on campaigners working together apply to designated leads in a different way from other campaigners.

33. We note that both Yes Scotland and Better Together recognised the benefits of designating early in their oral evidence to the Committee on 30 May 2013.

34. The benefits of bringing forward the designation process have to be balanced against the risk that support for a lead campaigner may change before the start of the referendum period. In our view, the benefits and risks would be best balanced by starting the designation application process in mid-March 2014. This would mean that decisions would be due by the beginning of May 2014, approximately a month before the start of the referendum period.

Restrictions on publication of material by central and local government

35. At PPERA referendums, restrictions are imposed on the publication of material about a referendum by central and local government and by publicly funded bodies in the 28 days before the poll. In our report on the 2011 referendums we recommended that the UK Government should clarify the provisions and should consider what sanctions, if any, should apply to breaches.

36. The approach the Scottish Government has taken in Schedule 4 paragraph 25 of the Bill is narrower than that at PPERA referendums. It only applies to Scottish Ministers or any other part of the Scottish Administration, the Scottish Parliamentary Corporate Body, and any Scottish public authority with mixed functions or no reserved functions.

37. The Bill does not make any provision for sanctions in respect of breaches of the relevant provisions, and we understand that the UK Government does not intend to put its Edinburgh Agreement commitment on a statutory basis. The Commission will therefore not have a regulatory or sanctioning role in respect of restrictions on government activity in respect of this referendum.

38. In our view, this is not in itself a concern, provided that both Governments explain to voters how the Edinburgh Agreement commitments will be observed.

June 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM THE ELECTORAL COMMISSION

Provided following oral evidence to the Referendum (Scotland) Bill Committee on 23 May 2013

During the course of the Commission’s oral evidence to the Committee on 23 May 2013 we committed to follow up in writing on two particular issues which were discussed at the evidence session. The additional information is set out below.

Restrictions on the publication of referendum material in the 28 days before the poll.

The Scottish Independence Referendum Bill (Schedule 4 paragraph 25) restricts the publication of material about the referendum by Scottish central and local government bodies in the last 28 days before the poll. The restrictions apply to Scottish Ministers and any other part of the Scottish Administration, the Scottish Parliamentary Corporate Body, and any Scottish public authority with mixed functions or no reserved functions, and relate to publishing material which:

- provides general information about the referendum
- deals with any of the issues raised by the referendum question
- puts any arguments for or against any outcome, or
- is designed to encourage voting at the referendum.

These restrictions do not apply to the designated lead campaigners, the Electoral Commission, or the Chief Counting Officer or any other counting officer (Schedule 4, paragraph 25(3)).

The Bill does not provide the Commission with a regulatory role in relation to breaches of these rules, and we are not in a position to advise the Committee on whether and how particular public bodies would be covered by these rules. We have invited the Scottish and UK Governments to provide contact details of whom in each Government will deal with complaints about breaches of the Edinburgh Agreement undertakings, and will include these in our guidance material well before the start of the 28 day period.

More generally, the Bill allows any individual or organisation, whether or not they receive public funds, to spend up to £10,000 on ‘promoting or procuring an outcome’ at the referendum without being subject to referendum regulation. Organisations that receive public funds will of course need to comply with any restrictions that apply to their use of those funds. Compliance with these restrictions will be a matter for the relevant funding body or any appropriate regulator rather than for the Commission.
Individuals or organisations that intend to spend more than £10,000 campaigning at the referendum will have to register with the Commission as a permitted participant. They will then be able to spend up to £150,000. The Bill provides that only ‘qualifying’ individuals and bodies are able to register as a permitted participant (Schedule 4, paragraphs 2(3) and (4)). In order to qualify an individual must be resident in the UK or on an electoral register. To qualify, a body such as a company, unincorporated association, limited liability partnership, trade union, building society or friendly society, must be registered (where applicable) and carrying on business in the UK. There is no prohibition on publicly funded organisations registering as a permitted participant provided they fall within the category of qualifying bodies. Again, the use of public funds for campaigning at the referendum will be a matter for the relevant funding body or any appropriate regulator.

To expand on discussions at our oral evidence sessions, permitted participants can only accept donations towards campaigning activity that takes place during the referendum period from permissible sources, which are set out in Schedule 4, paragraph 1(2) of the Bill. Grants paid from public funds (as defined in Schedule 4, paragraph 1(4)) are not classed as donations for this purpose (Schedule 4, paragraph 31(1)(a)) and are therefore not covered by the permissibility controls.

The Committee also raised questions about the rules on Members of the Scottish Parliament and Members of the House of Commons using parliamentary resources to campaign at the independence referendum. As we indicated at the Committee evidence session this will be a matter for the relevant parliamentary authority.

**Declaration of local count totals**

One of our principles for a well-run referendum is that it is administered in a way that engenders confidence, is credible, transparent and open to scrutiny. It should produce results that are accepted as accurate by the public and the campaigners.

As we understand the Bill as introduced to Parliament, Rule 35 of the Conduct Rules (Schedule 3 of the Bill) does not specify when or how the Chief Counting Officer (CCO) should make the decision to authorise the figures in each local counting area to be publicly declared. This is the same situation as in other referendums held in the UK, including the 2011 referendums on the UK Parliamentary voting system and the law-making powers of the National Assembly for Wales.

The rules for the 2004 North East of England regional assembly and local government referendums required the Chief Counting Officer to wait until all the local figures had been reported in to him before announcing the overall result and then the figures from each local authority area. In our report on that referendum, we recommended that the release of future referendum results be left to the discretion of the Chief Counting Officer.
The normal practice in referendums, and elections with a regional element, in the UK is for local results to be declared as soon as they are ready and have been checked by the Chief or Regional Counting Officer as the case may be. We would expect the Chief Counting Officer for the Scottish independence referendum to follow the same practice.

It would be possible for Rule 35 to be amended so that the CCO should authorise a declaration as soon as practicable after receiving local count figures from a counting officer. If an amendment of this nature was tabled, we would comment on its workability.

May 2013
Electoral Commission powers to order improvements to the accessibility of polling places

During the Committee’s round table evidence session on 30 May there was a discussion about the accessibility of polling places during which it was suggested that the Electoral Commission has the power to order Returning Officers to make improvements to the accessibility of polling places. We want to clarify that this is a very specific power which only applies in relation to statutory reviews of polling districts and places.

The Representation of the People Act 1983 requires all local authorities to conduct a review of their polling districts and polling places at least once every five years.¹ They are statutorily required to publish notice of this review and to seek the views of anyone it thinks may have particular expertise in relation to access to premises or the provision of facilities for disabled people.

Once the local authority has published the results of its review, specified interested parties – including any group of 30 or more electors – may make representations to the Electoral Commission to reconsider any polling districts and polling places. If, on receipt of such representations, we find that a local authority’s review did not:

- meet the reasonable requirements of the electors in the constituency, or a body of them, or
- take sufficient account of the accessibility for disabled persons of polling stations within a designated polling place

then we may direct the authority to make any alterations to the polling places that we think necessary and, if the alterations are not made within two months, may make the alterations ourselves.

Setting standards and providing guidance on accessibility

The Electoral Administration Act 2006 gave the Electoral Commission powers to set and monitor performance standards for electoral services in Great Britain. In order to meet our standards for well-run elections Returning Officers must ensure that the electoral process is accessible to all voters; this includes providing accessible information for voters as well as ensuring that polling station staff receive training on ensuring equal access and good customer care.

We provide guidance for Returning Officers on meeting our standards but we do not have any powers to enforce compliance. However, we are of the view that, as service providers, Returning Officers are subject to the Equality Act 2010 and have a

¹ This was recently increased from every four years by the Electoral Registration and Administration Act 2013.
duty to make reasonable adjustments to avoid putting people with disabilities at a substantial disadvantage compared to people who are not disabled.

The Scottish Independence Referendum Bill seeks to provide the Chief Counting Officer with the power to direct Counting Officers. The Chief Counting Officer could direct certain actions be taken to improve access to polling stations for disabled voters.

**Accessibility of voter information materials**

At the 30 May session a witness from Inclusion Scotland highlighted the benefits of making information materials available in ‘Easy Read’ format for voters. We routinely produce key voter information in Easy Read format and we would expect to make any voter information booklet we produce for the referendum available in that format. An example of our Easy Read information booklet from the 2012 Scottish council elections is included below. See separate document Ref 15b Example of Easy Read booklet.

We also produce our main voter information materials in a number of other accessible formats including British Sign Language, Braille, audio format and large print.

In line with other elections in Scotland, Counting Officers at the referendum will also have the power to make any guidance for voters at the polling station available in accessible formats. At elections we produce template guidance for voter notices, including those displayed in the polling booth, in graphical formats for Returning Officers to use. These templates use pictorial illustrations with very little text to ensure that they are not only accessible to voters with learning difficulties but also for those with low literacy levels or those who do not have English as a first language. We would expect the Chief Counting Officer to provide these for Counting Officers at the referendum.

**Assistance to vote for visually impaired voters**

At the evidence session one witness raised concerns that visually impaired voters cannot request the assistance of the Presiding Officer to complete the ballot paper. However, the Representation of the People Act 1983 does make provision at elections for any voter who is “incapacitated by blindness or other disability” and unable to complete their ballot paper unaided to ask the Presiding Officer to mark the ballot paper on their behalf. There is no legal definition of ‘disability’, this is determined via a self-declaration by the voter. Alternatively, if the Presiding Officer agrees, the voter can be helped by a companion. The companion of a disabled voter must be either a close relative (father, mother, brother, sister, husband, wife, civil partner, son or daughter, provided they are over 18 years of age, or 16 in the case of the referendum) or a person eligible to vote in that election. The voter must ask the permission of the Presiding Officer to be assisted by their companion. Counting Officers train their staff before each poll, including on customer care, so that the staff are prepared to help electors as far as they can.
Each polling station must have a ‘tactile voting device’ for blind and visually impaired voters. The ‘tactile voting device’ has an adhesive backing, which attaches firmly to the ballot paper but can be removed without damaging the paper. Flaps on the device cover each of the boxes on the ballot paper in which the vote is marked. The Presiding Officer will read out the list of candidates and parties along with the numbers which gives their position on the ballot paper. The corresponding numbers on the voting device are embossed in black on the surface of the flaps and are also raised so that they can be identified by touch. To vote, voters lift the relevant flap to show the box on the ballot paper and they make their mark in the box. They can then take the device off the ballot paper before folding the ballot paper to make sure their vote is secret.

Each polling station must have an enlarged hand-held sample copy of the ballot paper and display a large print version in the room.

The Bill makes the same provisions in respect of voting at the referendum.

**Public awareness – working with stakeholders**

Ahead of any electoral event the Commission works with a range of stakeholders to ensure that our public information activities have as wide a reach as possible. This includes providing tailored information for organisations working with disabled people so that they know about the information we provide in accessible formats and also to ensure that disabled voters are aware of what assistance they can expect when they come to vote. Our experience has been that this work is most effective when undertaken in the period immediately prior to any poll, which is when most voters start to think about the voting process and when the accessible resources are available for them to access.

We also work with a number of youth focused organisations to ensure that we are reaching young people through as many appropriate channels as possible and can support their activities to provide information which is relevant to their audiences. We have worked closely, over the years, with the National Union of Students in Scotland, Young Scot and the Scottish Youth Parliament. We met with all three organisations on 24 May specifically to discuss plans for reaching young people with information about the referendum. We note that the witness from the Scottish Youth Parliament did not appear to be aware of that meeting, although we understand that the Scottish Youth Parliament has since been in contact with the Committee directly to clarify that they did indeed meet with us the previous week.

As noted in our written evidence to the Committee on the Referendum Bill, we intend to set out more detail on our approach to public awareness before the summer recess.

June 2013
On 3rd May you need to mark your ballot paper with numbers. Here’s how...

Local Council Elections in Scotland
3 May 2012
About this booklet

This easy read booklet tells you about the local elections in Scotland on Thursday 3 May 2012.

An election is a public vote when you are asked to choose people to represent you.

There are some difficult words in this booklet which are in red.

There is a list of words and what they mean on page 8.

You may want to have someone to help you when you look at this booklet.
What is in this booklet

Local elections .................................................. 2
Voting in the election........................................ 3
Who is allowed to vote in the election? .... 4
How to vote .......................................................... 5
  1. In person on polling day.............. 5
  2. By post .................................................. 6
  3. By proxy ................................................. 7
What the words mean................................. 8
Local elections

On Thursday 3 May 2012 there will be an **election** in Scotland to choose **local councillors**. An election is a public vote.

Your local council provides services such as:

- education
- housing
- care for older people
- recycling and rubbish collection.

In Scotland each local council is divided into smaller areas called wards. Each ward has 3 or 4 local councillors who are elected to represent you and your local community.

You can find out more about these elections by going to the website called [www.aboutmyvote.co.uk](http://www.aboutmyvote.co.uk).
Voting in the election

A ballot paper is a form you can use for voting. The ballot paper has the names of the candidates on it and looks like the one in the picture.

Candidates are the people who want to be local councillors in your area.

You can choose as many candidates as you want. You must number them in the order of your choice:

- Put the number 1 in the voting box next to your first choice.
- Put the number 2 in the voting box next to your second choice.
- Put the number 3 in the voting box next to your third choice. And so on.
Who is allowed to vote in the election?

You can vote in the election if you are:

- registered to vote in Scotland, and
- aged 18 or over on Thursday 3 May 2012.

You must also be:

- a British citizen living in Scotland
- a qualifying Commonwealth citizen living in Scotland, or
- a European Union citizen living in Scotland.

To vote in this election you must be registered by **Wednesday 18 April 2012**.

You can find out more about registering to vote by going to the website called **www.aboutmyvote.co.uk**.

A citizen of a country is someone who has the right to live there all the time.
How to vote

There are three ways you can vote.

1. In person on polling day
Polling is another word for voting.

Polling day is the day there is a public vote.

The polling day for this local election is Thursday 3 May 2012.

On Thursday 3 May you can go to your polling place/polling station to vote.

A polling place/polling station is a public building near your home – for example a school or library – where people can vote.

You will get a letter in the post which tells you where your polling place/polling station is. The letter is called a poll card.

Voting at the polling place/polling station is easy and there are people there to help you if you are not sure what to do.

Polling places/polling stations are open from 7am to 10pm on Thursday 3 May 2012. You need to make sure you arrive in plenty of time.

You can find out more about voting on the website called www.aboutmyvote.co.uk.
How to vote (continued)

2. By post

If you want, you can arrange to send your vote in the post instead.

You need to fill in a form if you want to send your vote by post.

To get the form, go to the website called www.aboutmyvote.co.uk. In a section of the website called How do I vote?, go to Voting by post and follow the instructions to get the form.

You need to print this form, fill it in and send it to your local electoral registration office by 5pm on Wednesday 18 April 2012.

Your local council will then send a ballot paper to your home. A ballot paper is a voting form.

Fill in the ballot paper, put it in the envelope provided and post it to your local council.

Make sure it gets to your council by Thursday 3 May 2012.

You can find out more about how to vote by post by going to the website called www.aboutmyvote.co.uk.
3. By proxy

A proxy is someone you trust to vote for you.

Voting by proxy means asking someone to vote for you. You will need to tell your proxy who you want to vote for in the local election.

You need to fill in a form if you want to vote by proxy.

To get the form, go to the website called www.aboutmyvote.co.uk. In a section of the website called How do I vote?, go to Voting by proxy and follow the instructions to get the form.

You need to print this form, fill it in and send it to your local electoral registration office to arrive by 5pm on Wednesday 25 April 2012.

You will need to say why you cannot vote in person or by post.

Who can be my proxy?

You can ask anyone to be your proxy and vote for you, so long as:

- they are allowed to vote in this election
- they only vote for you and possibly one other person
- they are happy to vote for you.
What the words mean

**Ballot paper**: a form used for voting

**Candidate**: a person who wants to become a local councillor

**Citizen**: someone who has the right to live in a certain country all the time

**Election**: a public vote when you are asked to choose a person (or people) to represent you

**Local councillor**: someone who is chosen by people in a vote to represent them on a local council

**Poll card**: a letter which tells you the date of the public vote and where your polling place/polling station is

**Polling day**: the day when there is a public vote

**Polling place/polling station**: a public building near you where you can vote

**Proxy**: someone you ask to vote for you

**Qualifying Commonwealth citizen**: a person who is from a Commonwealth country and is allowed to stay in the UK
This booklet has been produced by the Electoral Commission.

The Electoral Commission is an independent body that works across the UK. The Scottish Parliament has given us a duty to provide public information about voting in the local council elections in Scotland.

Please call 0800 3 280 280 for more information.

The Electoral Commission
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SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM THE ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

To support oral evidence to the Referendum (Scotland) Bill Committee on 16 May 2013

INTRODUCTION

Representatives of the Electoral Management Board (EMB) have been asked to appear as witnesses before the Referendum (Scotland) Bill Committee on 16 May 2013 to provide evidence for the Committee's consideration. This paper has been prepared to assist the Committee in its preparation for the meeting. It introduces the EMB, outlines the role of the Convener in the Referendum process as Chief Counting Officer and then offers a series of comments on the Referendum Bill. Comments on the Bill are general in nature, although more detailed comments on individual clauses, based on a review of the Bill by the SOLAR (Society of Local Authority Lawyers and Administrators in Scotland) Elections Working Group are available and will be submitted to the Government.

THE ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

The Electoral Management Board for Scotland (EMB) was created by the Local Electoral Administration (Scotland) Act 2011, which gave the Board “the general function of co-ordinating the administration of Local Government elections in Scotland.” Consisting of Returning Officers, their Deputies and Electoral Registration Officers, the EMB is under the leadership of a Convener who is appointed by Ministers. Specialist advice is supplied by professional organisations of electoral experts, the Scottish and UK Governments and the Electoral Commission.

With respect to local government elections the Convener has a power of direction over Returning Officers and Electoral Registration Officers to promote best practice in the administration of elections and support the electoral community. The focus of activity is ensuring that the interests of the voter are at the centre of all decision making. In 2012 a range of activities were undertaken to support Returning Officers and Electoral Registration Officers in the delivery of the Local Government elections. This included training, the production of guidance material, negotiation with suppliers and the provision of consistent forms. These were widely appreciated by both the electoral professionals and suppliers including Royal Mail and the eCounting contractor.

The Board is composed of eight members; five are Returning Officers (or their Deputies) and three are Electoral Registration Officers. These are appointed by a Convener, who is in turn appointed by Scottish Ministers following a process of open competition. Advisors from the professional associations that work in electoral...
administration, SOLAR and the AEA, attend the Board. The Electoral Commission, the Scottish Government, Scotland Office and COSLA also have representatives at each meeting, acting as official advisors to provide support and advice.

THE INTERIM ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

The EMB was set up on an interim basis in November 2008 as an initiative of the four professional associations responsible for electoral activity in Scotland – SOLAR, the SAA, SOLACE and the AEA. The establishment of the Board was supported and promoted by the Electoral Commission.

This Interim Board was a reaction by the Electoral Community to the issues that arose in the delivery of the combined elections of May 2007 when the Scottish Parliamentary Elections were combined with the Local Government elections. In particular, it was a reaction to the Electoral Commission’s report *Electoral Administration in Scotland 2008*, which in itself was the end of a deliberative process following the 2007 elections.

Operating on clear principles of promoting a consistent national approach to electoral administration and simplifying decision making – both aiming to ensure that the interests of voters were kept at the heart of all electoral activity – the IEMB supported the Regional Returning Officer for Scotland in the delivery of the European Parliamentary Elections in 2009. It also offered support in terms of common forms and other guidance in the UK Parliamentary Elections in 2010. 2011 saw the IEMB support the Regional Counting Officer, in the delivery of the UK Referendum on voting systems for the Westminster Parliament which, in Scotland, was combined with the Scottish Parliamentary elections.

THE EMB AND THE REFERENDUM

The Referendum Bill identifies the Convener of the EMB as the Chief Counting Officer for the Referendum, with specific duties:

> “The Chief Counting Officer is responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of votes, in accordance with this Act” (section 6(1) – emphasis added)

The Bill has the CCO appointed by Ministers and she then appoints a counting officer for each local government area. The CCO authorises any public announcements with respect to results and must, for the whole of Scotland, certify—

(a) the total number of ballot papers counted, and

(b) the total number of votes cast for and against each proposal.
The CCO can issue directions to Counting Officers and may require a council to provide, or ensure the provision of, such property, staff and services as may be required.

THE EMB’S APPROACH TO THE REFERENDUM

The referendum should be well-run and produce results that are accepted as accurate. The aim is to declare “a result that everyone will trust” – there must be no question about the integrity or accuracy of the process. To achieve this, guiding principles are that:

- the referendum should be administered efficiently and produce results that are accepted as accurate; and
- there should be no barriers to voters taking part.

In practice the Convener of the EMB, as the CCO designate, is taking lessons from last year’s local elections, where the EMB had a statutory role, and from the UK Referendum in 2011 where the Convener was Regional Counting Officer. Consistency is important – voters need to have the same experience throughout the whole of Scotland and the EMB always aims to achieve consistency via consensus if possible with direction when necessary. Local variation should be an exception and would have to be well justified and never agreed if there is any risk to clarity or integrity.

CHIEF COUNTING OFFICER WORKSTREAMS

In support of these duties the Convener, anticipating a role as CCO, has initiated a number of workstreams including:

- **Guidance** – drafting guidance, direction, forms and information for Counting Officers;
- **Governance** – putting in place effective and robust project management and risk management arrangements, with regular performance management and monitoring of Counting Officers;
- **Count collation** – providing a technical solution for the gathering of the 32 tallies from the Counting Officers to compile a national result; and
- **Count declaration** – planning an event at which the result will be declared.

These tasks will be the sole responsibility of the CCO. However the Convenor of the EMB is using the expertise and resources of the Board to support her in these tasks as a Programme Management Board.
EARLY CONSULTATION

The EMB has valued early consultation and engagement with Scottish Government as the Bill has been developed. The SOLAR Elections Working Group made a detailed set of comments on the content and approach of the draft bill. These were supported by the EMB. Some of these comments have been incorporated into the Bill that is currently being considered.

GENERAL COMMENTS ON THE REFERENDUM BILL

Once the Bill was published, the Convener requested that the SOLAR Elections Working Group hold a workshop at which the provisions of the Bill could be examined by the country’s experts in electoral administration and legislation. As a result of this work SOLAR have offered some comments through the EMB. SOLAR considered the Bill in the light of its earlier comments on the draft Bill. Its comments are both general and specific and are offered to the Committee to prompt discussion at this evidence session.

The context in which these discussions have been held and these comments generated is that of the objectives above: a clear, consistent process is required in which every voter is able to take part and trust. To give a flavour of the issues discussed by SOLAR, some general comments are as follows:

The declaration of results – liaison arrangements between the CCO and COs for the count need to be the subject of consultation, with clarity on the appropriate sequencing of local and national declarations. It needs to be clear that there is only a national result. A local tally in isolation must always be held discrete from the national result. (section 6(3))

Fees and Charges – early consultation on the draft Fees and Charges Order is essential to enable proper planning for the conduct of the poll. There must be adequate and appropriate resources made available to Counting Officers and to the Chief Counting Officer which reflect the resources needed to deliver this event and take account of local circumstances of geography and scale. (section 8)

A Referendum Timetable – a timetable with key milestones as is used in elections legislation is a major omission and should be inserted into the Bill. This greatly aids planning and preparation and is a valuable resource for both administrators and campaigners.

The Ballot Paper – the ballot paper as specified in schedule 1 stipulates that official mark should be printed on back of the ballot paper. The official mark should be printed on the front of the paper as is usual at elections to facilitate identification of doubtful ballot papers at the count without the need to turn each ballot paper over to check for the official mark.
Days of public thanksgiving or public mourning – days of public thanksgiving or public mourning should be disregarded when calculating the cut-off date for registration, as in para. 2(1)(d) of Schedule 1 to the Scottish Local Government Elections Order 2011. (schedule 2, section 18(2))

An Index – An index or contents page for the conduct rules would be a useful addition, as contained at the start of Schedule 2 to the Parliamentary Voting System and Constituencies Act 2011. (schedule 3)

Provision of rooms – not all public authorities mentioned may be aware of their stated obligation to provide a room free of charge if asked. All such bodies should be advised of this provision in due course, particularly those to whom this obligation will be new. The CO has a right under this rule to use, free of charge, for the purpose of polling and counting, any meeting room which it is the practice to let for public meetings, and which is maintained wholly or mainly by a public authority with mixed or no reserved functions. (schedule 3, Rule 7(3))

Polling – the PO should be given power to limit the total number of persons in the polling station at any one time, given the potentially large number of persons who will have the right to attend at a polling station under Rule 15. (schedule 3, Rule 17(1))

Attendance at Count – Schedule 3, Rule 29(2) should be amended to “The counting officer must give notice to observers attending the count of the time and place at which the counting officer will begin to count the votes”. The public are not permitted into the count so it makes sense that notice should be given by the CO to those entitled to do so.

Marked Registers – It was noted that the new Bill provides for a designated organisation (i.e. a lead organisation) to request copies of the marked polling lists. The implications of this need to be considered.

In addition to these general comments, SOLAR has shared with the EMB a set of comments on many of the clauses of the Bill. These will be submitted to the Scottish Government for consideration as the Bill progresses through Parliament. However, for the purposes of this session they are not appropriate for discussion as they are often very detailed and specific.

SUMMARY

Under the Bill the Convener of the EMB will have the role of Chief Counting Officer (CCO) ultimately responsible for the consistent, effective delivery of the referendum. The referendum must be well-run and produce results that are accepted as accurate. The aim is to declare “a result that everyone will trust”, with no question about the integrity or accuracy of the process. To achieve this, the guiding principles are that:

- the referendum should be administered efficiently and produce results that are accepted as accurate; and
• there should be no barriers to voters taking part.

The current Bill has been examined in the light of these principles by the professionals within SOLAR and overall it achieves these aims. However, there are many specific comments that will be submitted to the Scottish Government for consideration as the Bill proceeds through Parliament. The EMB has welcomed the opportunity to engage with Government on the terms of the Bill and has valued the consultation that has already been undertaken as the draft Bill was prepared and developed.

13 May 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM THE ELECTORAL REFORM SOCIETY
SCOTLAND

The Electoral Reform Society (ERS) Scotland is the country's leading authority on elections, democracy and political power.

ERS Scotland researches the effectiveness of existing voting systems in Scotland, campaigns for improvements in the systems and processes of government, and seeks to promote debate and discussion about Scotland’s democracy. ERS Scotland activities include: analysing election results and voting behaviour, including producing documents, research publications and articles for the press; organising events to stimulate democratic engagement and debate; and working with like-minded organisations to promote democratic renewal.

We welcome the opportunity to respond to the Referendum (Scotland) Bill Committee's call for evidence. The submission deals with the areas of interest outlined in the call for evidence as well as some additional areas of concern to the Society.

Summary

Perhaps the largest challenge Scottish democracy faces in relation to the independence referendum is that the public are seeking information about the consequences of either a ‘Yes’ or a ‘No’ vote, information which it is difficult, if not impossible, to objectively provide. ERS Scotland would suggest that having faith in the public to discuss and debate the alternatives is the best way to inform our citizenship about the referendum, and with this in mind we suggest public funding for a programme of community based deliberative discussion in the run up to 18 September 2014. The usual grant for referendum campaigns has been omitted from the Bill, so we would suggest this funding could instead be allocated to such a community based discussion.

The date of the referendum and the wording of the question

ERS Scotland is happy with both the timing of the referendum and the wording of the question. Our previous submissions in relation to the referendum made clear our support for the Electoral Commission testing and approving the question and we welcome the acceptance of their suggested changes. On timing, our experience of the AV referendum in 2011 made it clear that a longer rather than shorter lead in time to a referendum is to be preferred.

The conduct rules (schedule 3)

We note the written evidence from the Electoral Management Board (EMB) regarding the placing of the official mark on the ballot paper (s6(1)). We would agree that the ballot paper should be marked in such a way as to facilitate ease of counting. It is important that the count is as efficient and accurate as possible. This is not just an issue for those undertaking the count, but also has implications for the speed of the count, which is vital considering the levels of anticipation which are to be expected, and also for public confidence in the result.
Section 7 allows for the use of public buildings as polling stations. ERS Scotland has in the past suggested that more commonly used venues with higher public familiarity be used as polling stations, such as supermarkets. We would also suggest considering allowing voters to use all polling stations within their local government area, rather than restricting them to the closest geographical venue. We appreciate there would be administrative issues to be addressed in facilitating this, but would suggest that encouraging turnout is a vital aspect of our democracy and should not be restricted by bureaucracy.

Related to this, we would point out that as turnout in the referendum is expected to be higher than at parliamentary elections, the number of polling stations must be sufficient to meet demand. We welcome the rules regarding voting being open to anyone who is present at a polling station at 10pm despite the polls closing at 10pm.

We note the evidence from Inclusion Scotland regarding the lack of availability of assistance by the Presiding Officer for partially sighted voters. We would suggest the Committee consider amending the draft legislation to make it clear that Presiding Officers can use their discretion in judging whom to assist, and we would encourage Presiding Officers to be flexible in their interpretation of their ability to assist.

Our experience of the 2012 local government elections has shown that different local areas use different methods to report the results to their constituents. We would suggest that a uniform method of reporting results, spoilt ballots, etc be adopted for the referendum to provide for easy and accessible understanding of the results.

Finally, clarity on who will be provided with the full polling list (ie including 16 and 17 year olds) would be welcome.

**The campaign rules (schedule 4)**

**Designation:** We note the evidence from both Yes Scotland and Better Together and would agree that early designation would be beneficial. Delaying designation provokes uncertainty as to status, with implications for donations and spending. The controlled (referendum) period should run concurrently with designation, and both should occur as soon as possible after the Bill receives Royal Assent. Spending limits and reporting requirements should commence at the moment of designation.

**Expenses:** We are aware of Committee questions regarding the expenses of designated organisations, permitted participants, and groups who do not qualify as permitted participants (mainly because they will not spend over £10,000). We would encourage transparency and regular reporting from all permitted participants, and indeed ideally all groups campaigning around the referendum, and would recommend the Electoral Commission be given adequate resource to monitor these campaigns. However, we would not wish there to be overly restrictive rules for small campaign groups. Diversity in the debate is important as is a plurality of voices.

**Spending limits:** We broadly agree with the spending limits allocated to the designated organisations and permitted participants and with the calculation to determine the levels of political party spending for those parties represented in the Scottish Parliament. There is however the potential to have unlimited spending outwith the regulated period. This could possibly be addressed by extending the
referendum period, which we acknowledge is a complex request. We would welcome at least some consideration of the practicalities of extending the referendum period, as outlined above.

**Reporting of expenditure:** We would welcome regular reporting of expenditure throughout the campaign rather than one report to the Electoral Commission three months after the referendum. We would also be keen to see clarification of when the expenditure report from the designated organisations would be published, and we would urge amendment of the draft legislation to require this information to be published.

**Restrictions on activity of public authorities:** We note the concerns expressed by some Committee members and witnesses regarding the activities of public bodies relating to the referendum. Clearly, as this Bill can only legislate for Scottish public bodies, there are some limitations to the restriction. This also raises the conundrum that in essence a campaign between two Governments is being legislated for by a Government that cannot regulate the behaviour of the opposing Government, or the public bodies thereof. We believe all of Scotland must be involved in the debate in the run up to the referendum but equally Government must not use their public resources to their advantage. We would agree with the statements of some witnesses that the court of public opinion will hold Government to account, but we would urge both the Scottish Government and the Government at Westminster to make a public undertaking that they will respect the rules restricting campaigning activity by public bodies, including the Governments themselves whilst understanding that public money and public bodies should find a way to encourage involvement and debate as part of the democratic process in relation to the referendum. This is a difficult area, but not outwith the wit of man to resolve. We would welcome clarification on the process for questioning the actions or behaviour of public bodies should a complaint be raised.

**Reporting on donations:** Lowering the limits on disclosing donations should be considered, not least as the agency rules are ineffective and impossible to enforce. Consideration should be given to the US model, with all donations reported, especially with technology making administration of donations more efficient. We would certainly support moving to weekly reporting during the referendum period as is currently the case in election periods. It should also be noted that the rules on donations in PPERA are geared around large Tory donors / union donations – which are not as common in Scotland. The funding rules could (and arguably should) therefore, be different. International standards may well be more appropriate than UK precedent. As with expenditure reporting, the Electoral Commission should be obliged in the legislation to publish the donations reports. We would welcome clarification on the status of what constitutes a foreign donation in this referendum.

**The role of the Electoral Commission**
It has in the past been the role of the commission to provide unbiased information statements on the proposition. The intricacies and complexities of this particular proposition make anything other than repetition of the campaigns’ claims in an attempt at balance almost impossible. Should the Electoral Commission be instructed to provide objective information, we feel it would be being asked to undertake something that is simply not possible. Ensuring proper balanced
broadcast media coverage and the suggested programme of citizen engagement below would be a much better way to address this requirement.

The proposed limits on funding for campaign organisations and political parties
As noted above extending the referendum period so that campaign expenditure is regulated for a more substantial amount of time (considering campaigning has effectively already begun) should be considered. Also as noted above, requirements to publish donations and report on spending should be tightened. The model of political parties during election campaigns publishing weekly accounts is worth considering.

The lack of public funding is a concern as it sets an unwelcome precedent. Providing public funding properly combined with strict spending limits could limit the extent to which large donors could be seen to influence or curry favour with politicians and political parties. That said we accept that grants will not be made for this referendum.

Therefore, we would propose the Committee consider recommending that the public money that would have been allocated in grants to the campaigns be given to a third party agent or coalition of agents to facilitate local community led discussions across Scotland. Facilitated by trained ethical volunteers in deliberative democracy (of which there is a growing network across Scotland), this would allow communities’ concerns and questions to be raised which could then be addressed by the campaigns. This would allow citizens and communities to help frame the coming debate instead of allowing small groups of elites to frame the discussion subsequently expecting citizens to engage on terms already defined. This would set Scotland up as a world leader in democratic innovation without any risk to the referendum. Our original suggested amount of grant expenditure was £250,000 and we would expect no less than this to be allocated to such a programme.

It is a fact of political life that campaigns often misrepresent, mislead or distort arguments in their uncontested material. We do not therefore consider that the Yes Scotland or Better Together campaigns or their representative political parties are the best or only way for voters to receive information. Information to voters should come through ‘challenged’ discussion or debate on broadcast media or through non-partisan explanation from journalists and commentators. It would be most surprising if this referendum debate was not fully covered by all the relevant media. It is vital therefore to ensure these channels of communication are properly resourced and responsible in covering the debate.

In the meantime, clarity on the status of inter-governmental discussions and progress being reported on to the public would be welcome.

Citizen engagement
Registration: It is vital that everyone who is entitled to and wishes to can participate in the referendum. We note the delay of the introduction of Individual Voter Registration in Scotland until after the referendum and agree that this avoids a potentially confusing situation. We would welcome a concerted electoral registration effort; including rolling out registration via schools to ensure 14 – 17 year olds who will be entitled to vote in the referendum are registered. Such a scheme is already in
place in Northern Ireland and was referred to in our submission regarding the Scottish Independence Referendum (Franchise) Bill. Additionally, ERS has long suggested that registration efforts be reformed, with improvements to online registration as in Washington State (where as long as you have a driving licence or id card number you can register online without having to print off and send in a signed form), same day registration, as sees high turnout levels in several American states including Minnesota, and the capacity to register when undertaking any public registration, such as receiving a driving licence or a passport.

**Consultation:** From the outset with David Cameron’s announcement on the Andrew Marr show on 8 January 2012, through to the signing of the ‘Edinburgh Agreement’ on 15 October 2012, elite control of the process and the question has been complete. Arguably much of the referendum process has been decided behind closed doors and without citizen participation. This should be acknowledged and a commitment given to full and fulsome citizen engagement in any discussions around the constitutional settlement after the referendum, regardless of the result.

**Post referendum**
The post referendum debate is not covered by the Bill. We would welcome a requirement for some kind of citizen participation in discussing the constitutional settlement post referendum. We would also be interested in the Bill giving legal effect to the final paragraph (paragraph 30) of the section 30 agreement memorandum. This would give legislative force to the statement:

**Co-operation**
30. The United Kingdom and Scottish Governments are committed, through the Memorandum of Understanding between them and others, to working together on matters of mutual interest and to the principles of good communication and mutual respect. The two governments have reached this agreement in that spirit. They look forward to a referendum that is legal and fair producing a decisive and respected outcome. The two governments are committed to continue to work together constructively in the light of the outcome, whatever it is, in the best interests of the people of Scotland and of the rest of the United Kingdom.

At the very least we would ask the Committee to clarify what the process would be should a complaint regarding a breach of the Edinburgh Agreement wish to be made.

6 June 2013
I write in support of the recent submission by SCVO and STUC to seek funding from the Scottish Government to enable third sector organisations to increase levels of voter registration in the lead up to the 2014 Referendum – and higher levels of participation in the referendum.

The work of our organisation is focused on working alongside many of Scotland’s very poorest individuals and communities. It is amongst this group of people and neighbourhoods that democratic participation is often at its very lowest. We are keen to work alongside others to seek to address this issue not just around the referendum but for the long term future of our nation.

Whatever the result of next year’s vote, it is in everyone’s interest that this occasion is taken as a significant opportunity to help to re-engage significant groups of people who currently feel disenfranchised with the democratic structures of our society.

Certainly we would be keen, in collaboration with others, to take whatever steps we can to increase voter registration and voter turnout amongst traditionally excluded groups in what is potentially the most significant vote in Scotland for generations.

Martin Johnstone
1 July 2013
1. I am grateful for the opportunity to give evidence to this Committee. The 2014 Independence vote will be unusual in the UK’s thin experience of direct democracy, being the first such poll capable of being characterised as a high salience referendum. For the first time voters will be given the decisive say in what is commonly agreed to be the ‘most important issue’ of the day.\(^1\) We should accordingly be careful when drawing lessons from past referendums – what obtains in a mid- to low-salience contest (ie. practically all of the UK’s referendums to date) will not follow automatically in a competitive, closely fought campaign that holds the nation’s attention.

2. The Scottish Independence Referendum Bill (‘the Bill’), as introduced on 21 March 2013, is accordingly something of a disappointment. It scarcely departs from PPERA’s referendum scheme, and where it does so, it does so ill advisedly. Quite rightly the Government has stated that the 2014 referendum should be “conducted and regulated to the highest international standards.”\(^2\) Unfortunately, this policy objective has had no discernible impact on the substance of the Bill. There is no evidence, either on the face of the Bill or the accompanying documentation of non-trivial engagement with the voluminous comparative experience of referendums.\(^3\) Rather, the Bill has sought to ensure that the conduct and regulation of the Referendum map the United Kingdom’s standards, aping the scheme in PPERA. Whatever else may be said of PPERA, it does not track the highest international standards. This is especially true for its Part VII.

Political Parties Elections and Referendums Act 2000, Part VII

3. It is worth reminding ourselves why PPERA’s approach to referendums has always been seen as questionable. PPERA was stamped from the cookie cutter of the Committee on Standards in Public Life (‘CSPL’).\(^4\) The Funding of Political Parties in the United Kingdom closely mapped the Labour Party’s policy preferences and was subsequently enacted as the Political Parties Elections and Referendums Act 2000. The one exception to this is Part VII on referendums, where the CPSL exhibited some independence. For referendums alone (ie. in distinction to the scheme for all other elections), the CPSL rejected the notion of expenditure limits, of ex ante disclosure, and of public funding. The reasons for these are highly contingent – the referendum debate of the day (late 1990s) was entry into the Euro. Moreover, two of the more significant members of the committee were overtly euro sceptical – the Chair (Lord Neill) and Labour’s Peter Shore. Among the community of party finance scholars, Part VII’s status as a conceptual outlier is attributed to these

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1 The referendum on the Good Friday agreement could possibly be similarly characterized.  
2 Scottish Independence Referendum Bill, Policy Memorandum SP Bill 25-PM, Session 4 (2013), 1  
3 For a conspectus, see Karin Gilland Lutz and Simon Hug (eds), Financing Referendum Campaigns (Palgrave Macmillan 2009)  
4 This quasi-independent body, then chaired by Sir Patrick Neill QC, was charged with the responsibility of enquiring into the funding of political parties by Tony Blair in 1997.  
factors. It was designed to ensure (or rather, avoid) a particular outcome in a particular vote.

4. That said, large parts of the regulatory regime that pertain to referendums are in fact general to PPERA. Matters such as the control of donations, loans etc, monitoring and securing compliance, and the Electoral Commission’s investigatory powers are shared with other electoral events and have been provided to work more or less satisfactorily. To the extent that there are shortcomings, the new range of sanctions contained in the Bill – stop notices, enforcement undertakings etc – (which are substantially similar to those added into the PPERA regime by section 3 of the Political Parties and Elections Act (PPERA) 2009) are very welcome. Breaches that previously incurred criminal proceedings and referral to the Crown Prosecution Service/Procurator Fiscal, can now be dealt with by the new array of civil sanctions. This flexibility, which the Commission had long been arguing for, may have resulted in different outcomes to well known party finance scandals.

5. The below considers some of the less satisfactory aspects of the Bill, some departing from PPERA’s scheme, some not.

The Referendum Period

6. Tucked away in Schedule 8 of the Bill, in the long list of terms for interpretation, is the line that “‘referendum period’ means the period of 16 weeks ending on the date of the referendum”. Although this terms serves a number of differing purposes, for finance purposes it carries the heavy burden of demarcating the period during which monies expended in campaigning count for the purposes of the campaign limits. These limits – total referendum expenses – vary according to the status of the body in question – up to £10,000 for ordinary individuals or bodies, £150,000 for non-party permitted participants, or £1,500,000 for Designated Organisations, or for registered political parties a formula based on success in the previous Scottish Parliament election is used. However, these limits will only apply to money expended in the period 29 May 2014 to 18 September 2014. Any sums expended prior to that time are unconstrained by expenditure limits. The distortive effect of this is easily anticipated.

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8 Including marking the period within which prospective DOs must make their applications (Sch 4, Pt 2, paragraph 6(2)(b)).
9 Sch 4, Pt 3, paragraph 17.
10 Sch 4, Pt 3, paragraph 18(1)(c).
11 Sch 4, Pt 3, paragraph 18(1)(a).
12 Sch 4, Pt 3, paragraph 18(1)(b). See further ¶8 below.
7. We have been here before. Pre-campaign expenditure has been a growing trend in general elections, especially in the all-important ‘target seats’ with the attendant argument that the regulated campaign period of PPERA failed to capture significant activity that might affect the election result. The problem revolved around the issue of triggering – in the absence of fixed term parliaments, when would the regulated campaign period commence? This was partially addressed by section 21 of PPEA by which expenditure is triggered by the adoption of a candidate – a solution which is easily gamed. In any event, that solution has no application in the referendum space. What could the triggering event be in executive dominated referendums (one can see that popular initiatives, the ‘referendum period’ could be triggered on the successful conclusion of an initiative)? The obvious solution is for the referendum period to commence upon the coming into force of this Bill, thereby capturing all expenditure that contributes to the formation of public opinion in respect of the referendum.

8. The risk with the proposed constraint of only counting expenditure between 29 May 2014 and 18 September 2014 period is obviously that campaigners could ‘front load’ their expenditure in order to avoid the strictures of the Bill and as such expend in an incontinent fashion. In the present Scottish context this is not so much a question of equality of arms between the campaigns (both sides are thought to have substantial financial reserves to draw upon) but of circumvention of a expenditure limits and the ‘loudhailer effect’ – of well-funded speech drowning out less capital friendly views.

**Expenditure Limits**

9. Unlike Committee on Standards in Public Life but like PPERA, the Bill opt for expenditure limits. This is, in and of itself desirable and brings the regulation of referendums into line with the other forms of electoral campaigning. But what of the levels and why index to Scottish Parliament elections rather than General Elections in Scotland, or local government elections, or indeed some combination of them? The selection of index election leads to very different results. The risk is that without adequate justification – and there has not been to date – the Government will be accused of designing a scheme which is skewed towards its own interests.

**Public Funding, Absence of**

10. The absence of public funding from the Bill’s scheme is an oddity. Public funding is a constant feature of all UK politics, including the Scottish Parliament and

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14 Defined at PPERA section 80.
16 As a consequence of the Fixed-term Parliaments Act 2011, now less of an issue.
18 See EN at ¶150ff.
19 See Policy Memo ¶81.
its elections, and referendums under PPERA. It serves a number of valuable functions: levelling the playing field, providing unfunded voices with the capacity to contribute to the formation of public opinion, and publically demonstrating the value of viewpoint diversity. Almost all UK referendums to date have provided for public funding and those that have not have not been justly criticised – viz. Wales 1997.

11. The stance of the Bill not to support these practices or principles requires substantial justification. Presumably the argument is that both ‘sides’ have amply resources and so state provision is unnecessary. Or perhaps the argument is borne of austerity. In either case, it is unconvincing. Whilst it is true that both campaigns are already up and running, they are not and ought not be the entirety of the campaign. The two campaign groups are closely related to the major political parties. Even if both sides are well funded, this does not take into account the substantial, non-party aligned, sections of Scottish public life that risk being drowned out by the familiar dominant voices. Scotland’s vibrant civil society – its churches and faith groups, charities and not-for-profits, other association groups – which are often unaffiliated, should be supported by public funding even if the parties and official campaigns should not.

Transparency

12. Transparency is lauded as a key goal and achievement of PPERA. Nonetheless, we need not take these plaudits on trust, nor need we ignore the substantial regulatory gaps that are contained in PPERA and replicated in the Bill. The first and most glaring of these is the absence of \textit{ex ante} donation reporting for referendum campaigns. This was a matter that the CSPL took very seriously in the context of general elections and their words are worth extracting at length:

“... information is urgently needed [in the period immediately before a general election]. It may have an immediate bearing on the response of other potential donors and it may impact upon voters’ intentions. In this period, therefore, there should be a recurrent obligation to furnish the \textit{best available information} about disclosable donations within seven days of receipt. The formula ‘best available information’ is proposed because there is bound to be difficulty in the hectic pre-election days in producing absolutely comprehensive information.”

13. \textit{Ex ante} interrogation of donations allows electors to evaluate the nature of a donation, its effect on the upcoming poll, and allow them to align themselves with or against a campaign on the basis of their published supporters. The US Supreme Court in \textit{Buckley} put it thus, “the sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.” There is no principled reason for not extending this logic to referendums, as for general elections. Indeed,

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21 ¶12.48. Emphasis added.
22 \textit{Buckley v Valeo} 424 U.S. 1 (1976), 66.
the CSPL did not even address the issue directly. The Bill, in making a similar omission, makes the identical error.23

14. On the basis of the scheme currently contained in the Bill, the electorate will form its opinion on the largest question that Scots have ever had to decide without knowing who is funding the two sides of the campaign, what they think of those donors and what that knowledge tells them about the respective campaigns. This weakness was addressed in part by the two campaigns in the Voting System referendum of 2011,24 both of whom criticized the absence of transparency on funding prior to polling day.25 Indeed, on a voluntary basis both campaign groups published their donations ex ante. Whilst laudable, and considerably better than nothing, such voluntary actions are very much a second best, lacking as they do the commensurability of mandated reports in terms of timing, format and thresholds. Moreover, not having the force of law behind them, the possibility for inaccuracies in reporting cannot be discounted. The rather laconic response of the Electoral Commission that “current donation reporting requirements mean that voters are not guaranteed access to information about who has funded the campaigners until long after polling day”26 can be inverted – the current arrangements guarantee that reliable information about who has funded the campaigners is denied the electorate. The Bill itself puts in place the requirement that “all permitted participants [must] provide regular reports to the Electoral Commission ahead of the poll on all donations and loans received.”27 This is allegedly to “ensure maximum transparency”28 but it does not unambiguously do so. At most it provides information to the Commission necessary for the monitoring and enforcement of funding controls, but it reveal who is funding whom. As to the argument that in the frantic final weeks of a referendum campaign, the Commission could not verify donation report, recourse could be had to the criminal law formulation of “knowingly or recklessly making a false declaration”, as contained in sections 10 and 11 PPEA 2009.

Disclosure Thresholds

15. The £5,000 disclosure threshold was increased to £7,500 by the PPEA.29 Although this Act was principally a response to the spate of scandals that afflicted the Labour Party from 2005 onwards – ‘Cash for honours’/Lord Levy, Peter Hain’s think tank, proxy donations and David Abrahams30 – the legislature also took the opportunity to raise the disclosure threshold by 50%. The reasoning revolved around

23 RIDER – in discussions with representatives of the government, it appears that they believe that the Bill does provide for ex ante disclosure. That is not my reading of the Bill, nor apparently that of the Electoral Commission (private conversation with an EC official). If I (and the EC) are wrong about this, then ¶12-14 herein should be ignored.
25 Ibid., ¶5.95.
26 Ibid., ¶5.97.
27 Policy Memo, ¶87.
28 Ibid.
29 c.12 Pt 2 s.20(3) (January 1, 2010). For local parties, the disclosure threshold was raised to £1,500 and for the purposes of permissibility from £200 to £500.
30 Navraj Singh Ghaleigh, Paul Reid, and Ben Kemp, ‘Politics As A Profession: Electoral Law, Parliamentary Standards and Regulating Politicians’ [2012] Public Law
unsubstantiated ideas of “administrative convenience”. The thinness of this reasoning is clear when one asks what administrative burden is lifted by raising the threshold? Is it the burden on the Electoral Commission or parties? If the former, is that a sufficient reason or even plausible in a world of electronic filing? If the latter, are there really so many donations at the local level around £1,500 that constituency parties (essentially volunteer operations) cannot cope with them? If this burden applies to central parties, similar considerations apply but their force is diminished owing to their non-voluntary staffing.

16. In any event, this threshold now places the UK in a dim light in comparison with the USA where federal candidates, party committees and PACs must disclose to the Federal Election Commission the name and address of any person who makes a contribution or contributions aggregating more than $200 during a calendar year, together with the date and amount of any such contribution. There is no obvious administrative reason why the Bill could not make similar requirements for donations. Its effect on public knowledge of the reality of the donation landscape would be dramatic. A donation to a campaign of £7,499 would remain secret, yet its campaign effects would be significant. It would fund the printing of 450,000 leaflets – more than every household in Edinburgh. The idea that donations of this size should remain secret should be a source of embarrassment.

17. For the purposes of the Bill however, PPERA’s provisions are again passively replicated. These are hardly “the highest international standards”. It is odd to have to argue, with a legislature that has full legislative competence in this matter, that opaque processes tend to facilitate corruption or capture. Corruption or its appearance is more likely because secret funding facilitates rent-seeking and transparent processes make quid pro quos more difficult, increasing the likelihood that they will be exposed. Rights-based arguments can also bring us to this same destination – transparent constitutional processes are a necessary precondition for citizens to participate in democratic self-government. In the presence of information asymmetries, citizens struggle to make meaningful decisions, as political equals, at the ballot box.

Foreign Donations

18. The question of foreign donations was somewhat confused by a recent Supreme Court decision. In any event, the broad position is that donations from those not on a UK electoral register are impermissible. Nonetheless, foreign donations are being actively solicited by at least one of the campaigns. The website of Yes Scotland states that “if you are not on an electoral register in Scotland we will not be able to accept a donation of more than £500 from you.” Their website

31 HC Deb, vol 488, col 588, 2 March 2009; PBC cols 78-81, November 6, 2008.
33 R (on the application of the Electoral Commission) (Respondent) v City of Westminster Magistrates Court (Respondent) and the United Kingdom Independence Party (Appellant) [2010] UKSC 40.
34 As a matter of law, this is incorrect. A permissible donor, either in the terms of PPERA (section 54) or the Bill (Sch 4, Part 1, section 1(2) and (3)) is inter alia an individual registered in an electoral maintained under section 9 of the Representation of the People Act 1983.
further states that, “£5 produces 300 leaflets, £25 distributes leaflets to 300 homes, £50 sends a campaign team to a local event, £100 delivers a community campaign meeting, £500 sends a resource starter pack to five new local groups.” That being the case, even a single ‘legal’ foreign donation can have notable campaign effects in a society as small as Scotland. Namely, a single foreign donation would fund the printing of 30,000 leaflets, or 6,000 homes leafleted, 10 campaign teams sent to local events, 5 community campaign meetings delivered or 5 resources starter packs sent new local groups. Given the large Scottish diaspora, and the active soliciting of such donations, even a trivial volume of such donations would have a distortive effect on the campaign, inimical to the statutory concept of the permissible donor.

**Final Remarks**

19. The various failings of the Bill should be a cause for concern to the Committee. Whilst it is commonly said, under the Chatham House rule, that the Government will not admit any substantial changes to the Bill, it should be clear that such changes are necessary. The risk under the Bill’s current scheme is that big money will dominate the referendum campaign, much of it from abroad, to squeeze out non-mainstream voices and hidden from public scrutiny and discussion.

6 June 2013

__contrast, the Better Together website states that__, “we will ask all donors to confirm they are not from overseas; we will check that anyone who gives a donation of over £500 is not from overseas.” Moreover, those wishing to execute an online donation, are required to complete a tick box stating that “I Confirm That I Live In The United Kingdom And Am On The UK Electoral Register.”<https://secure.bettertogether.net/page/contribute/default> accessed on April 3, 2013.
SCOTTISH INDEPENDENCE REFERENDUM BILL

Written Submission from Sallie Condy on behalf of
Glasgow Council for the Voluntary Sector (GCVS)

Submission relevant to the Public Awareness and Understanding key theme.

It is requested that due consideration be given to the provision of measures as part of a public awareness campaign for those adults and young people that face challenges with their literacies skills, given that these could impact their ability to participate in the referendum.

The Scottish Survey of Adult Literacies (SSAL)(2009)\(^1\) states that

‘around one quarter of the Scottish population (26.7%) may face occasional challenges and constrained opportunities due to their skills….. Within this quarter of the population, we find that 3.6% (one person in 28) faces serious challenges in their literacies practices.’

Individuals will not have a wealth of literacies practices from which to draw in order to participate in the referendum, so it will be essential to ensure that information is provided in an accessible way.

It is suggested that the measures for this should include an easier to read guide and an associated publicity campaign to raise awareness that it is available. The guide would for example encourage participation by explaining registration and the process needed to vote, along with explaining what will happen at the polling station. The guide could be made available in hard copy or electronically for download.

In order to fully utilise this resource, it will need to be available by April 2014 in order to allow ample time for learning providers to work with individuals. The availability of the guide could be promoted for example via the Big Plus Campaign and Education Scotland networks.

Intermediaries and support agencies, such as GCVS, play a key role in ensuring individuals with literacies issues are effectively supported and it will therefore be important to make provision for this as part of the Bill, if the legislation is serious about engaging with the many individuals in Scotland who face these challenges.

21 May 2013

\(^1\) Scottish Survey of Adult Literacies (SSAL)(2009) Scottish Government
http://www.scotland.gov.uk/Publications/2010/07/16144921/0
SCOTTISH INDEPENDENCE REFERENDUM BILL
WRITTEN SUBMISSION FROM DAVID HALL

I was born in Scotland but now live in England and I object to not being able to vote on the Referendum. Having been born and bred through university in Scotland, I feel I have more of a right to vote than any non-British national.

David Hall
3 June 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

HARRY HAYFIELD

I am a resident of the county of Ceredigion in Wales and hope that committee will accept a submission from a fellow Celt, if not a Scottish citizen. My submission is concerned about the oversight of the counting procedure for the referendum and covers three aspects:

1) Democratic Oversight
2) Media Reporting
3) Electorate Awareness

Firstly, Democratic Oversight. I am pleased that the bill published yesterday allows for observers registered with the Electoral Commission to watch the count as it is being held but am a little concerned that there does not appear to be enough recognition that international observers, some of whom may come from areas also interested in holding referenda on independence, would be welcome to come. Therefore I would like to see a recommendation from the Committee that the Office for Democratic Institutions and Human Rights and the European Commission are given as many chances to recruit and send observers to the count.

Secondly, Media Reporting. The Referendum announcement on March 21st 2013 was a very important day for Scotland and yet, if it had not been for my ability to get Scottish television via Sky Television, I would not have been able to see the announcement live. I would therefore like the committee to recommend that the broadcast of the count is shown live on both Sky News and BBC News and that any other international news channel that wishes to show the count live is given access to do so.

Thirdly, Electorate Awareness. The last time a referendum was held in Scotland, to establish the Scottish Parliament in 1997, the count was held overnight and although most people were aware of the result, that was the following day following the formal announcement of the result of the vote in the Highland council area. This referendum is even more important than that referendum, therefore I would like the committee to recommend that after the close of polls, the ballot boxes are taken to the local count centres (as outlined in the bill) and then placed under a secure guard so that the count can start at 9.00am the following day (so that the maximum number of people in Scotland can see the result being announced and be aware of the overall result).

I would dearly love to attend a session of the committee in case members had any questions they wished to raise about my suggestions, however the cost of getting from Ceredigion to Edinburgh is very prohibitive (and at this precise moment I am suffering from a painful hip joint), however if it is possible, I would be able to attend using video conferencing software (such as Skype) from my home.

March 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM THE RETURNING OFFICER, THE HIGHLAND COUNCIL

The Highland Returning Officer’s comments are highlighted in **BOLD** as shown below.

Section 8

(2) A counting officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the counting officer of functions under this Act.

**Charges Order required. The draft Order should be made available before the Bill is enacted to assure the elections community that adequate finance to administer the referendum will be made available.**

SCHEDULE 2

18 (1) In this Act, the cut-off date means 5pm on the eleventh day before the date of the referendum.

21 (1) In the case of a person shown in the postal voters list or the proxy postal voters list, no postal ballot paper (and postal voting statement) may be issued until after 5pm on the cut-off date.

*The earliest day for posting of postal packs to those on the standing list of postal voters is Wednesday 3 September 2014. As legislation is being introduced for the issue of Postal Packs in the European Parliamentary Election, the Referendum Rules should run to the same timetable.*

Confirmation of receipt of postal voting statement

34 (1) A voter or a voter’s proxy who is shown in the postal voters list or proxy postal voters list may make a request, at any time between the first issue of postal ballots under paragraph 22 and the close of the poll, that the counting officer confirm—

(a) whether a mark is shown in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned, and

(b) whether the number of the ballot paper issued to the voter or the voter’s proxy has been recorded on either of the lists of provisionally rejected postal ballot papers kept by the counting officer under sub-paragraphs (2) and (3) of paragraph 40.
(2) Where a request is received in accordance with sub-paragraph (1) the counting officer must, if satisfied that the request has been made by the voter or the voter’s proxy, provide confirmation of the matters mentioned in sub-paragraph (1).

It is accepted that postal voters should be able to confirm with the counting officer whether their postal vote has been received. However, there is no remedy for the voter if their postal ballot paper has been provisionally rejected.

Destruction of copies of the Polling List etc.

53 (1) This section applies to any person holding a copy of any registration document (within the meaning of paragraph 51(3)).

(2) The person must ensure that the document is securely destroyed no later than one year after the date of the referendum, unless otherwise directed by an order of the Court of Session or a sheriff principal.

Does this section apply to the electronic data held regarding individual postal voters and their personal identifier information? Paragraph 51(3) cross refers to 46(1) and (2) which both refer to ‘printed copies’. It also refers to 48(1) which allows relevant organisations to request information but the onus will be on the relevant organisation to destroy the document.

Supply of marked Polling List etc. to designated organisations

54 (1) A designated organisation may request that a counting officer supply the organisation with copies of—

(a) the marked copy of the Polling List,

In terms of Rule 37(1) of the Conduct Rules, the Counting Officer has to send papers (including sealed copies of the marked Polling List (Sec 36(2)(d)) to the Proper Officer of the Council. Counting Officer should be changed to “Proper Officer” in all occurrences in Rule 37.

SCHEDULE 3 – Conduct Rules

Use of schools and public rooms for polling and counting votes

7 (1) The counting officer may use, free of charge, for the purpose of taking the poll or counting the votes—
(a) a suitable room in the premises of a school to which this rule applies in accordance with paragraph (2), and

(b) any meeting room to which this rule applies in accordance with paragraph (3).

(2) This rule applies to any school maintained by an education authority.

(3) This rule applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—

(a) the Scottish Ministers or any other part of the Scottish Administration, or

(b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

The Scottish Government or the Electoral Commission should supply a list of the organisation to which para 7(3) above applies in order that they can be made aware of this additional responsibility.

Appointment of presiding officers and clerks

10 (1) The counting officer must appoint and pay—

(a) a presiding officer to attend at each polling station, and

(b) such clerks as may be necessary for the purposes of the referendum.

(2) The counting officer may not appoint any person who is or has been involved in campaigning for a particular outcome in the referendum.

Clarification is required of the meaning of campaigning. If an individual expressed support for a particular view on a website, does that constitute campaigning and prohibit their employment as poll staff?

Loan of equipment for referendum

12 (1) A council must, if requested to do so by a counting officer, loan to the counting officer any ballot boxes, fittings and compartments provided by or belonging to the council.

(2) Paragraph (1) does not apply if the council requires the equipment for immediate use by that council.

(3) A loan under paragraph (1) is to be on such terms and conditions as the council and the counting officer may agree.
The Scottish Government should either issue guidelines on reasonable loan terms and conditions, or include this in the Charges Order. It is estimated that the cost of loaning equipment (320 ballot boxes; 450 Voting screens and equipment for the count) to the counting officer could be in the region of £7,500.

The Count

30(4) For the purposes of paragraph (1)(c), a postal ballot paper is not to be considered as having been duly returned unless it—

(a) is returned—

(i) by hand to a polling station in the same local government area, or

(ii) by hand or post to the counting officer,

before the close of the poll, and

For the avoidance of doubt, the address of the Office of the Counting Officer should be specified.

Referendum Guidance

In the Referendum Bill (in its current form) Paragraph 25(1) to Schedule 4 will prohibit the Highland Council during the pre-referendum period (13 August – 18 September) from providing any material which—

(a) provides general information about the referendum,

(b) deals with any of the issues raised by the referendum question,

(c) Puts any argument for or against any outcome, or

(d) is designed to encourage voting at the referendum.

Schools in Highland return from their summer break on 19 August 2014. Therefore, under the provisions in the Bill, the Council would not be able to raise any referendum issues with pupils. The inclusion of (a) and (d) appears to contradict all of the efforts that are being made to inform and encourage youth participation.

5 June 2013
1 Introduction

1.1 Inclusion Scotland (IS) is a Scottish-wide network of self-organised groups of disabled people and disabled individuals. Currently over 70 organisations of disabled people and over five hundred individual disabled people are members. Inclusion Scotland’s main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and to encourage a wider understanding of these issues throughout Scotland.

1.2 Disabled people, like all other citizens, wish to play their full part in shaping the political future of our nation. Therefore Inclusion Scotland welcomes the Committee’s invitation to provide evidence as the Referendum will provide a unique opportunity for disabled people to play an equal part in a “once in a lifetime” piece of decision-making.

1.3 It should also be recognised that the Scottish Government and Parliament have a duty, under the UN Convention on the Rights of Disabled People, to ensure that disabled people are enabled to participate equally in political life. Article 29 (Participation in political and public life) of the Convention states –

“States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

a. Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

   i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; …” (our emphasis)

2 Barriers to Participation

2.1 Between 2007 and 2010 Inclusion Scotland worked in partnership with Leonard Cheshire Disability’s Citizenship Academy and the Electoral Reform Society to
promote voter registration amongst disabled people and to identify barriers to electoral participation.

2.2 We also brought together disabled people with Electoral Registration Officers’ staff from a number of local authorities at an event in Stirling to identify practical proposals aimed at increasing disabled people’s participation in future Scottish elections.

2.3 Several major obstacles to full and effective participation in elections have been identified by ourselves and in an earlier survey by Capability Scotland:

(i) the physical accessibility of polling stations
(ii) the difficulties that those with visual impairments have in casting their ballots.
(iii) the difficulties that some people with learning difficulties had in understanding electoral information
(iv) the failure to provide electoral information in British Sign Language.

3 Physical Access to Polling Stations

3.1 As late as 2010 disabled people were still reporting difficulties in accessing some polling stations. Though there have been great improvements in reducing barriers, local authority staff (at our Stirling event) admitted that some polling stations were still not fully accessible to wheelchair users. We believe that only fully accessible buildings should be used as polling stations for the Referendum, noting that anything less than full accessibility could be in breach of Article 29 of the UNCRDP.

4 Visual Impairments & Ballot Papers

4.1 The UK Parliament’s Working Party on Electoral Procedures recommended in 1999 that election rules should be changed to allow the provision of large print posters of the ballot paper and ballot paper templates or polling aids in polling stations. However disabled people with visual impairments reported that this change had not really assisted them in casting their ballots.

4.2 This is because whilst the large print facsimile of the ballot paper can be read by many of those with limited vision it cannot itself be used as a ballot paper. This means that the disabled person, on many occasions, still cannot identify where they should be placing their cross. Moreover, polling station staff are under instructions not to assist those who ask for help in casting their vote.

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2 Polls apart 5: Disabled voters’ experiences in the 2007 Scottish election, (Capability Scotland, June 2007).
4.3 This has created an anomaly because those with physical impairments which prevent them from voting can be assisted in casting their ballot by a named individual whereas those with a visual impairment cannot.

4.4 Inclusion Scotland would urge the Committee and Scottish Government to address this anomaly as it cannot be fair that one group of disabled people are deemed worthy of assistance whereas another group are denied that self-same assistance. We would recommend that anyone reporting that they cannot cast their ballot because of an impairment or condition should be allowed to nominate a named individual to assist them regardless of the type of impairment that limits their ability in this area.

5 Easy Read Information

5.1 As Members of the Committee will recall there were particular issues surrounding the 2007 Scottish Parliament elections that were identified as being related to a lack of understanding of balloting procedures by those with learning disabilities. As such Capability recommended that more information on voting procedures should be provided in an ‘easy read’ format. Organisations of and for learning-disabled people have repeatedly called for this since then and we would concur with their pleas.

5.2 Easy Read not only renders information in a more accessible format for learning-disabled people but in fact assists everyone, but particularly those with literacy issues, to more fully understand information. Thus the provision of information in Easy Read on both the Referendum itself and balloting procedures will increase informed voter choice, surely something that those on both sides of the debate would welcome.

6 BSL Information

6.1 As Members of the Committee will also be aware members of the deaf community who use BSL consider themselves a cultural group within wider Scottish and UK society. As such they, rightly, demand that information should be provided to them in their own language.

6.2 In addition, the Electoral Commission have reported that they received representations from members of the deaf community regarding the lack of election information provided in British Sign Language. The Electoral Commission concluded that for future Scottish elections more needed to be done to ensure that electoral information was accessible to the BSL community. Inclusion Scotland would therefore recommend that information regarding the election and

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3 Polls apart 5: Disabled voters’ experiences in the 2007 Scottish election, (Capability Scotland, June 2007).

balloting procedures is produced in a variety of formats including Easy Read and BSL.

7 Conclusion

7.1 Disabled people are as passionately divided on the issue of Scotland’s future within the Union as any other section of Scottish society and as such Inclusion Scotland has no settled policy on independence. However disabled people are as one in demanding that they participate as equals in the Referendum debate and in balloting on Scotland’s future and they are supported in this by the UN Convention. Inclusion Scotland hope, and believe, that the Parliament and Government of Scotland will do all in their power to ensure that disabled people are thus enabled to participate as full citizens.

Inclusion Scotland
22 May 2013
I am writing following Bill Scott’s oral evidence on access to voting last week, regarding the inclusion of assistance for physically disabled and blind people.

We were pleased to note that Schedule 3, Rule 23 on page 58 of the Bill covers blindness and inability to read. However, we remain concerned that this may exclude visually impaired people. There is certainly scope for their inclusion though as there is currently no definition of blind within the Bill. We suggest that anyone registered with their local authority as blind or partially sighted – and thereby in receipt of support services, passported benefits and/or reduction of payment for some services, from social work – could be included in a definition of blind/unable to read within the Bill.

This would provide easy clarification for those who need additional support to make their vote. This allowance is very unlikely to be abused as only those in need of this support would be likely to ask for it.

We hope you take on board this point and include a definition within the Bill as an amendment that would ensure that no discrimination takes place against people with a visual impairment who wish to vote.

Inclusion Scotland
3 June 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL
THE LAW SOCIETY OF SCOTLAND

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

This response has been prepared on behalf of the Society by members of our Constitutional Law Sub-Committee (‘the committee’). The committee is comprised of senior and specialist lawyers (both in-house and private practice).

General Comments

The Scottish Independence Referendum Bill is a complex measure which derives from the Political Parties, Elections and Referendums Act 2000, the Scotland Act 1998, the Scotland Act 1998 (Modification of Schedule 5) Order (SI 2013/242) and the agreement between the United Kingdom Government and the Scottish Government on a Referendum on Independence for Scotland (15 October 2014) (“the Edinburgh Agreement”).

The Bill does not contain any major points of principle as most of the Bill is taken up with the detailed rules relevant for the operation of the referendum.

Paragraphs 41 and 42 of the Policy Memorandum state that the detailed rules in the Bill for voting and the conduct of the poll are in line with those for Scottish Parliament elections and, moreover, that the Scottish Government has consulted extensively with electoral professionals to ensure that the referendum poll will be delivered consistently with election polls.

The Committee had previously been concerned, when commenting on the Franchise Bill, that there should be adequate protection for the Register of Young Voters. There is some protection in the Franchise Bill itself, but the Referendum Bill also ensures that, when the full "Polling List" is prepared, the entries drawn from the register of local government electors will be merged with the register of young voters in such a way that it is not possible to identify from which register a particular name has been drawn (see Paragraph 17 of Part 2 of Schedule 2 to the Bill and Paragraph 17(3) and (4) in particular). Dates of birth are not to be shown on the Polling List and the clear intention is to protect young people’s details (see also Paragraph 44 of the Policy Memorandum).

This written evidence only refers to those provisions in the bill on which the Committee has comments to make.
Section 1 – Referendum and Scottish Independence

This Section complies with the terms of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 and the Edinburgh Agreement.

Section 2 – Those who are entitled to vote

This Section links the Bill to the Scottish Independence Referendum (Franchise) Act 2013.

Section 4 – Chief Counting Officer

This Section requires Scottish Ministers to appoint a Chief Counting Officer for the Referendum. Section 4(5) allows Scottish Ministers to remove the Chief Counting Officer if they are satisfied that he or she is unable to perform his or her functions by reason of any physical or mental illness or disability. This provision is slightly different from the provisions of Section 5 – Other Counting Officers which allows the Chief Counting Officer to remove a Counting Officer from Office if he or she is satisfied that the Counting Officer is “for any reason” unable to perform the Counting Officer’s functions. It is not clear why there is a difference between these two provisions. The Government should explain the rationale for this difference.

Section 5 – Other Counting Officers

See comments in Section 4

Section 6 – Functions of the Chief Counting Officer and Other Counting Officers

This Section sets out the responsibility of the Chief Counting Officer to ensure that the Referendum is properly and effectively conducted including the conduct of the poll and the counting of votes in accordance with the legislation. It obliges each Counting Officer to conduct a poll on counting votes in the local government area for which each Officer is appointed, to certify the number of ballots counted by the Officer, the number of votes cast and the number of rejected papers. This Section broadly reflects Section 128 of the Political Parties Elections and Referendums Act 2000 (PPERA) although there is no reflection of Section 128(4) which requires a local authority to place the services of their Officers at the disposal of the Counting Officer for the area and there is an inclusion in Section 6(2)(b)(iii) of the number of rejected ballot papers which is not reflected in Section 128(6) of (PPERA). The Government should explain the rationale for this difference.

Section 8 – Expenses of Counting Officers

This Section provides that the Chief Counting Officer and Counting Officers can recover from Scottish Ministers charges for and any expenses incurred in connection with the exercise of their function. The maximum amount of charges and expenses will be determined in an order made by the Scottish Minister.

A draft of this Order should be made available prior to the passage of the Bill.
Section 13 – Campaign rules, general offences

Section 13 provides that a person commits an offence if that person alters, suppresses, conceals or destroys any document (which includes any book, record or other document liable to be required to be produced for inspection under Schedule 5, Paragraphs 1 or 3. It is also an offence to withhold information or fail to provide information to the relevant person or to provide false information. There are two offence provisions, Sections 13(7) and (8). Section 13(7) applies to an offence committed under Sub-Sections (1)(4)(b) or (5). The penalty is on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both) on conviction of an indictment to imprisonment for a term not exceeding 12 months or to a fine (or both). A person committing an offence under Sub-Section (4)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. It is not clear why there are two different offence provisions, both based on Sub-Section (4) although there may be a proportionality argument. However, it is perhaps odd that the term of imprisonment on both summary conviction and on indictment should not exceed 12 months. These offences appear to be strict offences and there is no provision for a reasonable excuse defence.

Section 15 – Duty of court to report convictions to the Electoral Commission

This Section requires the court to notify the Electoral Commission of the conviction as soon as is practicable. Should this duty be imposed on a named individual, say the Clerk of Justiciary or the Clerk of the Court.

Section 21 – Information for voters

This Section obliges the Electoral Commission to take such steps as they consider appropriate to promote public awareness and understanding in Scotland about:

1. The Referendum;
2. The Referendum question; and
3. Voting in the Referendum

This Section is important because it reflects Paragraph 3.1.D of the European Commission for Democracy through Law (Venice Commission) Code of Practice on Referendum (2009) which requires that authorities “provide objective information” about the Referendum.

Section 24 – Report on the conduct of the Referendum

Section 24 requires the Electoral Commission to prepare and lay before the Scottish Parliament a report on the conduct of the Referendum as soon as reasonably practicable after the Referendum. Section 24(2) mandates some of the content of the report relating to how the Commission carried out their function and the expenditure of the Commission. There may be an issue concerning the publication of this report “as soon as is practicable” and the time limits for providing returns on Referendum expenses and delivery of returns under Schedule 4, Part 3, Paragraph 20 and 22 which stipulate a time limit of three months and six months respectively.
Section 30 – Power to make supplementary, etc. provision and modifications

This Section allows Scottish Ministers to make supplementary, incidental or consequential provision in order to give full effect to any provision of the Act. There is no obligation to consult on the subordinate legislation enacted in connection with this provision. The Government should be required to conduct such a consultation.

Section 31 – Restriction on legal challenge to Referendum result

Section 31 provides that any legal challenge to the certification of the votes cast in the Referendum must be brought by way of judicial review and must be lodged within six weeks of the last certification of the result. This is in conformity with most Referendum legislation.
Schedule 3 – Conduct rules

Rule 1 - Publication of notice of the referendum

Rule 1(2) provides that certain days are to be disregarded in the computation of the time limit for publishing the notice of the Referendum. These include Saturdays, Sundays, Christmas Eve or Christmas Day or Bank Holidays. In the Referendum Bills under the Parliamentary Voting System and Constituencies Act 2011, Rule 2(1)(c) included the provision that any day appointed as a day of public Thanksgiving or Mourning should be disregarded. There should be a similar provision in Rule 1(2).

Rule 7 – Use of schools and public rooms for polling and counting votes

Rule 7 provides that the Counting Officer may “use, free of charge, for the purpose of taking the poll or counting the votes… any meeting room to which this rule applies in accordance with Paragraph (3).” (3)(b) applies the rule to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998). The Scottish Public Authorities search on the Scottish Information Commissioner website [www.itspublicknowledge.info/scottishpublicauthorities/authorities](http://www.itspublicknowledge.info/scottishpublicauthorities/authorities) indicates that Scottish Public Authorities includes bodies as diverse as local authorities but also including the Accountant in Bankruptcy, the Auditor General for Scotland, Children’s Hearing Scotland, Disclosure Scotland, Fife Constabulary, Greater Glasgow NHS Board, Her Majesty’s Chief Inspect of Prisons for Scotland, the Judicial Appointments Board for Scotland, the Keeper of the Registers of Scotland, the Mental Welfare Commission for Scotland, OSCR, the Public Appointments Commissioner for Scotland, Quality Meat Scotland, the Risk Management Authority, the Scottish Court Service, Tayside Valuation Joint Board, all the universities, Visit Scotland and the Water Industry Commission for Scotland.

The Parliamentary voting system and Constituencies Act 2011 restricts the free room provision to rooms, the expense of maintaining which is met by any local authority in Scotland.

What is the reason for including the rooms of Scottish Public Authorities?

Rule 10 – Appointment of presiding officers and clerks

Rule 10(2) provides that “the Counting Officer may not appoint any person who is or has been involved in campaigning for a particular outcome in the Referendum”. This is distinct from Rule 14(1) of the Parliamentary Voting System and Constituencies Act 2011 which provides that the Counting Officer may not employ “a person who has been employed by or on behalf of a permitted participant in or about the Referendum”.

Rule 10 does not provide a definition of “campaigning nor does Schedule 8. The provision in the 2011 Act although narrower is clearer and can be interpreted with more certainty.
What is the reason for the difference in approach?

**Rule 12 – Loan of Equipment for Referendum**

Rule 12(1) provides that a Council must, if requested by a Counting Officer, loan to the Officer any ballot boxes, fitting and compartments provided by or belonging to the Council.

Rule 12 (2) provides that this does not apply if the Council requires the equipment for immediate use by that Council.

There is no provision for a fall-back. Where would a Counting Officer obtain equipment if Rule 12(2) applied?

**Rule 14 – Appointment of polling and Counting Agents**

Rule 14(5) provides for certain days to be disregarded in the calculation of the time limit for notification of appointment of polling or Counting Agents by the Referendum agent. It does not include days allocated to public mourning or thanksgiving. See the comments on Rule 1(2)

**Rule 15 – Admission to polling station**

Rule 15(2) allows certain persons to attend the polling station. These include MPs, MSPs, MEPs and Councillors. There were no such provisions in the analogous rules under the 2011 Act, Rule 21.

What is the rationale for this difference?

**Rule 17 – Keeping of order in polling station**

In Rule 17(2) should it be made clear that the person is to be removed immediately from the polling station?

**Rule 33 – Decisions on ballot papers**

Rule 33 provides that the decision of the Counting Officer on any question arising in respect of a ballot paper is final. The 2011 Act has a similar provision in Rule 44 stating however that the final decision of the Counting Officer is “subject to review in accordance with Paragraph 23 of Schedule 1”. Paragraph 23 of Schedule 1 corresponds to Section 31 in the Bill where there can be a legal challenge to the Referendum result by way of judicial review. Rule 30 should reflect the possibility of challenge under Section 31.

**Rule 40 – Orders for production of documents**

Rule 40 provides that the Court of Session or a Sheriff Principal may make an order for the inspection or production of rejected ballot papers, for the opening of a sealed packet and for the inspection of any counted ballots for the purposes of instituting or
maintaining a prosecution or proceedings under Section 31. In the 2011 Act, this power was given to the Court of Session or the Sheriff.

What is the rationale for allocating this jurisdiction to the Sheriff Principal?

Schedule 4 – Campaign rules

Part 2 – Permitted participants and designated organisations

Paragraph 7(3)(b), see comments on Schedule 3, Rule 7.

Part 3 - Referendum Expenses

This applies to expenses incurred for referendum expenses and which fall within Paragraph 10. These provisions generally follow those in PPERA, Chapter 11, Criminal Controls.

Paragraph 10(3) - Expenses qualifying where incurred for referendum purposes

The Electoral Commission may issue a code of practice regarding whether expenses fall within paragraph 10. This code must be sent to Scottish Ministers who must lay the code before Parliament. This should be done soon so those who will be campaigning know what expenses they can incur.

Paragraph 11(12) – Notional referendum expenses

See comments regarding Section 13.

Paragraph 13(2) – Restriction on payments in respect of referendum expenses

Expenses of less than £200 do not need to be vouched by receipt. This reflects PPERA but should not all expenses be vouched?

Paragraph 17 - General Restriction on referendum expenses

This paragraph sets a limit on expenses of £10,000 which can be incurred by individuals or bodies which are not permitted participants. However the limit only applies during the referendum period i.e. 16 weeks before the referendum. As a control on expenditure this is not effective as expenses are currently being incurred without such controls.

There are offence provisions for spending more than £10,000 in the referendum period.

Paragraph 18 - Special restrictions on referendum expenses by permitted participants

This paragraph sets out the expenditure limits by permitted participants during the referendum period. These limits and the associated offence provisions apply only
during the 16 week period and do not apply at the moment. It would have been clearer if the Bill had prescribed the limits for each of the political parties in the Scottish Parliament based on the formula rather than merely setting out the formula - see Schedule 4, Paragraph 18(2) of the Bill which is explained in Paragraph 80 of the Policy Memo.

**Paragraph 22 - Delivery of return's to Electoral Commission**

This paragraph requires a responsible person to deliver the returns under paragraphs 20 and 21 to the Electoral Commission within 6 or where appropriate 3 months of the end of the referendum period. This is reinforced by a criminal sanction but it seems inadequate to police expenditure in this way when the time lag between incurring the expenditure and the reporting of that expenditure is so long.

**Paragraph 24 - Public inspection of returns under paragraph 20**

This paragraph allows public inspection of the returns. Should there not be a requirement to publish the returns?

**Part 4 - Publications**

Paragraph 25(2) provides that for 28 days before the referendum the Scottish Ministers, SPCB and any Scottish Public Authority will be in purdah.

Para 29 of the Edinburgh Agreement states that “The UK Government has committed to act according to the same PPERA-based rules during the 28-day period.” Does this mean that the UK Government will follow purdah in the same way as the legislation sets out?

**Schedule 5 – Campaign rules: investigatory powers of the Electoral Commission**

Schedule 5 gives the Electoral Commission investigatory powers including powers to inspect documents, to apply to the Court of Session for a document disclosure order, to retain documents and to copy them.

Legal professional privilege is protected in paragraph 10.

**Paragraph 11 – Admissibility of statements**

This Paragraph provides that a statement made by a person is admissible in any proceedings i.e. civil or criminal proceedings. However, where the proceedings in question are criminal the statement is only admissible if the person who made it introduces it into the proceedings. Accordingly the Commission will require to inform a person making a statement with the potential for court proceedings to follow about the terms of this provision and to allow the person access to a solicitor.
Schedule 6: Campaign rules: civil sanctions

Schedule 6 gives the Commission power to impose fixed penalties on referendum rule offenders if it is satisfied beyond reasonable doubt that the responsible person has committed the prescribed offence or has breached Schedule 4.

Paragraph 2 – Representations and appeals, etc.

This Paragraph allows for representations to be made to the Commission but here is no detail in the Schedule as to how the Commission reach the decision to impose the penalty especially where that imposition can only occur when the Commission is satisfied 'beyond reasonable doubt'. Paragraph 2 recognises this issue when it provides in Paragraph 2(5) and (6) that following written representations the Commission may not impose the penalty and that the person on whom the penalty is imposed may appeal to the Sheriff on various grounds including that the decision was wrong in law or fact or was unreasonable.

Paragraph 25 – Guidance as to enforcement

This Paragraph provides that the Electoral Commission must publish guidance on the sanctions but does not prescribe when this publication is to occur.

May 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Supplementary submission, following oral evidence session on 9 May 2013

In the evidence last week, I indicated that the High Hedges (Scotland) Act 2013 contained a statutory obligation to consult on subordinate legislation. That obligation refers to statutory guidance rather than subordinate legislation.

Scottish Ministers have a statutory obligation to consult on subordinate legislation in terms of the following:-

   a) The Scotland Act 2012 (s.20 and s.21)
   b) The Dormant Bank and Building Society Accounts Act 2008 (s.20(D))

There may be other examples obliging other Ministers to consult on subordinate legislation, however, I think these are good examples.

Michael Clancy
15 May 2013
The LSCC believes:

- there should be a single, clear and neutral question on the subject of independence or not
- the referendum should be held sooner rather than later as the uncertainty caused by delaying it further could damage the economy
- the referendum process ought to be run independently by the Electoral Commission
- in return for granting the SNP a vote for 16 and 17 year olds, the ‘Overseas 15 year rule’ – the rule that applies in UK general elections and European Parliament elections that enables non-UK residents to vote if they were resident in the UK during the previous 15 years - should be adopted with a minor addition to also include those formerly registered in Scotland but now registered elsewhere in the United Kingdom being granted the right to vote in the Scottish referendum
- the SNP’s proposed application of the same voter eligibility as the Scottish Parliamentary and council elections is not appropriate for a decision which is permanent, unlike a four year tenure.

3 June 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL
WRITTEN SUBMISSION FROM JOHN MACLEOD

I refer to the Committee’s call for evidence in relation to the above Bill, and submit the following views, focussing in particular on the question of whether the ballot paper should be in a bilingual (English/Gaelic) format.

I believe strongly that the ballot paper for the referendum on Scottish independence should be available in a bilingual format (Gaelic and English), and that the Bill should specify this. There are various reasons for this, many of which are incorporated in the attached PDF document which contains the substance of an e-petition (PE01483)¹ which I recently submitted for the attention of the Public Petitions Committee of the Scottish Parliament. While the e-petition should be referred to for the detailed arguments I set out, I can summarise the position as follows:

1. The Gaelic Language (S) Act 2005, which received all-party support in the Scottish Parliament, was passed “with a view to securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language”

2. The Scottish Government has published a Gaelic Language Plan, prepared under the above legislation. It states that “when delivering services in Gaelic, we shall endeavour to ensure they are of a comparable standard and quality as those they provide in English” There is also a commitment to enhance the status of Gaelic by ...
   “ensuring that Gaelic is given an increased profile within Scottish public life ...”

3. In a written reply to a Scottish Parliamentary Question² the Deputy First Minister stated that the Scottish Government does not plan to provide a Gaelic language version, and that the Electoral Commission in a recent test of a proposed question (in English) found that some voters who speak Gaelic as a first language had understood the question easily and experienced no difficulty in completing the ballot paper. In a recent reply from the Scottish Government to a letter I wrote to her following this response, I have been informed that the ballot paper arrangements in the Bill “replicates the standard arrangements in place at elections and referendums in Scotland and the U.K.” I would dispute this as my information indicates that in a referendum that took place in Wales in 2011, on the subject of the voting system for UK elections, the ballot paper was in both English and Welsh, so the precedent has already been set.

¹ Public Petition PE01483. Accessible at: http://scottish.parliament.uk/GettingInvolved/Petitions/petitionPDF/PE01483.pdf

4. The justification for promoting Scottish Gaelic is not about “an ability to understand English” but about “language rights” and “equality of respect between Gaelic and English”. Indeed, the use of Gaelic in a key constitutional process such as a referendum on independence – a question the Scottish Government has said is the most important question put to a Scottish electorate in more than 300 years – is necessary in order to maintain the relevance of the language as “an official language of Scotland”.

5. It is expected that the referendum electorate will include 16 and 17-year olds, some of whom will be products of the successful development of Gaelic-medium Education over the past 25 years. They deserve to have their education language given the due “recognition” and “respect” that the law says it should have.

6. It must also be remembered that the United Kingdom has ratified the European Charter for Regional or Minority Languages, and the Scottish Parliament and the Scottish Government must respect commitments made under the charter. Article 7(1) requires governments to base policies, legislation and practice on a number of principles, including the need for resolute action to promote Gaelic in order to safeguard it (c), and the facilitation and/or encouragement of the use of Gaelic, in speech and writing, in public, as well in private life (d). If the referendum is the most important decision to be taken in Scotland in 300 years, allowing those Scots who wish to use Gaelic to express their views on this matter must surely be the most important thing that the Scottish Government could do to satisfy commitments made under the Charter.

Leis gach deagh dhùrachd,

4 June 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM PROFESSOR TOM MULLEN

To support oral evidence to the Referendum (Scotland) Bill Committee on 16 May 2013

Challenges to the Outcome of the Referendum

Section 31 of the Bill provides as follows:

“31 Restriction on legal challenge to referendum result
(1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast as certified by a counting officer or by the Chief Counting Officer under section 6(2)(b) or (as the case may be) (4) unless—
(a) the proceedings are brought by way of a petition for judicial review, and
(b) the petition is lodged before the end of the permitted period.
(2) In subsection (1)(b) “the permitted period” means the period of 6 weeks beginning with—
(a) the day on which the officer in question makes the certification as to the number of ballot papers counted and votes cast in the referendum, or
(b) if the officer makes more than one such certification, the day on which the last is made.
(3) In subsection (1), references to a petition for judicial review are references to an application to the supervisory jurisdiction of the Court of Session.”

Thus, any challenge in court must be brought by a petition for judicial review and must be made within 6 weeks of completion of the count. This provision is similar to those in earlier referendum legislation e.g. the Parliamentary Voting System and Constituencies Act 2011 (AV referendum) and the Government of Wales Act 2006 (extension of powers of Welsh Assembly) and is designed to ensure any doubts about the referendum result are resolved swiftly.

It should be noted that the limitation of access to the courts applies only to proceedings which seek to question the number of ballot papers counted or votes cast. The provision does mention challenges on other grounds. This raises four questions:

- Could a challenge to the outcome be brought otherwise than under section 31?
- On what grounds might such other challenges be brought?
- Within what time should such challenges be brought?
- Who might bring such a challenge?
Could a challenge to the outcome be brought otherwise than under section 31?

It can be argued that a challenge could be made at common law. Section 31 excludes applications to the supervisory jurisdiction of the Court of Session outwith the time limit only in respect of the matters specified (the number of ballot papers counted and votes cast). Therefore, it remains possible to apply to the supervisory jurisdiction in relation to other matters. However, it is not clear whether a challenge to the outcome of the referendum would fall within the scope of the supervisory jurisdiction.

According to the leading case, *West v Secretary of State for Scotland* 1992 SC 385, the Court of Session has power, in the exercise of its supervisory jurisdiction, to regulate the process by which decisions are taken by any person or body to whom a jurisdiction, power or authority has been delegated or entrusted by statute, agreement or other instrument. The sole purpose for which the supervisory jurisdiction might be exercised is to ensure that the person or body does not exceed or abuse its jurisdiction, power or authority or fail to do what is required. Moreover, for a case to be appropriate for the exercise of the supervisory jurisdiction, there must be a tri-partite relationship, between the person or body to whom the jurisdiction has been delegated, the person or body by whom it was delegated, and the persons in respect of whom the jurisdiction is to be exercised.

A person challenging the referendum outcome would have to specify the person to whom the challenge was addressed, and the decision, action or inaction of that person s/he was challenging. There would be some uncertainty as to both of these requisites so we cannot be sure whether or not a challenge to the outcome of the referendum would fall within the scope of the supervisory jurisdiction.

If, however, the challenger could convince the court that the case did fall within the scope of the supervisory jurisdiction, the three further questions listed above would arise.

On what grounds might such other challenges be brought?

The competence of holding the referendum has been settled by the Scotland Act 1998 (Modification of Schedule 5) Order, SI 2013/242. Apart from the integrity of the count itself, there might conceivably be concerns about the conduct of the election campaign, for example, breaches of the rules on donations and expenditure rules or irregularities in relation to voting.

Election petitions in parliamentary elections have been brought on a variety of grounds including the incurring of unauthorised election expenditure (*Grieve v Douglas-Home* 1965 SC 186), improper conduct of the election by officials (*Re Kensington North Parliamentary Election* [1960] 2 All ER150) and a candidate’s making false statements in relation to another candidate’s personal character or conduct (*Watkins v Woolas* [2010] EWHC 2702 (QB); *R. (Woolas) v Parliamentary Election Court* [2010] EWHC 3169 (Admin);
Election petitions under the Representation of the People Act 1983 are available only to challenge the election of a candidate and not the outcome of a general election.

However, although in theory a person might bring a challenge on the grounds that there had been such widespread irregularities as to call into question the fairness of the outcome, the likelihood of a successful challenge is remote. A few isolated examples of unauthorised expenditure or minor irregularities at a few polling stations would not suffice. There would have to be something so substantial as to raise genuine doubts about the fairness of the outcome, in order to persuade the court to intervene.

**Within what time should such challenges be brought?**

There is no fixed time limit for raising proceedings for judicial review, however, the court does have a discretion to refuse a remedy on grounds of *mora* (delay), taciturnity and acquiescence (see e.g. *Portobello Park Action Group Association v City of Edinburgh Council* 2012 SLT 1137).

**Who might bring such a challenge?**

In order to raise a petition for judicial review, a person must have standing to sue. Until recently, there might have been doubt about the range of persons who might have been able to raise a legal action to challenge the outcome of the referendum. However, the test for standing was recently reformulated in two Supreme Court cases (*AXA General Insurance Ltd, Petitioners* [2011] UKSC 46; 2012] 1 AC 868 and *Walton v Scottish Ministers* [2-12] UKSC 44; 2012 SLT 211).

The person raising the petition must have sufficient interest in the matter to which the application for judicial review relates, but this is to be broadly interpreted and does not necessarily mean that the person must have a greater interest than any other person. The dicta in both cases made clear that in appropriate cases a petitioner can represent the general public interest. Accordingly, whilst both the official campaigns would clearly have sufficient interest to challenge the outcome, a broader range of individuals and groups might also have standing.

Professor Tom Mullen
University of Glasgow
13 May 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM NO CAMPAIGN LIMITED (NO TO AV)

To support oral evidence to the Committee on 9 May 2013

No Campaign Limited
Under the name “NO to AV” No Campaign Limited was formed for the purposes of fighting the AV Referendum of 2011. It was the designated lead campaign group on the No side. Although the company is now formally dormant, the individuals involved in its operations continue to take an interest in referendum-related matters.

Matthew Elliott is a board director of No Campaign Limited and was the Campaign Director of NOtoAV, which turned public opinion from being 2:1 in favour of introducing the Alternative Vote to voting 2:1 against a year later in the referendum. Matthew also founded the TaxPayers’ Alliance in 2004, to campaign on behalf of taxpayers and to tackle government waste. He launched Big Brother Watch in 2009 to fight the surveillance state, and has been described as “probably the most effective political campaigner that Britain has produced in a generation”.

William Norton is a board director of No Campaign Limited and was the Responsible Person for the AV Referendum, handling the legal and compliance aspects of the campaign. He was also the registered referendum agent for No Campaign Limited in all 440 electoral districts. In the past William acted as referendum agent for North East Says No Limited, which was the designated lead campaign group on the No side for the 2004 North East Referendum. He is the author of White Elephant: How the North East said NO (Social Affairs Unit, 2008), an account of the regional assemblies issue and how the North East Referendum answered it.
Executive Summary

We recommend that the Scottish Independence Referendum Bill be amended.

High Level concerns for the fairness of the Referendum

- The Electoral Commission should not be given the duty of promoting understanding of the Referendum Question (Section 21) because as the question is drafted it will be impossible for the Commission to explain it without compromising their neutrality.

- It is clearly wrong in principle for one side in a referendum to have access to a free mailing to all voters (possibly also TV broadcasts) which is denied to the other side (Schedule 4, paragraph 5). That defeats the object of designating lead groups in the first place, which is to ensure that the public receives a fair hearing from both sides.

- The method for calculating the expenditure limits for political parties (Schedule 4, paragraph 18) is a significant departure from existing principles and severely handicaps some parties compared to the position under UK law. This could be interpreted as an attempt to favour one side over the other.

- The only legal restriction on public authorities (Schedule 4, paragraph 25) contains loopholes and lacks an enforcement procedure. This creates an opportunity for undue influence of the outcome. It should be replaced by a measure with genuine teeth which also applies to bodies in receipt of EU funding.

- Grants should be available to both designated organisations. The grant would only reimburse expenditure on printing the freepost mail-shot and preparation of TV broadcasts. Only 50% of expenditure would be reimbursed and the maximum grant payable would be capped at 10% of the campaign’s spending limit, i.e. £150,000.

Medium Level concerns about the technical conduct of the Referendum

- The deadline for appointing referendum agents (Section 16) is too early and should be put back to the normal PPERA date that applies under UK law.

- The provision for aggregating spending among groups working to a common plan (Schedule 4, paragraph 19) is unworkable and misconceived. A better way to prevent abuse is to tighten the rules for registering as a participant (Schedule 4, paragraph 2).

- The investigation powers of the Electoral Commission (Schedule 5) should include an express provision to enforce the controls on Ministers. This would provide clarity that the referendum will be fought fairly, and be seen to have been fought fairly.

- The matters caught by the Electoral Commission’s civil penalty regime (Schedule 6) should be specified now, not left to later statutory instrument. Ministers and public bodies should be inside the scope of these penalties.

Low Level concerns about other aspects of the Bill

- It seems odd that non-English languages are not represented in the
referendum materials (the Question in Section 1 and the ballot paper in Schedule 1). This may raise concerns from the point of view of voter engagement. Has this issue been considered?

- The power for Ministers to re-write the provisions of the Bill (Section 30) should be qualified or subject to a final deadline. Ministers should explain why they require such a power and the circumstances in which they expect to use it.
Introduction

1.1 The Scottish Independence Referendum Bill (“the Bill”) introduced on 21 March 2013 contains significant revisions from the original Draft Bill published in January 2012. We were highly critical of the Draft Bill, chiefly in regard to its omissions, and we welcome the fact that many of its deficiencies have been addressed. In particular, we welcome the fact that the provision of campaign loans is now regulated, as we called for through the various consultation processes.

1.2 There is already an existing framework for fighting a referendum, laid down by the Political Parties, Elections and Referendums Act 2000 (“PPERA”). That UK statute was drafted following a full review of the area by the Committee on Standards in Public Life, under the chairmanship of Lord Neill, in their Fifth Report of October 1998. That report reviewed the 1997 referendums, as well as looking back to the 1975 European Referendum, in formulating their recommendations.

1.3 The Bill largely copies the provisions of PPERA. On the whole, that is to be welcomed since there is now reasonable familiarity with its provisions, and hence certainty as to the legal position of campaigners. Unfortunately, it also means that the Bill carries over some aspects of PPERA which, in the light of experience, ought to have been amended before any other referendums were held.

1.4 In a number of key areas, the Bill deviates from the PPERA template, either in its provisions or in what it omits. Viewed from the perspective of campaigners, we consider that these differences will have a significant impact on the way in which the referendum will be conducted.

1.5 This note highlights areas where we believe the Bill could be improved. Since this is necessarily a technical and specialised subject, for ease of reference we have divided our recommendations into three categories:

- Matters of High Level Concern, which could affect the fairness of the referendum;
- Matters of Middle Level Concern, which are principally issues of a technical and compliance nature with drawbacks for campaigners on either side;
- Matters of Low Level Concern, where other improvements could be made.

Section 1 and Schedule 1

2.1 We note that the Referendum Question (Section 1) and the draft ballot paper (Schedule 1) are written in solely in English. The Bill does not appear to permit non-English documentation for the Scottish Referendum. On the other hand, the AV Referendum did permit the use of Welsh language material in
2.2 We are aware that there are sufficient Gaelic speakers in Scotland to justify the existence of a bespoke TV channel (BBC Alba) and a Gaelic version of the website for the Scottish Parliament.

2.3 This omission will not represent any difficulties for campaigners, and actually simplifies their work. But it seems odd that non-English languages are not represented in the referendum materials and we would mention it as a Low Level concern from the point of view of voter engagement. For example, there is the question of Gaelic language referendum broadcasts. Has this issue been considered?

Section 16: appointment of referendum agents

3.1 Referendum Agents will be the principal representatives of a campaign in each local authority area, e.g. dealing with the counting officer. Section 16(3) states that the deadline for appointing these Agents is 25 working days before polling day, i.e. Wednesday 13 August 2014.

3.2 This is earlier than has been the case in previous referendums. A deadline of 16 working days before polling day applied for the North East Referendum of 2004, and in the Welsh Referendum and AV Referendum of 2011. That deadline would fall on 27 August if the Referendum Date is retained as 18 September 2014.

3.3 In 2011 Scotland’s electoral administrators were able to deal with a 16-day deadline for AV referendum agents, as well as handling the parallel elections (in fact, on the whole they handled it far better than their counterparts in England). So it is not obvious why they would require an earlier deadline in handling Referendum Agents alone.

3.4 On the other hand, an early deadline increases the inconvenience for campaigners, especially if that deadline falls in August.

3.5 We would consider this to be a procedural annoyance, rather than inherently unfair, and categorise it as a Medium Level concern.

Section 21: role of the Electoral Commission

4.1 Under the Bill, the Electoral Commission is given the specific task of promoting public awareness and understanding of the Referendum, the Question and the voting process. This is a different remit than has applied in previous PPERA referendums.

4.2 In the 2004 North East Referendum the Commission had the primary remit of

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1 Parliamentary Voting System and Constituencies Act 2011, section 1(8)
2 The Regional Assembly and Local Government Referendums Order 2004, article 11
3 The National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010, article 18
4 Parliamentary Voting System and Constituencies Act 2011, Schedule 1, para 12
encouraging voting. The duty to promote awareness about the arguments for and against the proposal only arose if the Commission were unable to appoint designated organisations for both sides. The Commission discharged this remit by a public advertising campaign and website, and issuing each voter with a booklet which said very little about the substance of the regional assembly proposal, and concentrated more upon the associated reorganisation of local government.

4.3 In the 2011 Welsh Referendum, the Commission was given the remit of promoting public awareness of the referendum, its subject matter and how to vote.7

4.4 In the 2011 AV Referendum, the Commission was given the remit of promoting public awareness of the referendum and how to vote, and a separate obligation of providing information about the rival voting systems.8 They discharged the first through a public advertising campaign and website, and the second by issuing each voter with a booklet which described the mechanics of the two systems. Both sides had complaints about the booklet content.

4.5 It is undesirable for the Commission to be responsible for promoting understanding of any Question, because it would be very difficult to do so without engaging with the issues on the Yes and No sides and thereby compromising their neutrality.

4.6 For example, some people would say that in many ways Scotland already is a separate “country”, e.g. in having a distinct legal system, a devolved law-making parliament and its own representation in international sporting events. Others would argue that Scotland would not be “independent” in any meaningful sense if it remained within the EU and/or did not have its own currency, citing the recent example of Cyprus. It will be impossible for the Commission to explain this particular Question, and what it means for Scotland to become an “independent country”, without being either subjective or partisan.

4.7 Because this problem creates the risk of compromise to the neutrality of the Electoral Commission, we would categorise it as a High Level Concern. Sub-section (b), and the duty to promote “understanding”, should be deleted from Section 21. Explaining the Question raises more serious problems than the actual wording of the Question.

Section 30: amendment by statutory instrument

5.1 Section 30 contains a very wide-ranging power for Ministers to alter any provision of the Bill or the rules it contains. In theory, everything in the Bill could be re-written before polling day.

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5 Regional Assemblies (Preparation) Act 2003, section 8
6 Regional Assemblies (Preparation) Act 2003, section 9
7 The National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010, article 16
8 Parliamentary Voting System and Constituencies Act 2011, Schedule 1, para 9
5.2 We appreciate that widely-drafted amendment powers of this nature have become almost boilerplate provisions in modern legislation. The statute governing the AV Referendum included a number of order-making provisions, including modification powers, but each of these was limited to a narrow scope. In particular, there was no power to re-write the conduct rules or the campaign rules, because the referendum period started with Royal Assent to the Act, so those rules came into effect immediately. With this Bill the referendum period starts on a specific date (Friday 30 May 2014, following the definition in Schedule 8) and there is likely to be an interval between the Bill being enacted and the start of the controlled period.

5.3 It would be helpful for campaigners and election staff if they could be certain that there was a deadline beyond which the conduct rules would not be altered. For example, in the AV Referendum, the Electoral Commission set 16 February 2011 as a deadline for Royal Assent to the legislation, because election staff needed assurance on the final governing framework for planning local elections and the referendum. The Act was passed on that day (albeit just before midnight).

5.4 It would also be useful if Ministers could explain why they require such a wide-ranging power, and the circumstances in which they expect to use it. In the wider scheme of things we would categorise this as a Low Level Concern.

Schedule 4 paragraph 5: designation

6.1 The Bill expressly permits the Electoral Commission to designate a lead campaigner for one side but not the other. This is a significant deviation from PPERA section 108, where the Commission is bound by the “both-or-neither” rule that it has to designate lead groups for both sides.

6.2 Under the Bill, a designated organisation is only entitled to the use of public rooms for holding meetings (Schedule 4, paragraph 7). It was necessary for the Section 30 Order to incorporate PPERA section 127 (right to make referendum TV broadcasts) and PPERA Schedule 12, paragraph 1 (right to send a referendum mailshot to voters free of charge) for the benefit of any designated organisation.

6.3 Broadcasters have a duty of impartiality.\(^9\) Campaigners have limited scope to influence them. In the AV Referendum, although both Yes and No Campaigns had a “right” to TV broadcasts under PPERA, they could only accept the number of slots, and the timing of them, which the broadcasters were prepared to make available – e.g. a scheduled No Campaign broadcast was delayed at short notice to allow the BBC News to give extended coverage of the death of Osama bin Laden.

6.4 The Section 30 Order is silent about the duty of impartiality, but it does include a provision to exclude the duty of Welsh TV to broadcast Scottish referendum broadcasts.\(^10\) That reinforces the conclusion that the broadcasters’ duty of impartiality is not overridden, because otherwise it would have been expressly

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\(^9\) Broadcasting Act 1990 section 6; The BBC Agreement, clause 44
\(^10\) Section 30 Order, Article 4(3) disapplying Communications Act 2003 Schedule 12, paragraph 18
mentioned in the Order.

6.5 For their own professional reasons broadcasters are unlikely to want to provide airtime for only one side in the Referendum. Even if they were prepared to do so, they would expose themselves to legal challenge. Case law indicates that they would be on strong grounds in resisting the Parliament.

6.6 Royal Mail would probably be prepared to deliver a one-sided designated mailshot, if they could be certain of being paid. The Section 30 Order authorises payment by the Scottish Ministers\textsuperscript{11} “where paragraph 1(3) of Schedule 12 to [PPERA], as applied by this article, applies section 200A of the Representation of the People Act 1983”. That PPERA provision is framed on the assumption that there will only ever be a designated organisation for both sides, and never a one-sided designation. There is the risk of legal challenge (chiefly, to payment out of Scottish funds), but it would be less likely to succeed than an action against one-sided TV broadcasts.

6.7 It is clearly wrong in principle for one side in a referendum to have access to a free mailing to all voters (possibly also TV broadcasts) which is denied to the other side. That defeats the object of designating lead groups in the first place, which is to ensure that the public receives a fair hearing from both sides. We categorise this as a High Level Concern because paragraph 5 clearly creates the risk of an unfair referendum. It should be replaced by the equivalent wording from PPERA.

6.8 We suspect that the reason one-sided designation is permitted in the Bill is to avoid the perceived problem of a “tactical non-designation” by one side. In the Welsh Referendum of 2011, the No Campaign declined to apply for designated status. As this was a PPERA referendum with the both-or-neither rule, the Electoral Commission was unable to make designations. The result was that campaigners had lower spending limits, and there were no TV broadcasts or mailshots from either side. It has been alleged that the Welsh No Campaign opted for this approach in order to deliberately stifle the debate.

6.9 We are in no position to speak for the Welsh No Campaign, but their decision may have been motivated as much by finance. In the AV Referendum we experienced a genuine dilemma over whether to apply for designation. Sending a leaflet to every voter, and preparing TV broadcasts, would cost us at least £1 million. At that stage (February 2011) the level of donations received made it doubtful whether we would ever raise that much money. In theory a designated organisation was eligible for an Electoral Commission grant of up to £380,000, but the terms were extremely restrictive and grant money could not have been used to finance either the mailshot or any TV broadcast. Only comparatively late in the process did we decide to take the risk of applying for designation, committing to the expense of preparing the mailshot and raising funds to pay for it later.

6.10 Paragraph 5 appears to be intended as a “stick” to force both sides to apply for designation by holding out the threat of a one-sided designation. But designated status is of little value to a campaign group which cannot finance

\textsuperscript{11} Section 30 Order, article 4(4)
the costs of printing a mailshot and preparing TV broadcasts. The better
approach is to use a “carrot”, which we discuss in paras 12.1-12.10 below.

Schedule 4 paragraph 18: expenditure limits

7.1 The Bill contains radically different expenditure limits than were included in
the Draft Bill of 2012. Those controls were widely criticised as unfair and
unworkable.

7.2 PPERA Schedule 14 sets the expenditure limits for UK-wide referendums. A
designated organisation is limited to £5 million, political parties are limited to
amounts ranging in banded intervals between £500,000 and £5 million
depending upon their share of the vote, and all other campaigners are limited
to £500,000. Those were the limits which applied in the AV Referendum of
2011. This leaves open the question of how the limits would be set for
smaller voting areas.

7.3 For the North East Referendum in 2004, the limits for all participants were
scaled back proportionately by the size of the electorate, but no lower than
£100,000, and parties’ vote shares were taken from the most recent elections
to the European Parliament (which are conducted regionally). The principle
was maintained that no political party had a spending limit which was higher
than a designated organisation, which was set at £665,000.

7.4 For the Welsh Referendum in 2011, the same scaling back approach was
followed, with no participant capped at spending less than £100,000. Political
party vote share was derived as a blended percentage of their votes for both
constituencies and the list results in the most recent Welsh Assembly
elections. The principle was again upheld that no political party could have
a higher spending limit than a designated organisation, which was set at
£600,000 (although in the event, no such organisations were designated).

7.5 The Bill follows a somewhat more complicated approach. Designated
organisations are limited to £1.5 million, and other non-party campaigners to
£150,000, which is the proportionate relationship which would be expected
following the principles of PPERA. However, the effect of Schedule 4 is to
place a maximum ceiling on campaign spending by all political parties of £3
million, and to use the blended percentage approach to determine how much
of this aggregate pot is allocated to each party. The result produces a
different spending limit than under PPERA:

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12 The Regional Assembly and Local Government Referendums (Expenses Limits for Permitted
Participants) Order 2004, article 4
13 The National Assembly for Wales Referendum (Assembly Act Provisions) (Limit on Referendum
Expenses Etc.) Order 2010, article 4
<table>
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* Originally presented as £879,000 – corrected following 9 May oral evidence
** Originally presented as £399,000 – corrected following 9 May oral evidence
***Originally presented as £204,000 – corrected following 9 May oral evidence

7.6 We are aware that this approach has been vetted by the Electoral Commission. They appear to have accepted as a valid policy objective the claim that it would damage voters’ trust in the Referendum if there was not a rule which limited spending by political parties to a rough equivalence between pro-Yes and pro-No sides – although we note that the concocted paragraph 18 formula actually produces a pro-Yes advantage.

7.7 We believe that the Commission has overlooked the fact that Schedule 4 paragraph 25 does not follow the PPERA template (see paras 9.1-9.10 below). In the Bill the controls on publically-funded organisations are much weaker than under PPERA. Hence there is an area of politically-influenced activity which falls outside the narrow party spending covered by paragraph 18.

7.8 The logic of the argument behind paragraph 18 is to set an absolute “top-down” limit on spending by all Yes campaigners and all No campaigners. The limit would have to be increased significantly, probably to at least £4 million. A “top-down” approach could only be enforced by another special rule which prohibited referendum spending except by the officially designated lead campaign groups, and so prevented other organisations from registering as participants in their own right and conducting their own campaigns. That would be a major violation of the way in which democratic politics has been carried on in Scotland (and the rest of the UK) – and that is why a “top-down” approach to spending limits has never been adopted in the UK.

7.9 The theory behind paragraph 18 assumes that the parties concerned in fact register for the Referendum on the sides they are expected to. What happens if a party changes sides (e.g. because of the brilliance of the arguments) or decides not to register (e.g. because of internal division)? If either of those happens then the theory breaks down and the formula would produce a deliberately un-level playing field.

7.10 We do not believe that voters’ trust in the Referendum rules would be strengthened by a “special rule” which is designed to produce a pro-Yes advantage, particularly when the Bill contains other “special rules” which also
appear to favour Ministers over their opponents. In fact, we do not believe that the rules will have any effect on the level of public trust in Scotland’s politicians – other than, of course, to weaken it even further.

7.11 Taking into account the defects with the provisions on expenditure control (see below, paras 8.1-8.15 and 9.1-9.13), the Bill is open to the criticism that it appears to be designed to throttle spending by one side in the Referendum. We regard this as a matter for High Level Concern.

7.12 We would prefer a simple restoration of the PPERA approach to spending limits.

Schedule 4, paragraph 19: campaign expenses

8.1 This provision is not found in PPERA. It governs “expenses incurred as part of a common plan”. Where expenses are incurred as part of a “plan or other arrangement” among groups on the same side, and there is a designated organisation for both sides, each group subject to the plan has to declare all of the spending as counting towards its total, i.e. the same spending is multiple-counted towards the overall expenditure limits of all the groups.

8.2 This appears to be based upon a specific provision about “concert parties” which applied in the AV Referendum,14 (and which, so far as is known, had no effect – although most of the campaign groups on the Yes side opted to file a joint expenditure return). In the event, no participant spent anywhere near its limit, so the provision did not matter.

8.3 The concert party rule did not apply to the Welsh Referendum. There were no designated organisations on either side in that contest. Instead, a large number of local groups registered as permitted participants on one side. There has always been a suspicion that this was an attempt to engineer a higher amount of spending above the limit applicable to a non-designated campaigner.

8.4 The justification for this measure in the Explanatory Notes (para 172) is that it is intended to prevent the establishment of dummy campaign groups, in order to manufacture higher spending limits. We are aware that the Electoral Commission favours the introduction of rules to catch “concert parties” trying to subvert the spending limits.15 However, as it has been drafted it will not achieve this objective. Paragraph 19 is misconceived.

8.5 Campaigns are more likely to establish dummy groups in situations where there is no designated organisation – to accumulate several entitlements to spend £150,000 because no group is entitled to spend up to £1.5 million. But paragraph 19 is expressly limited to situations where there is a designated organisation on both sides (para 19(1)(d)), so it will not catch the circumstances where abuse is most likely.

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14 Parliamentary Voting System and Constituencies Act 2011, Schedule 1, para 17
15 Electoral Commission Referendum on the voting system for UK parliamentary elections (October 2011), Recommendation 15
8.6 In any well-run referendum there will always be some form of plan or co-ordination between sympathetic groups on the same side. The need for contact and co-operation will be even more acute if, say, there are a number of different political parties on one side who are more used to opposing each other. But the risk is that as soon as they try to reach a sensible plan for fighting the Referendum, paragraph 19 will handicap their activities.

8.7 Either: all activities will be co-ordinated through the umbrella designated organisation, in which case expenses will count against the designated organisation’s limit (so that supporting groups’ limits never come into play); or: the cost of activities co-ordinated outside the umbrella will count double (using up the limits more quickly).

8.8 Example (1): The SNP holds a pro-Yes rally, which costs £20,000. It notifies the Yes Campaign in advance, and the Yes Campaign refrains from holding any events on that day to avoid dividing media attention. Under paragraph 19, that amounts to an arrangement for incurring referendum expenses. Both groups are treated as having spent £20,000 (making £40,000 in total) - unless the Yes Campaign decides to accept all of the cost as having been incurred on its behalf (in which case it is treated as having spent £20,000 and the SNP £0). Neither filing outcome represents the reality of what actually happened.

8.9 Example (2): Group A is double-booked to give pro-No speeches in both Edinburgh and Glasgow on the same day. They agree with Group B that it will make the Glasgow speech instead. Both speeches cost £500. Under paragraph 19, there is an arrangement between the two groups, and they are both treated as having spent £1,000.

8.10 Ironically, paragraph 19 would probably not be very effective at preventing one obvious form of evading the spending limits. As campaign Group X reached its spending limit during the referendum, it could shut down, dismiss its staff and then re-register as a new organisation, Group Y. There would be no plan or arrangement between Groups X and Y, which had never been in operational existence at the same time, and they would probably have different board directors. The Electoral Commission would have to prove a pre-ordained conspiracy, which might be difficult.

8.11 The obvious nonsenses created by paragraph 19 could be avoided through the use of Electoral Commission guidance, stating in advance which non-contentious situations would not be regarded as comprising a “plan” or “arrangement”. But it is not ideal to cure a bad law by issuing extra-statutory guidance that has to pretend the law does not say what it actually does. The better course is to avoid enacting bad laws in the first place.

8.12 The mischief which the legislation seeks to prevent is evasion of the spending limits. The abuse which should be blocked is the creation of dummy organisations to qualify for additional spending capacity. The test should be whether different bodies are in substance the same organisation. That would actually address the objective in the Explanatory Notes, of blocking the same group from registering itself under multiple names.

8.13 This could be achieved by strengthening registration as a permitted
participant (Schedule 4, paragraph 2): requiring a declaration from the responsible person that the group is genuinely independent, supported by details of their separate bank account, payroll arrangements, campaign logo, corporate governance and administration. In particular, it would be a criminal offence to file a false declaration and the persons involved in the conduct and management of a registered participant could not also be involved in the conduct and management of another. Sufficient of these details would be disclosed on the Electoral Commission’s register of participants (Schedule 4, paragraph 4) to enable the opposing sides to police each other’s compliance.

8.14 The administrative burden for the Electoral Commission in policing the registration requirements we recommend would be much lower than would be created by paragraph 19. Furthermore, paragraph 19 potentially requires the Commission to second-guess whether participants are acting to a “common plan” in following a particular campaign structure. It would be unattractive if the Commission became involved in dictating campaign structure to participants.

8.15 On the face of it, this is an arcane technical point but it will add to the compliance burden of running any campaign. For that reason it should be best categorised as a Middle-Level concern. It would not have hindered any previous PPERA referendum, because in no referendum fought so far has either side approached its maximum expenditure. However, it would be far more significant in a close-fought, high-spending contest and might in practice adversely affect one side more than the other.

Schedule 4, paragraph 25: control of Ministers

9.1 Paragraph 25 is the equivalent of PPERA section 125, which is commonly known as “the purdah”. The material covered by both is identical and the two provisions share the same heading (“restriction on publication etc. of promotional material by central and local government etc”). Both measures prohibit the publication of material relevant to a referendum and both come into operation 28 days before polling day, which would be Thursday 21 August 2014 on the current timetable. The provisions do not create an offence; they merely impose a public duty.

9.2 The PPERA purdah applies to Ministers of the Crown, government departments, local authorities and “any other person or body whose expenses are defrayed wholly or mainly out of public funds or by any local authority”. There are exemptions for the Electoral Commission, the BBC, S4C and designated organisations.

9.3 The objective behind PPERA section 125 is clear: to prevent undue influence of a referendum by the use of public resources. This was almost certainly intended to address lingering allegations that the 1975 European referendum was in some way rigged.

9.4 Section 125 has been an issue in two of the referendums fought under PPERA (and it is understood that it was also a concern in the Welsh Referendum, even if no cases were ever pursued). It is not fit for purpose.
There is no mechanism for adjudicating or enforcing section 125 against a Minister of the Crown, and the limited machinery is too obscure and slow-working to provide any remedy even in a case that constitutes a clear breach.

9.5 In the North East Referendum of 2004 a Minister gave a newspaper interview two days before polling day to announce a change in government policy that would favour a North East Regional Assembly, were one to be approved. He considered this news to be a reason for voting Yes. The then Chief Executive of the Electoral Commission claimed he had no authority over section 125 complaints, and that it did not apply to the conduct in question. The Propriety & Ethics Unit of the Cabinet Office informed the No Campaign that it had no powers to force a Minister to obey section 125.

9.6 In the AV Referendum, a campaign group on the Yes side received a majority of its income from various public sector sources. They submitted a letter to the Commission in support of the Yes Campaign’s application for designated status. The group’s logo appeared on the Yes Campaign’s website as a supporter, and its own website publicised its support for a Yes vote. The Enforcement Team of the Electoral Commission took until the 27th day of the purdah period to decide that there was insufficient evidence of breach. When pushed further, they claimed that although they had by then found such evidence, nothing could be done after polling day.

9.7 In addition to carrying over these defects, paragraph 25 has a narrower scope. It covers only Ministers and parts of the Scottish Administration, the Scottish Parliamentary Corporate Body and certain public authorities. There is no equivalent for grant-funded organisations that are not public bodies.

9.8 That creates an obvious loophole for the mis-use of public resources. A campaign group or body wholly or mainly dependent upon taxpayers’ money could be financed to support one side in the Referendum (and this would arguably not rank as a reportable donation, due to the exemption in Schedule 4, paragraph 31(1)(a)).

9.9 The Bill has managed to take the PPERA section 125 purdah and produce something even less fit for purpose, and arguably creates an opportunity for the undue influence of the outcome.

9.10 The enforcement of paragraph 25 is opaque. Section 11 gives the Electoral Commission a general duty to monitor and secure compliance with the Campaign Rules in Schedule 4, but does not state how this is to be achieved.

9.11 It is laughable that there is a series of detailed rules which campaigners must follow (Schedule 4, 59 paragraphs), and very extensive provisions for them to be investigated by the Electoral Commission and punished for breach (Schedule 5, 15 paragraphs; Schedule 6, 29 paragraphs; Schedule 7, 21 paragraphs) but there is only one measure which applies to Ministers – who have actually decided that there should be a referendum in the first place.

9.12 We would categorise this as a High Level Concern. The purdah is the only legal restriction which applies to public authorities during a referendum. So far its deficiencies have not been significant in PPERA referendums because,
broadly, the only breaches have involved participants on the losing side.

9.13 Paragraph 25 should be replaced by a new measure with the following provisions:

- It should apply to Ministers, government departments, local authorities, public bodies and organisations who receive a majority of their resources from public funds (retaining exemptions for the Electoral Commission, the Chief Counting Officer, the BBC and either designated organisation).
- “Public funds” should include EU funding, which is currently ignored altogether.
- A 28 day purdah period is too short. The Electoral Commission’s longstanding view is that the purdah should run from the start of the referendum period.\(^{16}\) A sensible and principled compromise would be for it to start on the day after designation of the official Yes and No Campaigns – or when the Commission decides that it cannot designate (for whatever reason). Designation creates official groups entitled to public support. That is an obvious point for restricting any other form of publically-funded interventions.
- Breach should create an offence (which it does not at present). The Electoral Commission and anyone eligible to vote in the referendum should be able to refer a case to the courts.
- It should prohibit expressing or providing support for one side in a referendum as well as the activities currently forbidden. (In the case of Ministers, this restriction would apply to them only in their official capacity, not party political activity, but that merely reflects the current position on, e.g. electioneering.)
- It should clarify that the purdah extends to placing information in the public domain in any form and does not allow designated organisations to publish material or information on behalf of an individual or body which would be prohibited if that individual or body published it directly.

**Schedule 5: investigatory powers**

10.1 Schedule 5 copies over the investigatory powers of the Electoral Commission from PPERA Schedule 19B (which is not yet in force). It contains measures under which the Commission may require the disclosure of documents, and is chiefly aimed at ensuring that permitted participants have complied with the spending limits and donations rules.

10.2 However Schedule 5 paragraph 3 is drafted widely to cover any suspected breach of the Schedule 4 campaign rules and to require the provision of any document, information or explanation. This would appear to be the only mechanism for enforcing the Schedule 4 paragraph 25 purdah which applies to Ministers and public bodies (see para 9.1-9.13 above).

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\(^{16}\) See Electoral Commission *Referendum on the voting system for UK Parliamentary elections* (October 2011), Recommendation 6.
10.3 There should be an express provision within Schedule 5 stating that the Commission may compel compliance with the purdah provisions of Schedule 4, paragraph 25 (whether amended as we recommend or not). This would provide clarity that the referendum will be fought fairly, and be seen to have been fought fairly.

10.4 This suggested amendment carries a Medium Level Concern because it is primarily a matter of referendum compliance and practice.

Schedule 6: civil penalties

11.1 Schedule 6 contains robust measures for the Electoral Commission to levy fixed monetary penalties (Schedule 6, paragraph 1), impose a discretionary requirement (Schedule 6, paragraph 5) or serve a notice to stop activity (Schedule 6, paragraph 10) where they are satisfied beyond reasonable doubt that a person has committed a campaign offence or otherwise breached the Campaign Rules in Schedule 4. These penalties override any later criminal proceedings. Campaigners may also offer to give an undertaking to the Commission in lieu of such measures (Schedule 6, paragraph 15).

11.2 These carry over amendments to PPE RA (Schedule 19C) which have not yet been brought into force. In PPERA the intention is that a future statutory instrument will specify which offences and rules are covered by the Commission’s civil penalty powers. Because the Bill mainly copies PPERA, that feature has also been copied over. Hence, at the present time there is uncertainty because the offences and campaign rules which are covered will not be known until Ministers have issued a supplemental order.

11.3 There is no need to replicate such uncertainty with this Bill. Since they have copied these provisions, Ministers are presumably content with the idea that the civil penalty regime should come into force immediately. They should therefore be able to write into the Bill which offences and which of the Schedule 4 campaign rules they want to be covered, without recourse to a supplemental order.

11.4 It is not obvious why Ministers need a power for transitional provisions in their supplemental order (Schedule 6, paragraph 16(1)(a)). UK Ministers would require such a power in bringing PPERA Schedule 19C into effect, because PPERA-regulated elections have been taking place for many years, and it would change a pre-existing legal environment for handling election offences. In Scotland, however, it is not currently possible to commit a referendum offence, because there are no rules governing Scottish referendums. There is nothing from which to transition.

11.5 Specifying which offences and rule-breaches are covered from the outset would greatly assist prospective campaigners, election officials and the Commission itself.

11.6 We would strongly recommend that in any event Schedule 6 paragraph 16 is amended to require that any supplemental order specify that breach of the Schedule 4 paragraph 25 purdah (whether amended as we recommend or not) must be covered by the civil penalty regime. The purdah period only
extends for the final 28 days of the referendum period (see para 9.1 above),
and the civil penalties generally contain a 28 day warning period, so it would
not of itself stamp out inappropriate conduct by Ministers and public bodies
before polling day. Nevertheless, it would be an excellent early indication that
the referendum will be fought fairly, and be seen to have been fought fairly.

11.7 This suggested amendment carries a Medium Level Concern because it is
primarily a matter of referendum compliance and practice.

Grants to campaigners

12.1 The Bill is silent on the question of grants to campaigners. That follows earlier
consultation documents which stated that none would be paid. This is a
significant change from PPERA, under which designated organisations are
eligible for grants from the Electoral Commission.

12.2 This was a key recommendation of the Neill Committee, which advocated the
provision of grants to referendum groups to cover “core funding” and ensure a
level playing field between the two sides. The Neill Committee were
particularly influenced by evidence that “the referendum campaign in Wales in
1997 was very one-sided, with the last-minute No organisation seriously
under-funded and having to rely for financial support essentially on a single
wealthy donor. The outcome of the Welsh referendum was extremely close,
and a fairer campaign might well have resulted in a different outcome.”

12.3 The payment of grants to both sides in a referendum predates the introduction
of PPERA. In the 1975 European Referendum, £125,000 each was made
available to the two lead groups. PPERA section 110 sets a maximum
amount of grant that may be paid (£600,000) but otherwise allows the
Commission to determine quantum and criteria on a case-by-case basis.

- In the North East Referendum of 2004, grants of £100,000 were paid to
  both sides.
- In the AV Referendum of 2011, the Commission decided on a maximum
  grant of £380,000 to reimburse “eligible spending”. This covered
  campaign infrastructure and specifically excluded campaign materials
  and activity. £114,000 was paid on designation, with the balance
  claimable on provision of evidence of expenditure. Due to the restrictive
  eligibility criteria, both sides only claimed in the region of £140,000-
  £150,000 each.
- Similar rules would have applied in the Welsh Referendum of 2011, with
  proportionately lower amounts. No grants were paid to either side for
  the Welsh Referendum, but only because in the end no designation took
  place.

12.4 Thus, grants in the two 2011 referendums could not be used to finance the
preparation of mail-shots to voters or official TV broadcasts. The result was
less than satisfactory:

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17 Fifth Report of the Committee on Standards in Public Life, paragraph 12.36
18 Fifth Report of the Committee on Standards in Public Life, paragraph 12.32.
In the Welsh Referendum the No Campaign decided not to apply for designated status, meaning no designation could be made. Voters in Wales were denied the opportunity to hear fully from both sides.

In the AV Referendum the Yes Campaign decided not to send a mail-shot to all voters.

12.5 What is the purpose of designation? It is to ensure that there is a reasonable presentation of the arguments on both sides. That is why the two lead groups are entitled to freepost mailing of their referendum addresses and TV broadcasts. Therefore, a grant should be paid to ensure that these two facilities are taken up, so that the public receives a minimum level of information.

12.6 Discharging these public education rights comprises the largest activity during a referendum. During the AV Referendum the two sides spent the following amounts on “designated functions”:

- The Yes Campaign spent about £427,000 on their (limited) mail-shot and perhaps a further £54,000 on TV broadcasts, making a total of £481,000. That represented about 24% of their total declared spending and a little less than 10% of their limit.
- The No Campaign spent £929,000 on their mail-shot to the whole UK and a further £139,000 on TV broadcasts, making a total of £1,068,000. That represented about 43% of their total declared spending and a little over 20% of their limit.

12.7 We recommend that a grant should be available to a designated organisation on the following terms:

- The grant would only be available to reimburse expenditure on either the printing of the freepost mail-shot or the preparation of a TV broadcast.
- Only 50% of expenditure would be reimbursed – a campaign would have to spend £2 of its own money in order to receive £1 of public grant.
- The maximum amount of grant payable would be capped at 10% of the campaign’s spending limit, i.e. £150,000.

12.8 This assumes that the cost of printing 4 million leaflets and preparing two TV broadcasts would be £300,000. If a designated campaign spent less than this, it would receive a proportionately smaller grant, but if it spent more the grant would still be capped at £150,000. In this way designation would ensure that the public receive a reasonable minimum contact from both sides.

12.9 If the grant were to be restructured in this way then it would solve the “problem” of one side making a “tactical non-designation”. Applicants would know that if successful they could cover half of the cost of designated status. But the grant would be pegged at only 10% of their spending limit and it could not be used to subsidise wider campaigning activity, for which they would have to raise their own donations.
12.10 We consider this recommendation to be a High Level Concern because it is the most effective way of ensuring Scotland’s voters are fully and fairly informed.

2 May 2013
I write on behalf of the Scottish Community Alliance, a coalition of Scotland’s largest community-based networks, to express our support for the proposal on voter registration which has been submitted jointly by SCVO and STUC.

The need to restore voter participation could hardly be more urgent with the referendum and other key elections appearing on the horizon. In particular, we believe that there is a need to try to engage with some of the most hard to reach communities where voter numbers have been lowest in recent years.

Participation in our democracy is at an all-time low reflecting an alienation from party politics and political decision making. The referendum and forthcoming elections ought to be an opportunity to revitalise public participation. Everyone ought to have a role in considering Scotland’s future; particular emphasis ought to be placed on engaging with and listening to the voices of people who are most marginalised in our communities. Driving up voter registration and participation must be a strong priority.

In our opinion, the approach suggested in the SCVO/STUC proposal is the one that is most likely to succeed in this respect.

Angus Hardie
27 June 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

WRITTEN SUBMISSION FROM THE SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS (SCVO)

To support oral evidence to the Referendum (Scotland) Bill Committee on 30 May 2013

Summary

- SCVO believes that the Referendum debate ought to be an opportunity to open out discussion about the kind of country, economy and society people want to see. We are disappointed with the tone of the debate so far.

- Everyone ought to have a role in considering Scotland’s future; particular emphasis ought to be placed on engaging with and listening to the voices of people who are most marginalised in our communities.

- Participation in our democracy is at an all-time low reflecting an alienation from party politics and political decision making. The referendum ought to be an opportunity to revitalise public participation.

- Driving up voter registration and participation must be a strong priority. In particular, clear lines of responsibility and resourcing need to be established and agreed by parties, returning officers and the Electoral Commission.

- Lessons can be learned from elsewhere, particularly from Ireland, about community development campaigns on voter registration and participation, including initiatives for new citizens. There is still time to undertake this work so that everyone can be encouraged to take part.

Our briefing

SCVO welcomes the opportunity to input into the Bill and would like to contribute the following for members’ consideration:

This is an opportunity to move the debate beyond technical issues to a wider discussion about how we can encourage people to get involved in the debate, and ensure that the widest possible cross-section of Scottish society are registered and turn out to vote.

The debate so far

However, before we begin, we would like to take this opportunity to comment on the nature of the debate itself so far. SCVO has been disappointed with the tone of the debate up until now. The campaigns have tended to polarise the debate and have failed to give clear answers to important issues, leading to a perception of campaign dishonesty in the eyes of many ordinary people. There has also been a pressure on people engaging in the debate publically to declare which ‘side’ they are on, which has led to a lack of nuanced debate that is worthy of such a momentous decision as
deciding on the constitutional future of Scotland. The campaigns and parties must work harder to engage ordinary people. SCVO hopes that all involved in the debate find a way to open up the space for nuanced, thought-provoking, honest campaigning.

**Voter turnout and registration issues**

Moving on, SCVO believes that voting in elections is a crucial part of a healthy democracy. However, Electoral Commission research shows that levels of non-registration are higher among younger age groups and among some members of black and minority ethnic communities than in other groups. Voter turnout in recent times in Scotland has been lower than 50%, leading to serious questions around representation and legitimacy. Turnout in less affluent, more deprived, socio-economic areas is also far lower than that in affluent, white middle-class areas.

This is frankly unacceptable. SCVO strongly believes we have a duty to ensure this situation does not continue: we must ensure that 100% of eligible voters are aware of how to register and why they might wish to, and that those who are registered are inspired to vote. ‘Hard-to-reach’ potential voters must be targeted to ensure that the Referendum vote is undertaken by all. Driving up voter participation ought to be a national priority; even if a quarter or a third of our population decide not to vote, is that acceptable?

**Proven ways to improve voter engagement – lesson from Ireland**

Ireland has had some success in increasing voter turnout. Voting trends in Ireland declined from the 76% in 1969 to 62% in 2002. However they have risen in the two elections since and turnout was 70% in 2011. While there was a Government-led Active Citizenship programme in the late 2000s, some of their most successful initiatives seem to have been at the grassroots level. The Vincentian Partnership for Social Justice, Active Citizenship programme involved a three-step process exploring with people the reasons to vote, how to register and how to vote; considered ways in which to take an informed stance on important issues; and presented an approach to choosing candidates on an informed basis. Based on 400 workshops in 24 of the 26 counties and 150 ‘trainers trained’ in 15 years, voting trends increased between 12% and 31% in 6 selected areas.

**Suggested solutions to improve voter engagement in Scotland**

SCVO recently convened a round-table to consider voter participation in Scotland, chaired by Professor Charlie Jeffery from the University of Edinburgh, with representatives from the Electoral Commission, the STUC, the Electoral Reform Society, the Yes campaign, the Scottish Youth Parliament, and the third sector. Participants recognised that someone must be responsible for voter engagement and registration, and highlighted a range of engagement issues.

To achieve real improvement in registration, engagement and turnout in Scotland, those who attended the roundtable suggested that all communities be given the relevant resources to hold informed discussions about the Referendum in a participatory manner. The establishment, funding and resourcing of local groups of
people who can facilitate dialogue and learning in a neutral way – as in the Ireland example given above – is essential. Many community groups and local organisations are already starting to do this, something SCVO welcomes and is supporting. Moreover, academics also require the space to facilitate the sharing of evidence-based knowledge across Scotland for all, and media – especially local media – must be properly resourced to enable an informed debate to take place.

Traditionally, voter participation has been left to political parties but as we can see above, the issue is multi-faceted and needs community capacity building at various levels (locally as well as in different communities of interest). SCVO therefore recommends that communities be supported to undertake engagement activity, and that the Scottish and UK Governments set up a fund to support this.

**Future democracy**

SCVO would also like to take this opportunity to emphasise that the Referendum provides a chance to engage the population of Scotland with the political debate for future elections. Much like with the Olympics and increased sporting participation, SCVO believes the Referendum can leave a positive legacy of improved voter engagement for the future.

The Referendum will see the people of Scotland make one of the most important decisions that Scotland has seen in recent years. We all have a moral duty to ensure that as many people as possible participate in it in an informed way – building democracy for now and the future, and ensuring that the fate of Scotland is truly decided by all who live here.

SCVO
22 May 2013
Provided following oral evidence to the Referendum (Scotland) Bill Committee on 30 May 2013

Many thanks for inviting me to take part in the committee’s roundtable session on the Referendum Bill, which captured the key issues around voter registration.

It was heartening to see that all the issues that we highlighted were emphasised throughout the recent parliamentary debate on the Franchise Bill. MSPs from all sides referred to the importance of increasing registration and participation, and of using this opportunity to improve turnout in future elections.

It is clear everyone recognises the need for engagement of potential voters as a good idea. The key question is what is going to be done about it and who is going to do it.

As I mentioned in my evidence, SCVO and the STUC have worked up a proposal on this matter following discussions with a range of civil society groups and political and public bodies.

I have attached the formal proposal which we will be submitting to the Scottish and UK Governments.

The aim is for a well-resourced voter registration campaign, which focuses on the people who traditionally don’t vote to make sure they are able to do so in the referendum.

We would both strongly urge the Committee to endorse it and include it within the report recommendations.

For background, the proposal came about following a round-table convened by SCVO to consider voter participation in Scotland, chaired by Professor Charlie Jeffery from the University of Edinburgh, with representatives from the Electoral Commission, the STUC, the Electoral Reform Society, the Yes campaign, the Poverty & Truth Commission, the Scottish Youth Parliament and the third sector. Unfortunately, Better Together were unable to attend but they are also aware of the proposal.

Some of the key issues raised were:

- Participation in our democracy is at an all-time low, reflecting an alienation from party politics and political decision making. The referendum and forthcoming elections ought to be an opportunity to revitalise public participation
• Everyone ought to have a role in considering Scotland’s future; particular emphasis ought to be placed on engaging with and listening to the voices of people who are most marginalised in our communities.

• Driving up voter registration and participation must be a strong priority.

While many people’s view is that leading and co-ordinating awareness-raising is the role of the Electoral Commission, both the STUC and ourselves think that improving voter registration rates has to be led by well-established and trusted community groups, not a public body.

This type of engagement, especially with traditionally ‘hard-to reach’ groups needs to be run in a participatory, bottom-up manner, which will increase people’s engagement and long-term participation in the political process.

Dave Moxham from the STUC and I would be delighted to meet the Committee to discuss this matter further.

John Downie
12 June 2013
VOTER ENGAGEMENT PROPOSAL FROM SCVO AND STUC

Summary

Scottish society is clearly failing to engage politically. The last Scottish Government election registered turnout of only 50.6% in Scotland, (with just 37.7% turnout in Glasgow Shettleston for example), and just 39.7% in last year’s local elections. It is clear that something must be done now.

We believe that all communities must be given the relevant support to hold informed discussions about the referendum in a bottom-up, participatory manner. The resourcing of community groups and events that can facilitate dialogue in a neutral way is essential.

Currently some third sector organisations are organising such work with the resources available to them. This work is essential, not only to increase turn-out and engagement in the up-coming referendum and in future elections, but also to promote active citizenship. However, there is a limit to what some organisations can do given their resource.

SCVO and STUC therefore call on the UK and Scottish Governments to further fund this work. The aim would be to divert small grants quickly and efficiently to Scotland’s communities to enable them to facilitate debate and promote active participation. We understand that a number of Scottish organisations wish to assist in the delivery of this and we offer ourselves as administrative brokers in such a process.

Policy context and rationale

With low electoral turnout in Scotland (2012’s local authority elections having a turnout of just 39%), and the Electoral Commission’s research showing that young, urban, mobile and BME people regularly fail to register to vote, more needs to be done to engage the whole of Scotland in the debate and process for the upcoming referendum.

Evidence from the Electoral Commission suggests that, whilst voter registration efforts are important at all times, major electoral events provide a particular impetus to such campaigns. The referendum in 2014 provides a golden opportunity to achieve significant improvements in voter registration.

We believe it is essential that all communities are given the relevant resources to hold informed discussions about the referendum in a bottom-up, participatory manner; we feel engaging communities fully with the issues encourages them to register and then vote. The establishment, funding and resourcing of community groups and events that can facilitate dialogue in a neutral way is essential.
Such activity is not solely referendum-related – ensuring that we increase the number of registered and politically engaged people across Scotland should have a lasting effect on turnout in subsequent elections. This is particularly important given the enfranchisement of 16 and 17 year olds for the referendum vote, and the importance of creating a habit of voting amongst the youth population.

**The Proposal**

We believe that the Scottish and UK Government should act to ensure there is: a well-resourced voter registration campaign; objective information on what will happen post-referendum; and a concerted effort to engage with hard to reach groups.

In particular, we call on the UK and Scottish Government to support programmes such as Scottish Community Alliance’s ‘Big Vote’ Referendum Road Show that seeks to enable debates on the referendum across Scotland through the use of local facilitators. They already have over 20 community organisations on board, and the buy-in of both Better Together and Yes Scotland. They are currently limited in the number of communities they can engage with due to funding constraints.

Work such as this, led by well-established, trusted community groups and run in a participatory, bottom-up manner, will increase people’s engagement in the most important decision that Scotland currently faces, as well as increasing interest in voting across all communities in Scotland.

The academic community should also be encouraged and supported to provide balanced and accessible information to which community organisations can be sign-posted if that is their wish.

SCVO and STUC propose that the UK and Scottish Government create a fund to support community activity around the referendum and voting. We have already spoken to representatives from various third sector organisations who would be interested in taking such work forward if resources were available.

SCVO and STUC would be happy to undertake the administration and governance of such a fund and scrutiny of project proposals. We would ensure that all money is directed to grassroots organisations. Funding would not go to support one campaign over another.

**Conclusion**

The referendum will see the people of Scotland make one of the most important political decisions in decades. However, voter turnout is low in Scotland, and there is no guarantee that there will be improved turnout at the referendum.

It is essential that people are both informed of the practicalities of voting, and feel engaged in the debate. Community-led projects, suited to local people and their
concerns, are an essential part of this, and yet communities are not being supported to take part in this debate.

We believe that a specific fund to support grass-roots work in this area is essential. Only by doing this will we ensure that the fate of Scotland is truly decided by all who live here, and ensure that, whatever the outcome of the referendum, we have a strong, healthy democracy to move Scotland forward.
To support oral evidence to the Referendum (Scotland) Bill Committee on 23 May 2013

STUC is pleased to have the opportunity to give oral evidence to the committee and will provide further written evidence if, following the evidence session, that is appropriate.

STUC’s established position has been to support the use of Section 30 to enable the Scottish Parliament to legislate for a referendum at a time of its choosing; to extend the franchise to 16 and 17 year olds and to provide for an agreed role in the process for the Electoral Commission. STUC opposed the view that limitations should be placed on the Scottish Parliament’s right to pose multiple questions in the referendum but recognises that the wording of the question presented is clear and fair. STUC is also disappointed that a more open approach to prisoner voting has apparently not been adopted.

Scottish trade unions have traditionally played an active role in Scottish and UK elections either through direct funding relationships with political parties, predominantly the Labour Party, through supporting the campaigns of individual candidates and through non-party election initiatives designed to influence candidates and political parties in pursuit of various policy positions. Around half of trade union members in Scotland are members of unions which pay a political levy to a political party, the other half are members of unions which have traditionally remained neutral in respect of recommending votes for one party or another.

STUC is satisfied that the rules laid down for campaigning and third party campaigning, along with associated spending limits, broadly meet the purpose of allowing fair and free campaigning during the referendum period. Campaigning prior to this period is clearly less well controlled and there is an obvious potential for any inequality of arms in relation to the funding of campaigns to be manifested in the lead up to rather than during that period.

For its part, STUC decided at its Congress 2013, that the earliest point at which it would take a final view on the referendum vote would be in April 2014. This does not preclude individual unions from adopting positions before that date and at a time of their choosing, however a large majority of our affiliated unions have taken a view similar to that of STUC as a whole and seem likely to use the majority of the period running up to the referendum in discussion and consultation rather than campaigning for one outcome or the other. This approach does not reflect neutrality. Rather it
reflects STUC’s view that its members along with all other voters deserve the opportunity to consider the facts in as informed an environment as can be created.

STUC has previously voiced its concern that ‘election style’ campaigning at too early a stage has, and will continue to, make it more difficult to create the appropriate environment for debate. STUC is a participant in the Future of Scotland initiative which has consistently made the case for promoting an informed and rational debate. STUC’s own contribution to this has been the publication of ‘A Just Scotland – an interim report’ in November 2012 and this document has been used to promote discussion within unions in an atmosphere generally free of rancour.

STUC continues to take a positive view of the 2014 referendum as an opportunity to discuss the ‘kind of Scotland we want to see’ and believes that the next period could provide an opportunity to promote democratic participation and active citizenship. It is particularly important that the referendum is used to ensure maximum voter registration and that the first voting experience for many young people is a positive one.

There will be understandable tendency amongst the two main campaigns to build local campaign groups and to engage in voter registration amongst those communities of interest who each deem to be likely supporters of their respective positions. There is also a natural tendency amongst political parties to concentrate efforts on those deemed most likely to vote. The Parliament, and the respective governments, should do everything reasonable to militate against a situation in which the referendum result is decided by campaign messaging and organisation at the expense of full democratic participation.

STUC recently met with a range of interested parties to consider the issue of participation and active citizenship in the context of the independence referendum. The participants agreed the following statement which will be reflected in the evidence which the committee receives.

“Recently a number of representatives from the third sector, academia, and other interested parties discussed the need to increase voter participation in the run-up to the independence referendum in September 2014.

With low turnout in Scotland (2012’s local authority elections having a turnout of just 39%), and the Electoral Commission’s research showing that young, urban, mobile and BME people regularly fail to register to vote, more needs to be done to engage the whole of Scotland in the debate and process for the upcoming referendum.

We believe it is essential that all communities of geography, interest and background are given the relevant resources to hold informed discussions about the referendum in a bottom-up, participatory manner. The establishment, funding and resourcing of
community champions (local people who can facilitate dialogue in a neutral way) is essential.

Academics also require the space to facilitate the sharing of evidence-based knowledge across Scotland for all, and media – especially local media – must be properly resourced to enable an informed debate to take place.

Overall, the group believes that the Scottish and UK Governments should act to ensure:

1. a well-resourced voter registration campaign, aimed at ensuring that those who traditionally don’t vote are able to do so at the referendum.
2. the widespread availability of objective information on what will happen post-referendum, suitable for all voters to understand, so that all parts of Scottish society understand what a ‘yes’ or a ‘no’ vote will mean for them in practical terms.
3. concerted effort to reach ‘hard-to-reach’ groups by resourcing communities, schools, academia and relevant media to raise and debate the issues relating to the referendum, so that all parts of Scottish society feel informed and engaged.

The referendum will see the people of Scotland make one of the most important decisions that Scotland has seen in recent years. We all have a moral duty to ensure that as many people as possible participate in it in an informed way – building democracy for now and the future, and ensuring that the fate of Scotland is truly decided by all who live here.”

STUC May 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL
WRITTEN SUBMISSION FROM THE SCOTTISH YOUTH PARLIAMENT

Introduction and Context of Evidence

The Scottish Youth Parliament (SYP) welcomes the opportunity to give evidence on the Bill. The independence referendum will be a historic occasion, not just because of the magnitude of the decision facing Scotland’s citizens or the opportunity to vote on whether Scotland becomes an independent country, but because for the first time 16 and 17 year olds in Scotland will be enfranchised as full citizens in a national poll. Having campaigned for over a decade for Votes at 16, this has been by far the most important feature of the referendum process for SYP and we are delighted by the overwhelming support for the Scottish Independence Referendum (Franchise) Bill at Stage One from both the Committee and from the full Parliament.

Against that backdrop, our evidence focuses on more general aspects of the process and the campaign as opposed to specific comments on provisions in the Bill. Our overarching vision is for young voters to play a full part in the debate and are informed and inspired to cast their first vote on 18th September 2014. The role of civil society organisations, such as charities, will be vital in encouraging and enabling young people as well as other minority and marginalised groups to participate. This is an important element of ensuring that the campaign is seen to be fair by Scots of all ages, ensuring that the result is viewed as legitimate and that whatever the result, young people are encouraged to continue their involvement as active citizens in the democratic process once the dust has settled.

This response is designed to complement and expand on SYP’s previous evidence on the referendum process and Franchise Bill – our oral evidence on the Bill on 30th May1, our response to ‘Your Scotland, Your Referendum’ in April 20122 and our oral3 and written4 evidence to the Committee on the Franchise Bill at its Stage 1 consideration.

The need for impartial information and awareness raising programmes

As we also raised in our evidence on the Franchise Bill, the Scottish Youth Parliament feels it is essential that a comprehensive awareness raising programme is carried out in the months leading up to the referendum to allow young people to make a fully informed decision and encourage them to fully participate in the democratic process on referendum day. In particular, we feel it is important that young voters are fully informed of:

1 Official Report, Referendum Bill Committee, 30th May 2013
2 Your Scotland, Your Referendum, Response from the Scottish Youth Parliament
http://www.syp.org.uk/img/consultations/YourScotlandYourReferendum_SYP%20Response.pdf
3 Official Report, Referendum Bill Committee, 14th March 2013
4 Scottish Independence Referendum (Franchise) Bill, Written Evidence from the Scottish Youth Parliament
http://www.syp.org.uk/img/consultations/SYP%20response_Scottish%20Independence%20Referendum%20Franchise%20Bill_FINAL.pdf
• Their right to vote
• The process for registering to do so
• The process for casting a vote
• Impartial information on the issues, to enable them to make an informed choice in the referendum.

Information should be produced on these topics in straightforward, accessible and plain language and efforts must be taken to ensure this is conveyed to young people in an appropriate manner. This should include work to ensure that appropriate resources are available for use in citizenship and democracy education in schools and non-formal educational settings, and that learning about voting in the referendum is not confined to Modern Studies classes and information about the issues is not left up to the campaigners. We would not support Designated Organisations and political parties producing referendum teaching materials for schools.

It could involve young people as peer educators to help raise awareness of the process and use the issues that matter most to young people to encourage them to actively participate as first-time voters.

We would echo the call we made in our evidence on the Scottish Independence Referendum (Franchise) Bill to make use of rolling registration as part of awareness raising programmes to ensure that young people have as many opportunities as possible to make sure they are registered to vote in the referendum.

Additionally, given the importance of the internet and online technology in young people’s daily lives, we would strongly recommend that information on registering and the voting process, together with impartial information on the issues should be distributed online, through apps and text messaging. This would make sure that the information is readily available through the communications channels that young people routinely use.

This approach should also be extended to other groups who are traditionally marginalised or excluded from the political process, such as urban, mobile or BME people. We would echo the view of the Scottish Council for Voluntary Organisations (SCVO) and others that sufficient resources should be allocated to enable communities to hold bottom-up, participatory discussions around Scotland’s future in the run-up to the referendum. Evidence-based knowledge from academics would play a valuable part in the constitutional debate, and local and national media must be equipped to encourage an informed debate to take place. The key elements of an awareness raising programme for young voters should be applied to complementary programmes targeting marginalised groups to allow everyone to part in the debate and make an informed decision on referendum day.

The Scottish Youth Parliament would be keen to play our part in ensuring that an awareness raising programme, in particular one targeted at young people, leads to a new generation of informed citizens casting their vote on referendum day and would be delighted to discuss and assist with an awareness raising programme as appropriate.
A Fair Campaign

Young people participating in the political process for the first time will be discouraged if they perceive the campaign as unfair, with particular points of view being given precedence and others excluded, or discussion in the run-up to polling day focussing on whether there is ‘systematic bias’ towards the ‘Yes’ or ‘No’ camps and whether rules have been bent or broken, rather than a focus on what future for Scotland its citizens wish to see. Some of these elements will depend on the conduct of the campaign, but a number of elements will be addressed in this Bill.

When SYP consulted young people in early 2012 on the wording of the question, the clear view was that it should be clear and easy to understand, did not favour any particular outcome, and would not be subject to a successful legal challenge. In our response to ‘Your Scotland, Your Referendum’ we suggested that the Scottish Government’s original wording proposal was subject to independent analysis by the Electoral Commission. As this has taken place, SYP is content with the wording of the question proposed in the Bill.

Whilst the spending limits or campaign finance have not emerged as a major issue for young people in our consultations on the process, the proposals in the Bill for spending limits seem to be reasonably fair, so the SYP has no reason to object to them.

However, we feel that it is important that all points of view can be heard in the campaign to allow young people to make an informed decision, not just those of the two Designated Organisations and five political parties represented in the Scottish Parliament. Young people have a wide range of views about what Scotland should look like in future, whether as part of the UK or as an independent country, and it is important that those views can be heard and represented in the run up to the referendum. In that context, guidance on who can – or should – register as Permitted Participants is vital. Organisations or individuals with opinions to contribute in the debate on Scotland’s future should not be silenced by fear of inadvertently breaking the law by not registering, or deterred from raising their views by concerns about having to undergo a registration process to do so.

Opportunities for civil society involvement in the debate

Civil society organisations have an extremely significant role to play in ensuring the views of the people they represent – who would otherwise go unheard – are listened to in the political process. With Scotland’s constitutional future up for debate this is even more important. The role of the Scottish Youth Parliament has always been to make sure that young people’s views are represented and listened to on the issues they care about. With so many young people voting for the first time on referendum day, it’s right that the views and questions they have are at the heart of the debate, which SYP will be proud to play our part in raising.

In our previous evidence we advocated the production of guidance from the Electoral Commission or other appropriate body for local authorities and head teachers on how the referendum should be approached in schools, aiming to ensure that
consistent approach is taken in every school in Scotland so that pupils have equal access to all points of view and that schools aren’t scared off engaging young people in the referendum or avoiding it entirely.

Guidance on how to approach the referendum would be very helpful for other civil society organisations too for similar reasons – to make sure they are not deterred from discussing the referendum because of fears of breaking the law or being seen to be biased. **In particular, this is very important for charities** – as SYP is a registered charity we always need to be very careful at election time, and clear guidance from the Electoral Commission or the Office of the Scottish Charity Regulator (OSCR) would be welcome on what is permissible in the run up to the referendum.

In common with other charities, our Trustees will need to consider carefully our activities in the run-up to the referendum and the impact the campaign might have on the organisation. In the Scottish Youth Parliament’s case, this might include whether it would be appropriate for individual MSYPs to publicly voice their support for a particular referendum outcome; whether we would stage a debate and vote at our National Sittings on the independence question and whether we might adopt a public position for or against based on the outcome. Whilst relatively unlikely, they may discuss registering as a Permitted Participant or even affiliating to a Designated Organisation.

In line with their responsibilities, charity trustees will take these decisions in the organisation’s best interests after considering a range of factors. However, it is of vital importance that charity trustees are confident when they take these decisions that they are not inadvertently breaking the law. The SYP notes the publication of draft guidance from OSCR on this issue⁵ and the concerns that have been expressed by a number of charities on their clarity⁶. We would hope that revised drafts will be appropriate and relevant to enable charities to contribute to the discussion on Scotland’s future and not be deterred from doing so for fear of breaking the law.

As in our previous evidence, we would support the production of guidance for other civil society organisations, such as students’ associations, youth forums, trade unions, churches. This would be helpful to enable them to consider their role and what they can or cannot do in the run-up to the referendum, such as organising hustings, providing information to their members, or taking a public position on the outcome.

**Conduct of the Campaign**

The referendum will be the first time thousands of young people across Scotland will have the chance to vote. The referendum, and whether Scotland should be independent or not, is a topic that excites young people and one which many of them

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will have views on. There are a number of issues that will be important to young people when it comes to the referendum that they would like to see as central to the debate and not sidelined. Some of the many examples of these issues are whether the outcome of the referendum will make it more likely that they can get a job, have to pay tuition fees or not, get a better Minimum Wage or be able to vote in all elections.

It would be extremely disappointing if the campaign became a debate between two narrow points of view and dominated exclusively by politicians and the Designated Organisations drowning everyone else out in a tactical, nasty and brutal battle. This is likely to give young people a negative experience of voting and speaking up on the issues and may well discourage their future political participation. Whilst recognising that these issues are not ones that can be covered by the Bill, the Scottish Youth Parliament would call on both sides to conduct a dignified and democratic campaign without ‘dirty tricks’ to inspire and encourage young voters, not put them off participating as active citizens.
SCOTTISH INDEPENDENCE REFERENDUM BILL

Clarification of oral evidence from the Scottish Youth Parliament at 30 May meeting

The Scottish Youth Parliament provided the following correction to oral evidence given by Kyle Thornton MSYP at the Committee’s meeting on 30 May 2013.

Kyle stated that:

“To go back to Stewart Maxwell’s question earlier, I am not aware that the commission has had any real discussion with the Scottish Youth Parliament, which is used to getting young people out to engage in the voting process, as we work with 12 to 25-year-olds.”

This statement is inaccurate. The Scottish Youth Parliament, together with NUS Scotland, met with the Electoral Commission on 24 May to discuss issues of mutual concern.

The Scottish Youth Parliament works very hard to ensure any evidence we provide to the Scottish Parliament is accurate, and therefore we wanted to ensure this was corrected as soon as possible.

Scottish Youth Parliament Press Office
5 June 2013
I am extremely concerned at the wording currently being tabled for the ballot on Scottish independence.

A single question (to be answered 'yes/no') will never be able to escape the accusation of being a leading question, and of encouraging one answer over another. Academic papers on electoral behaviour the world over show that a 'yes/no' question is inherently biased in favour of the proposition. Thus both 'Should Scotland be an independent country' and 'Should Scotland remain part of the United Kingdom' are biased, and will cast doubt on the final result. Whether one supports Scottish independence or Scotland remaining part of the Union, doubt is surely the one thing that Scotland cannot afford: the referendum must be final, and the process unimpeachable.

One solution could be to combine the two: 'Should Scotland be an independent country, and separate from the United Kingdom'. But surely the simplest and clearest would be to follow the pattern used in any normal election, and to provide tick boxes beside two clear alternatives:

- Scotland should be an independent country.
- Scotland should remain part of the United Kingdom.

This works in all normal elections, and would avoid all ambiguity, and any accusation of bias.

3 June 2013
I am a Scot, born, bred and educated in Scotland. I served for seven years in the Gordon Highlanders, including over two years in Northern Ireland in the early 1970s, before becoming a member of the Diplomatic Service, where I supported Scotland’s economy and culture as aggressively as was proper. In my last posting I was appointed the first resident British Ambassador in Tajikistan when a new Embassy was established there after 9/11 at the direction of Jack Straw. I currently live in London.

As a native born Scot, who has served Scotland for the whole of my working life and continues to do so, there is a moral obligation upon the Scottish Executive or Government, whichever is the proper description, to permit me to vote in the referendum. The argument is not merely a sentimental one. If Scotland were to become independent, I would be required to make a choice, as to whether I became a Scottish or English citizen. That choice has both legal and fiscal implications of considerable gravity. Thus, by not having a vote in the referendum, although I am a British citizen of Scottish nationality, I have no say on the fundamental question of that nationality; which could potentially have severe negative financial and other implications for me personally.

It is therefore doubly inequitable that anyone who is not a Scottish national should have the right to vote in the referendum when I, as a Scottish national, cannot. This is not a parliamentary question. This is a nationality issue of the first moment and thus the proper franchise is for those nationals who are directly affected and certainly not the nationals of any other EU state. There is indeed an argument that English nationals should have a vote as the independence of Scotland will have significant effects on England, both politically, economically and in the international arena. I do not argue for that. But I do argue that the only proper electorate for this referendum is of all those, and only those, who can show, through their birth details, that they were born in Scotland. Any other franchise makes a mockery of any rational concept of a democratic vote. At a stroke the specious argument about the bureaucratic impossibility of identifying the electorate disappears: turn up on the day with your passport, or alternatively a birth certificate accompanied by photo ID. For those who could not return to Scotland for polling day – and it would be grossly unreasonable to demand that they should – I can see no insuperable bureaucratic difficulty in providing for postal votes for Scots resident abroad through the diplomatic posts, and in England any police station should be perfectly competent to issue postal voting cards and envelopes on verification of identity as described above.

I therefore urge you to re-consider what must appear to any objective observer a biased and politically motivated exclusion of those with an existential interest in the outcome while allowing the vote to others who have no such concerns and therefore do not have the commensurate interest to weigh the balance of factors with the care and attention this matter requires.

3 June 2013
Extending the role of the Electoral Commission

Section 21 - ‘Information for voters’ - paragraph (b)

This section proposes an important new role for the Commission ‘promoting understanding … of the referendum question’. I take this to mean ‘unbiased’, ‘impartial’ or ‘bipartisan’ information on the issue. While the intent is excellent, the practice is so difficult that I recommend the committee does not support paragraph (b).

The provision of ‘unbiased’ information in referendums is the Rubicon in world referendum practice that Sir Patrick Nairne (charged with drafting arrangements for the EEC referendum) in 1975\(^1\) and Lord Neill (then-chair of the Committee on Standards in Public Life) in 1999\(^2\) both declined to cross. Extending this role to the Commission would be a major change in the conduct of referendums in the UK.

The Commission is primarily an electoral commission and over the ten or so years of its existence has through many elections earned its spurs. It is well connected and led in Scotland and has the confidence of politicians here. It is clearly the right body to be given responsibility for the conduct of the referendum.

But as a referendum commission, it is still in its apprenticeship. It has conducted only three major referendums earning mixed reviews. Lord Neill whose report is the basis for PPERA, made a significant distinction between elections and referendums as political events and it is reflected here in the commission’s differing reputations.

For example, it has weakened the generic intent of PPERA with shifting interpretations including restrictive interpretation of the use of grants; and has proved hesitant in the face of authority infractions. Having itself been inadequately funded for referendums, it has not had the time nor research capacity to develop an understanding of their qualitative aspects or a wider knowledge of their practice.

No matter how experienced the Commission is, I would oppose this extension in principle. But for those who see no objection in principle, giving an inexperienced referendum commission the most difficult issue to cut its teeth on is inviting controversy in the independence referendum. The risk is increased because the issue has not yet been negotiated, meaning much of the detail must be ‘undecided’ detail with two, perhaps more, possible outcomes.

\(^1\) Sir Patrick’s 1975 report (Cmnd 5925) does not appear to be available online. His later Report of the Commission on the Conduct of Referendums, 21 November 1996, is accessible at: [http://www.ucl.ac.uk/spp/publications/unit-publications/7.pdf](http://www.ucl.ac.uk/spp/publications/unit-publications/7.pdf)

Attempting to provide this kind of unbiased information has largely defeated referendum commissions around the world. The attempts fall broadly into three categories. They are: thorough, dull and unread; or readable but milk and water in content and valueless; or clear cut, unwittingly partisan and therefore controversial. Few served their referendum debates and most used a great deal of public money ineffectively.

In lesser referendums, the limitations are tolerated and accommodated. In important referendums, they create the sort of difficulties encountered by the Irish referendum commission in the EU referendums, leading to costly judicial actions and complex legal redress.

Because of the veto used in the designation process in the Wales ‘primary powers’ referendum of 2011 the Commission was forced to provide unbiased information on the issue at stake. The Committee has already heard evidence on this. But scaling up the Welsh experience to the independence referendum is a step too far. There is impeccable precedent for declining the obligation to provide unbiased information entirely.

In 1998, Lord Neill specifically rejected an unbiased information role for the Commission. He reached his conclusion after hearing from all sides in the four referendums of 1997 and 1998, reviewing the 1975 EU referendum and the two devolution referendums in 1979 and commissioning research in other countries. Instead, he laid the duty solely on each side to make their case and gave them a public grant to do so ‘far and wide’. The Labour government when enacting PPERA amended some of his other recommendations while accepting his recommendation on this point in its entirety.

Before the 1975 EEC referendum, Sir Patrick Nairne conducted a review of practice abroad and came to the same conclusion that ‘unbiased’ advice however desirable was not achievable. So in 1975 public money funded a brochure with a ‘statement and rebuttal’ from each side and a statement from the government. In addition, a grant was made to each side. One difference from 1999 was the government was allowed to make its own statement.

Variations of 1975 are the most common format for dealing with the problem. In Switzerland and the US, the world’s two most experienced referendum democracies, neither attempts to provide ‘unbiased’ information. Switzerland funds a booklet including statements from all participants including the government; the US, a statement from both sides and a rebuttal of each statement.

What is to be avoided here is the promotion of ‘unbiased’ information on the issue by the Commission. PPERA does this as it stands but it means reinstating the public grant.

The drafters of the Scottish Independence Referendum Bill seem to have seen the public grant as a random and superfluous use of public money rather than an integral
part of the solution proposed by Lord Neill to the need for information. Abolishing grants means even more public money is spent by commissions on information leaflets that would be spent far more effectively by the campaigns. No public money is saved and a less than satisfactory outcome for all is the result.

This is not to deny the importance of information in referendum debates. In my view, it is what distinguishes a good referendum and delivers a stable result. I urge the committee to find a different solution than that proposed in section 21, paragraph (b).

For the record, I chaired the cross-party Yes campaign in the 1997 Scottish devolution referendum, gave evidence to Lord Neill in 1998, and made first use of PPERA in 2001 preparing for the euro referendum which was subsequently abandoned. I have been an observer of the three referendums actually held under PPERA. In addition, I have visited referendums in other parts of the world.

Nigel Smith
May 2013
**SCOTTISH INDEPENDENCE REFERENDUM BILL**

**WRITTEN SUBMISSION FROM NIGEL SMITH**

**Government role in the referendum including the 28 day purdah**

*Schedule 4 Part 4 paragraph 25: Publications and Control of Ministers*

All campaigners in the referendum except the Scottish Government will be regulated throughout the proposed four month campaign by the Electoral Commission.

The Scottish Government need only comply with the Scottish Independence Referendum Bill for the last 28 days of the campaign. For the other three months, the government is free to do as it wishes with public money in support of the referendum limited only by the usual Ministerial conduct codes.

These standing codes do not normally provide redress within the timescale of a referendum and sometimes involve the government being judge and jury in its own case. Any alleged infringement is often followed by a media firestorm that distracts from the issues at stake in the referendum.

Because the UK Government has agreed, in the *Edinburgh Agreement*, to abide voluntarily by the 28 day purdah, both governments will be regulated for the first three months of the referendum not by this Bill but ministerial codes and public outcry. And for the last month, by a referendum Commission with few tools in the Bill and its own uncertain will. This is no regulation of government at all.

PPERA, in section 125, has from enactment in 2000, been seen to give significant advantage to the government of the day. Despite Ministerial codes of conduct, the government can easily plan its business, lean on public bodies and tax payer funded clients, and use the profile of office with its routine attendance of media to its own advantage in the first three months of any referendum it calls.

The deficiency in PPERA has been copied into the Scottish Independence Referendum Bill and then simply amended to delete restrictions on its tax funded clients.

The advantage may be increased in the smaller polity of Scotland where the reach of government is greater. The focus on the high profile events like the festival of Bannockburn and the Commonwealth Games has tended to obscure the other areas where this clause could benefit the government.

Yet this is not a specific criticism of the Scottish Government. Other governments are tempted to abuse their power. One example was the use of public money to conduct opinion polling for the YES side in the 1998 referendum on the Good Friday Agreement. The current UK Government could also be tempted to misuse its power in the Scottish Independence referendum leading to a war of allegations.

The Neill Committee whose report in 1998 formed the basis for PPERA, recommended that government – as a government - should play no part in referendum campaigns except as individuals through their political parties. This would have solved the problem at a stroke. He cited other countries where this ‘neutrality’ is a longstanding practice without problems.
His recommendation that government should take no part in a referendum that it calls may, at first, seem counter intuitive. But the fact that in both the UK’s national referendums (1975 EEC and 2011 AV) and two of the three referendums fought under PPERA (AV and Powers) the government played no effective part - as a government - without the roof falling in, suggests Lord Neill was right. (The qualification should be made that in 1975, the Government issued a White paper and statement of its views; then played no further part in the referendum.)

Lord Neill’s recommendation was not adopted by the new Labour Government. Jack Straw as Home secretary said that ‘the government has got to be very careful about using its power and its money to unfairly influence the results of a referendum’ indicating that it was unwilling to stay out of the referendum altogether or play by the rules of everyone else. The most it was prepared to concede was 28 days.

In 2003, the No euro campaign took legal opinion that the privileged treatment of government in section 125 of PPERA, breached their rights under Articles 10 and 14 of the European Convention on Human Rights. Although the Lord Chancellor disputed the opinion, the campaign only desisted from pursuing the case when the Labour Government abandoned the euro referendum in June of that year. The legal opinion is therefore untested.

The Labour Government remained cautious on the point. Before the North East referendum in 2004, it voluntarily agreed to the Electoral Commission’s request to date the 28 day purdah from the distribution of postal ballots rather than referendum day (in effect, a 56 day period). This self-imposed extension had no legal force but the government stuck to its promise.

Then in 2010, the same Labour Government decided that it would play no part – as a government - in the Powers referendum in Wales. The referendum was held in 2011 under the new Coalition government who also decided against participating as a government. In effect, three major UK political parties have made some active acknowledgment of PPERA’s weakness on the government role and the 28 days.

In its own consultation in January 2012, the Scotland Office promoted PPERA as ‘well established, tried and tested rules’ but it should be ashamed of such an inaccurate claim. The rules have been tried and found wanting in several important respects - not once but three times – in referendums in 2004 and 2011. After each referendum, the Electoral Commission recommended reforming the government role by dropping the 28 days in favour of the whole referendum period, in this case - 125 days.

In January 2012 in its own consultation Your Scotland: Your Referendum, the Scottish Government said that it would consider these reforms with the Commission before introducing the Bill. But the Commission has been unable to persuade its sponsoring government to adopt 125 days.

Instead of accepting the reform on its merits, the Scottish government seems to have drawn the definition of public body even more to its advantage. Grant funded clients of the government of which there are many in Scotland, appear to be excluded. Para 9.13 from the No to AV campaign evidence seems to propose sensible amendments that cover the point.
The law of course has to be enforced within the 28 day purdah. The Bill seems to have given no new powers to do so. In addition, there must be some doubt of the will of the Commission to enforce any provisions against governments.

The Commission seems to have sorted out the preliminaries of a referendum to the satisfaction of participants but when the race starts and the tempo steps up, it has on occasions been seen to be slow to deliver timely decisions or guidance. The criticisms can be quite trenchant.

There is little experience of the 28 days but what there is in the North East referendum and AV referendum suggests the Commission is even slower to regulate Government or rule against tax funded bodies.

The more general point could be made that it is unrealistic to ask any public body to regulate the two governments in the heat of a referendum yet that is what it must do if the ruling is to affect the conduct of the referendum. Faced with sponsoring governments, the temptation is to split the difference rather making a clear cut ruling when one is justified and to do so only after much indecision.

So extending the 28 days to 56 days or 125 as the Commission recommends will certainly bring governments more fully into the Bill but it also compounds the problem of weak enforcement of government infractions.

Whereas removing the Government from the referendum solves the problem entirely. Both governments should issue White papers and statements then cease to take part in the referendum - as governments - exactly as was done in 1975 EEC referendum.

Leaving the Bill as it stands means both governments will be regulated for the first three months of the referendum not by this Bill but ministerial codes and public outcry. And for the last month, by a referendum Commission with few tools in the Bill and its own uncertain will.

I conclude that the Bill on this point provides no regulation of government and is more likely to distract voters than enlighten them.

For the record, I chaired the cross-party Yes campaign in the 1997 Scottish devolution referendum, gave evidence to Lord Neill in 1998, and made first use of PPERA in 2001 preparing for the euro referendum which was subsequently abandoned. I have been an observer of the three referendums actually held under PPERA. In addition, I have visited referendums in other parts of the world.

31 May 2013
Note in support of spoken evidence given to Referendum (Scotland) Bill Committee meeting 9th May, 2013.

Willie Sullivan as the Director, Field Operations was the ‘Responsible Person’ on the designated Yes campaign ‘Yes To Fairer Votes’ during the 2011 Alternative Vote Referendum 2011 conducted under PPERA. He is now the Director Scotland of the Electoral Reform Society.

Learning from AV Referendum and Scottish Independence Referendum Bill

1 Campaign Period and Controlled Referendum Period

The period of less than a year from proposal of a referendum in the UK coalition agreement in May 2010 to holding a referendum in May 2011 was far too short for public awareness to be raised to the necessary level for a proper, in depth and informed debate to be had. This is particularly true for a second order issue such as Electoral Reform.

Due to ‘parliamentary delaying tactics’ in Westminster the AV referendum Bill was not passed until 17th February 2011. This meant that campaigns may have taken significant risk in committing expenditure i.e. to print freepost etc without knowing if they would be designated or not

It is a positive that this referendum will have had a longer lead in and awareness raising period and that completion of the referendum bill and designation of campaigns and permitted participants should happen long before the referendum period.

2. Campaign Finance and Expenditure

Expenditure in the AV referendum, including all parties and permitted participants for the Yes campaigns was approx. £2.3 million and for the No campaign approx. £3.5 million. This expenditure was well below the limits set by PPERA but reflects the ability of the subsequent campaigns to raise funding. This of course reflects the relative advantage for a campaign that defends the status quo and therefore the sets of interests that have benefitted from existing conditions. The No campaign was largely funded by very wealthy individuals such as Hedge Fund Managers and the Yes campaign was funded through NGOs and trusts of longstanding campaigns for change.

The lower limits proposed within the current bill and the more equal fund raising position of the campaigns mean the potential of wealthy interests being able to influence the referendum outcome are mitigated. However as there is no need to report expenditure made prior to the referendum period
consideration should be given to ensuring this period is as long as practicably possible.

2.2 Public Funding

PPERA allows public funding up to £380k each for campaign administration. This was nowhere nearly fully utilised during the AV referendum because of the prohibition of its expenditure on actual campaigning. Such public funding combined with lower spending limits may in future be useful in ‘levelling out’ the funding advantage of ‘anti change’ positions.

Therefore the failure to allow any funding of this type in this referendum sets an unwelcome precedent.

2.1 Reporting of Donations

During the AV campaigns the question of who was funding who and how much was highly contested and became a campaign issue/tactic. There was no legal requirement to publish donations until well after the election. The No campaign made a show of publishing campaign donations but it became apparent after the referendum that they had selectively published donations.

This seems to be addressed by the requirement to publish donations during the referendum period

3. Informing the Citizens

It is often thought that a ‘laissez faire’ attitude to citizen information is enough in referendum and election campaigns. That is leave it up to the parties and campaigns to inform the voters. This raises a number of issues.

   a) The electoral incentive of campaigns to exaggerate, mislead and misinform voters. There is even a disincentive for campaign to challenge their opponents claims because a ‘fight’ over a damaging claim only serves to highlight that claim.

   b) Highly sophisticated segmentation and targeting of the population by political campaigns. So relying on campaigns to message for example people who have never voted before is naïve. They will target ‘likely to vote swing voters’

   c) The declining resources of the print media and broadcast media having an impact on their ability to fully scrutinise the debate.

   d) The failure of this approach up to now. Representative democracy if not facing crisis is facing a huge loss of legitimacy. Survey after survey blames political parties. They are untrusted.
The All Wales Convention set up in 2007 as a precursor to the 2011 devolution referendum was a partially response to these sorts of concerns and was charged with travelling the country raising awareness of the referendum issues. (Richard Wyn Jones might say more)

3.1 A Proposal

Unlike the PPERA referendum there is no public money given to campaigns. The Scottish Parliament should consider giving money to a third party agent or coalition of agents to facilitate local community led discussions across Scotland. Facilitated by trained ethical volunteers in deliberative democracy (of which there is a growing network across Scotland) to allow communities concerns and question to be raised that could then be addressed by the campaigns.

This would allow citizens and communities to help frame the coming debate instead of allowing small groups of elites to frame the discussion and expect citizens to engage on terms already defined. This would set Scotland up as a world leader in democratic innovation without any risk to the referendum.

W. Sullivan

May 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL
WRITTEN SUBMISSION FROM DYLAN THOMAS

I wish to exercise my democratic right to express my views to the Referendum (Scotland) Bill Committee consultation on the Scottish independence referendum process. My views are:

- The referendum process ought to be run independently by the Electoral Commission.

- The 'Overseas 15 year rule' for British General Elections should be adopted with a minor addition to also include those formerly registered in Scotland but now registered elsewhere in the United Kingdom being granted the right to vote in the Scottish referendum.

- The SNP’s proposed application of the same voter eligibility as the Scottish Parliamentary and council elections is not appropriate for a decision which is permanent, unlike a four year tenure.

- I do not think it is fair that European citizens residing in Scotland can vote in the independence referendum but non-resident Scots born and brought up in Scotland but resident elsewhere in the UK cannot.

3 June 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

JAMIE WALLACE

A charaid chòir,

Bu toil leam an cothrom ghabhail a chur mo bheachdan air adhart a thaobh Bile an Reifreinn mar fianais chun a’ Chomataidh. Bidh mi sin a dhèanamh anns a’ Bheurla air sgàth gu bheil mi a’ tuigsinn nach eil Gàidhlig aig a h-uile duine air a’ chomataidh seo, agus air sgàth gu bheil mi fhathast nam oileanach aig a bheil Beurla. Co-dhiù, tha e feumail a ràdh cuideachd gu bheil e fhathast cudromach dhomh gu bheil roghainn agam Gàidhlig a chleachadh. Mar oileanach, ag ionnsachadh Gàidhlig, tha e cudromach dhomh, gun teagamh, gu bheil mi a’ faicinn cleachdadh na Gàidhlig aig gach ìre ann am beatha poileataigeach na h-Alba.

[Translation to English: I would like to take this opportunity to put forth my thoughts on the Referendum Bill as evidence to the Committee. I will continue in English as I appreciate that not everyone on this Committee has Gàidhlig and also because I am still learning Gàidhlig as a student, having English as my mother-tongue. This said, it is useful to say also that it is still important to me that I have the choice to use Gàidhlig. As a student, learning Gàidhlig, it is really important, without a doubt, to see Gàidhlig being used at all levels of political engagement in Scotland.]

I believe that Gàidhlig should be used on the ballot paper, and that our official languages be evident at polling booths, for the Referendum on the 18th September 2014.

In areas where councils, such as South Lanarkshire Council, are stuck in their ways and are struggling to implement legislation because of old values and a lack of foresight, I believe the introduction of Gàidhlig in the 2014 Referendum could help the overall objective of the National Language Plan in creating a conscientious awareness of our languages that are rooted in our sovereign nation’s heritage, culture and DNA.

Moreover, by showing such leadership, and ensuring Gaelic is evident at polling booths and on the ballot papers, the Scottish Government would be creating important awareness of our rich native language. Not to grasp this opportunity would, I believe, be akin to imitating language policy of the British Empire – Scotland, thank goodness, has moved on from such a draconian measure, and the Scottish Parliament must ensure this happens.

Only last year did I request my local MP, Tom Harris (Lab) to ask the UK Parliament to create equality between Gaelic and English, in the same way there is with Welsh. Quite appropriately, he raised his EDM on Saint David’s Day. Despite coverage in the Highland Press and some activity on Social Media Sites, the UK government’s response was ‘no’! Of course, despite my optimism, I expected this outcome.

However, I expect better from the Scottish Government, and indeed yourself – The Scottish Parliament. You have demonstrated, particularly in the past few years, that you understand the needs of the Scottish people – those who live here in Scotland.
As a result, I would like for the Scottish Parliament to ask the Scottish Government to work with the Scottish Electoral Commission and test a bilingual ballot paper – or trilingual ballot paper if Scots were to be included too. I believe both the Scottish Government and The Scottish Parliament have a legal obligation to ensure at least this happens.

This legal obligation, I believe, is included in the Gaelic Language (Scotland) Act 2005 and in the strategic planning of Bòrd na Gàidhlig in relation to making sure Gaelic is used at national events. So please, test a bilingual / multilingual ballot paper and share the findings and the conclusion and recommendations.

But in a final point, I would like to go one step further. I would like for Gaelic to be used in General Elections too – starting with 2016. Make it happen! After all, we used Gaelic for the Scottish Census 2011, so it can be done!

On the 2nd of October 2012, the National Gaelic Language Plan was debated in the Chamber. Here is an excerpt from the Official Report where The Minister for Learning, Science and Scotland’s Languages (Dr Alasdair Allan) states that the language should be used:

Dr Allan: Agus gu duine sam bith a faighneachd carson a tha mi a’ cleachdadh na Gàidhlig an seo an-diugh anseo a’ Phàrlamaid, canaidh mi seo: direach anns an aon dòigh nach eil cù ga thabhasonn airson na Nollaig a-mhàin, chan eil cânann sam bith ann airson a’ mhòid no airson Bòrd na Gàidhlig no airson planachain Gàidhlig. Tha cânanan ann airson cleachdadhagus bruidhinn, agus ma tha a’ Ghàidhlig agaibh, bruidhinnibh i.

To anyone who asks why I am using Gaelic in Parliament today, I say that, just as a dog is not just for Christmas, the Gaelic language is not just for the Mòd, Bòrd na Gàidhlig and Gaelic plans. The language is there to be spoken. If you have the language, speak it.

He may be addressing the youth of today, but the Parliament is still young and I believe is entitled to be included as a stakeholder being addressed. The Parliament must also use the language more often, as should the Scottish Government.

As an aside, it is perhaps the right time to consider the statement in the Standing Orders of the Scottish Parliament that for Gàidhlig to be used in the Scotland’s Parliament, permission must be sought. This subservient relationship to English use in our nation’s Parliament – where permission to use English is not required - cannot help the status of the Gaelic in achieving equal status in any way whatsoever. Thank you for this opportunity to share my views with the Scottish Parliament.

Le gach deagh dhùrachd,

Dihaoine, 29 Màrt 2013
Scottish Parliament
Referendum (Scotland) Bill Committee
Thursday 9 May 2013

[The Convener opened the meeting at 09:32]

Scottish Independence Referendum Bill

The Convener (Bruce Crawford): Good morning, colleagues. I open the 12th meeting of the Referendum (Scotland) Bill Committee in 2013.

We have had apologies from Patrick Harvie, but there will be no substitute from the Green Party for him. We have also had apologies from Annabel Goldie, and John Lamont is here from the Conservative Party. There are no other apologies.

This is the first of five meetings at which the committee will take evidence on the Scottish Independence Referendum Bill at stage 1.

I give a warm welcome to our first panel of witnesses, who are from the Law Society of Scotland and the Faculty of Advocates: from the Law Society Michael Clancy and Richard Keen and James Wolffe from the Faculty of Advocates.

I understand that none of them wishes to make an opening statement and that they are happy to move straight to questions.

James Kelly (Rutherglen) (Lab): Good morning. I thank the witnesses for coming along and sharing their time with us and for their written evidence.

I do not know whether the panel has had an opportunity to examine some of the submissions from the second panel of witnesses. We have had a submission from the no to AV campaign, which raises some concerns about the technical conduct of the referendum. As they relate to legal points, I will put them to this panel and see whether the witnesses have a view on them or, even, want to reflect on them and come back to the committee.

The first point relates to the deadline for appointing referendum agents, which is in section 16 of the bill. The no to AV campaign contends that it is too early and a deviation from the normal date under the Political Parties, Elections and Referendums Act 2000. The campaign flags up the point that a different approach is being adopted in the bill. Do the witnesses see any issues with that?

Michael Clancy (Law Society of Scotland): We have not looked at that provision in great detail. In fact, I do not think that we commented on it when we made our submission to the committee. Therefore, it would be beyond my remit to commit the constitutional law sub-committee of the society to a view on the matter, but I am happy to take it back and ask the sub-committee whether it has any views on it.

James Kelly: I do not know whether the practical way forward is to draw the attention of the Law Society to the comments of the no to AV campaign and ask it to reflect on those. We could ask it to feed back any relevant comments to us.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): My question relates to the fact that in the Scottish Independence Referendum (Franchise) Bill, there is a date when the act will be repealed but there is no such provision in the Scottish Independence Referendum Bill. I know that it is not your bill or your drafting, but do you think that there should be a date on which the act is repealed after the referendum has taken place?

Richard Keen (Faculty of Advocates): Perhaps I could clarify a point arising from the convener’s introduction. I represent the Faculty of Advocates, not the Law Society of Scotland—

The Convener: Apologies.

Richard Keen: It is quite all right. I did not want to open up an internecine turf war with the Law Society, even though it makes a claim to be the leaders of the legal profession in Scotland. We can put that to one side as well—I know; it is terrible.

The Convener: Sorry I started that off earlier.

Richard Keen: Just to be clear, the faculty does not take a view on the constitutional question. Just as this committee is looking at the bill in the context of its operation, so the faculty is here for that purpose as well.

It seems to me that there is potentially a political dimension to John Lamont’s question. I wonder whether it is therefore a matter that should be determined by this committee.

John Lamont: There was no particular political dimension to the question. I simply thought, from a tidying-up perspective—keeping the statute book clean—that if the franchise act is to be repealed, the same should apply to the referendum act. Are you aware of any reasons why that should not be the case, or would it be preferable, from a legal perspective, for it to be repealed?

Richard Keen: I can see no reason why it would require to be repealed, given that it determines a referendum on a specific date in
September 2014. Once that date has passed, the act is essentially functus anyway.

Michael Clancy: The terms of the section 30 order require the referendum to be concluded by 31 December 2014, so there is an extent to the competence anyway. If Mr Lamont is looking for a clean statute book, there may be other measures that he would want to start with rather than this one.

John Lamont: I agree.

Tavish Scott (Shetland Islands) (LD): Mr Clancy, in the Law Society’s submission, in the final sentence of your observations on section 13, “Campaign rules: general offences”, you say:

“These offences appear to be strict offences and there is no provision for a reasonable excuse defence”.

Would you be so good as to explain that thinking?

Michael Clancy: Our criminal law committee looked at that. There is a provision in section 13 for various offences, but there does not appear to be any statutory defence. We thought that it might be appropriate for there to be a statutory defence of having a reasonable excuse. Section 13(1) says:

“A person commits an offence if—
(a) the person—
(i) alters, suppresses, conceals or destroys any document to which this subsection applies”.

However, section 13(4) says:

“The office-holder commits an offence if—
(a) without reasonable excuse, the office-holder fails to supply the relevant person with that information”.

Within the terms of that section, there is a distinction between those two types of offence. A reasonable excuse for altering, suppressing, concealing or destroying a document might be that it was destroyed inadvertently and not deliberately.

Richard Keen: We do not think so.

Michael Clancy: The faculty disagrees. Another internecine war is about to break out.

Richard Keen: Not at all.

We do not consider that those are strict offences, as is suggested by the Law Society. The offence occurs only if section 13(1)(b) is taken into account, because there is an “and” at the end of section 13(1)(a)(ii). A person must act

“with the intention of falsifying the document”.

There must be intent.

As has been noted, under section 13(4)(a), a person has to act “without reasonable excuse”. Still in section 13(4), under paragraph (b) the office-holder must “knowingly” supply the information. There has to be knowledge. Under section 13(5), a person commits an offence if they act

“with intent to deceive”—
so it is not an offence of strict liability; there has to be intention.

If we consider the further offences that are set out in schedule 4, subparagraph 26(10) of that schedule—on page 91 of my version of the bill—provides:

“It is a defence for a person charged with an offence under sub-paragraph (7) or (8) to show—
(a) that the offence arose from circumstances beyond the person’s control, and
(b) that the person took all reasonable steps”.

Schedule 7 sets out the further offences that are cross-referenced in section 13 and provides, at subparagraph 5(1)—on page 135—that there is an offence only if a person acts “without reasonable cause”.

If we bring all those provisions together, it appears to us that these are not offences of strict liability at all. At every turn there is a provision about reasonable cause, knowing or intent. Therefore we do not consider that there is the additional requirement for a statutory defence to be introduced into the bill.

The Convener: Do you want to respond, Mr Clancy?

Michael Clancy: I take the dean’s point. He has highlighted something that we identified at the start of our memorandum, which is that this is quite a complex bill.

Section 13(1)(b) provides that a person commits an offence if they act

“with the intention of falsifying the document or enabling any person to evade any of the provisions of schedules 4 to 6.”

There is a distinction between falsifying a document, and suppressing, concealing or destroying a document. However, these are points of detail and I am perfectly happy to concede the dean’s point that other provisions allow for defences. I was thinking particularly about destruction.

Tavish Scott: Perhaps I will try a different line of argument—given that that one got nowhere. I am interested in exploring to whom the potential offences apply. My reading of the bill is that they apply to campaigners on both sides of the campaign that will be initiated by the start of the control period on 30 May 2014. Is that the witnesses’ understanding?

Michael Clancy: First, there are distinctions between offences that can be committed by office-
holders and offences that can be committed by other persons, but people will commit an offence only in what one might term qualified circumstances—so if they bring themselves within those circumstances, they will commit an offence. I agree with you that that is not limited to office-holders.

Tavish Scott: Thank you. In evidence that we received for this morning’s meeting it was noted that

“there is a series of detailed rules which campaigners must follow ... and very extensive provisions for them to be investigated by the Electoral Commission and punished for breach”—

under the provisions to which you have been referring—and that those rules will apply to members of campaign organisations and people who are related to such organisations but not to ministers of the Crown or the Scottish ministers, in any sense. Are you familiar with the issue? There appears to be a rule for everyone who is involved with campaigns but no equivalent provision for ministers, who might be using money in a campaigning context.

Richard Keen: I am not sure whether I entirely follow the point. If a minister acts in a way that is prohibited by section 13, an offence will be committed. There is no exception because of his status as a minister. If he qualifies, within the terms of section 13, an offence will be committed.

Michael Clancy: I agree.

09:45

Tavish Scott: That is helpful.

I want to ask a more general question about section 30 and the broad range of provisions in the bill. Section 30 allows ministers to rewrite the bill’s provisions. There is no final deadline and no limitation on that power. Has the faculty or the Law Society given any thought to the breadth of that provision in section 30?

Richard Keen: I shall immediately concede that we have not. However, we would be happy to look at it and make any written submissions thereon.

The Convener: Michael, I think that you commented on that.

Michael Clancy: We did comment on section 30. We suggested that there is no obligation to consult on any subordinate legislation that Scottish ministers might introduce under that provision. We think that such a consultation would be a useful method of fleshing out any objections or questions on the part of people who might be subject to the provision. There is therefore a need to insert something along those lines into the bill. However, in terms of the Henry VIII or James VI provision—

Tavish Scott: Choose your king.

Michael Clancy: Exactly. Such a provision is something that we see in statutes regularly. Although one might have jurisprudential objections to the employment of executive power in that way, there is a lot of precedent for it.

The Convener: Stewart Maxwell has a supplementary on that.

Stewart Maxwell (West Scotland) (SNP): I want to pursue the issue of section 30. Whatever your view of the “Power to make supplementary etc provision and modifications”. I am glad that you have said that such a provision is not unusual. It has become routine, if I can use that term to describe it. Would you concede that, according to section 30(4), it is clear that if the power was used, the affirmative procedure would apply and therefore a parliamentary process would take place in relation to any proposed changes?

Michael Clancy: Yes. There is a parliamentary process.

Stewart Maxwell: Secondly, are you aware of any precedent in other bills for consultation on such a power?

Michael Clancy: I am not entirely sure, but I think that in the High Hedges (Scotland) Act 2013, there is a provision for consultation by ministers.

Stewart Maxwell: You seem to be struggling slightly to find—

Michael Clancy: I am not struggling; I am just being diffident. There is a provision in the High Hedges (Scotland) Act 2013, which was accepted by the minister because it is something that the Scottish Government has undertaken to do in any event—I think that that is what was said in the debate on the bill.

Stewart Maxwell: Yes, but I am not aware of a general provision that consultation should take place on secondary legislation in general but particularly on a power such as this.

Michael Clancy: We respond to many consultations on subordinate legislation throughout the year, so it is an ordinary course of event. Whether it is formally stated in an act of Parliament is another matter.

Stewart Maxwell: Thank you.

The Convener: Did Richard Keen want to comment on that?

Richard Keen: Only to say that there would have to be a positive vote of the Parliament on the issue. Nevertheless, there may be some substance in the suggestion about consultation. We have not taken a view on that, but we are happy to look at precedents.
Linda Fabiani (East Kilbride) (SNP): I have a couple of general questions, mainly for the Law Society. My first question is on the role of the Electoral Commission, which is detailed in many of your points. I would be interested in your view of the integrity of the Electoral Commission.

Michael Clancy: I have no view that I can advance on behalf of the Law Society. It is not something that we have specifically considered. On every occasion on which I have personally encountered the Electoral Commission, though, it has acted with utmost integrity.

Linda Fabiani: I have one other small question. On part 4, which relates to publications, your submission poses the question:

“Para 29 of the Edinburgh Agreement states that ‘The UK Government has committed to act according to the same ... rules during the 28-day period.’ Does this mean that the UK Government will follow purdah in the same way as the legislation sets out?’

Is that a veiled suggestion to the committee that it should check out this matter and try to get that commitment in writing from the UK Government? As we know, the section 30 agreement is very much based on mutual respect; it is, if you like, a gentleman’s agreement.

Michael Clancy: But that provision is contained in the Edinburgh agreement and is also mentioned in the policy memorandum. Given that the agreement was signed by the Prime Minister and the First Minister, one can take it that people understand what’s what. Nevertheless, I think that a distinction should be made between a statutory provision and something contained in an extra-statutory agreement that people might want to flesh out.

Linda Fabiani: Thank you very much.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): With regard to rule 40 in schedule 3, which relates to the orders for production of documents, can you flesh out the concern that you express in your submission about

“the rationale for allocating this jurisdiction to the Sheriff Principal”?

Michael Clancy: Our point is that there is a difference between this provision and that in the Parliamentary Voting System and Constituencies Act 2011 and we were simply asking why that was the case. I am sure that the Government has a perfectly good answer to that question.

Patricia Ferguson: I hope so.

You highlight a number of similar issues in your evidence, including the use of rooms or offices of public authorities, the people who have access to polling stations and so on. Quite a few of those details seem to be at odds with past precedent. Do you think that that is a result of—how shall I put it?—hasty drafting or are you concerned that it has happened for some other reason? I have to say that I see no reason why that should be the case other than hasty or not very good drafting, but do you have a view on the matter?

Michael Clancy: With all due respect to the draftsmen, this is actually quite a well-drafted bill. Indeed, as you will see from our submission, we had very little difficulty with the drafting. However, these questions about the use of rooms in the possession of Scottish public authorities arise from the fact that the Political Parties, Elections and Referendums Act 2000, which contains some of these provisions, applies only to UK Government-run referendums whereas the bill refers to a referendum run by the Scottish Government and has been tailored to Scottish conditions. In highlighting the reference to “any Scottish public authority” in the bill, I was pointing out that there are many such organisations and I doubt very much that, say, the Mental Welfare Commission for Scotland will want a ballot box sitting in its vestibule on 18 September. That said, such details give the bill a more distinctive flavour, as it were.

Patricia Ferguson: Thank you for highlighting a number of very interesting points that we will probably want to raise in evidence sessions with other witnesses.

Annabelle Ewing (Mid Scotland and Fife) (SNP): Good morning. First of all, I should declare that, like John Lamont, I am a member of the Law Society of Scotland. As you might remember, convener, I made that declaration at the very start of our first meeting.

The Law Society’s submission states that section 21

"is important because it reflects Paragraph 3.1.D of the European Commission for Democracy through Law (Venice Commission) Code of Practice on Referendum (2009) which requires that authorities ‘provide objective information’ about the Referendum."

Is there anything in the bill that you foresee would preclude or make more difficult the provision of objective information, or do you feel that the Electoral Commission, as it has done in the past, will be able to provide objective information as required about the referendum, the referendum question and voting in the referendum?

Michael Clancy: I do not think that anything in the bill will of itself make that task more difficult. As Ms Ewing has pointed out, the Electoral Commission has a lot of skill in doing that. I am sure that it will be able to distil the issues that might be packaged in information for voters about the referendum, the referendum question and voting in the referendum. On section 21, I was simply reflecting on the fact that I had been
introduced to the European Commission for Democracy through Law’s code of practice and that it contains provisions with which the bill accords. That is important, because handing over the duty on providing information tries to avoid any incidence of bias in the provision of information about the referendum, the question or voting.

Annabelle Ewing: Does the dean of the faculty wish to comment?

Richard Keen: The only additional comment that I would make is that it is clearly implicit in section 21 that the Electoral Commission will act objectively in discharging the function that is referred to. I also note that, under section 21, it “must” take those steps, so it cannot exercise discretion. That underlines the fact that the situation is more of a black and white one than one of judgment.

Annabelle Ewing: Section 31 sets forth the ways in which a legal challenge can be brought relating to the certification of the votes that are cast in the referendum. The Law Society suggests that the process, which is to be by way of judicial review, conforms with past precedent in referendum legislation. I ask both gentlemen to comment on that, just to get it into the oral record. Certainly, the Law Society’s view is that the provision conforms with the general practice that one would expect.

Richard Keen: We would concur with that. The appropriate step to take would be to present a petition to the supervisory jurisdiction of the Court of Session by way of judicial review. The only additional comment that I would make is that it is not entirely clear why a period for applications of six weeks has been chosen. In England and Wales, the time limit for applications is up to a maximum of three months, although it might be less. The proposal in the draft courts reform (Scotland) bill is that the period should also be three months. It is therefore not immediately obvious why, for the purposes of the Scottish Independence Referendum Bill, a period of half that has been chosen. That is just an observation; it is not a criticism at all.

The Convener: That is useful for future evidence sessions.

Does anybody else have a question?

John Lamont: I just want to correct what was said earlier by pointing out that, actually, I am a member of the Law Society of England and Wales, not the Law Society of Scotland.

Linda Fabiani: Is it cheaper?

Michael Clancy: I point out that it is not about the cheapness; it is about the value that you get as a member of the institution.

The Convener: As members have no more questions, I have a general point, although I am not sure whether it fits into our witnesses’ remit or the expertise that they bring to the table. On the expenditure that is allowed for the yes and no campaigns—for want of better words—we have received evidence that disputes the Electoral Commission’s findings on the amounts available. The Electoral Commission has said that the no parties will get £1,431,000 and the yes parties will get £1,494,000, which on the face of it seems a reasonably level playing field. Do you have any views on that?

Richard Keen: We have no views on that at all.

Michael Clancy: Similarly, the Law Society has no views on that.

The Convener: I just wanted to make sure of that.

Is there anything else that you would like to draw to our attention that you think it would be useful for us to hear about? That could be something in the evidence that Michael Clancy has submitted to us or it could be any other evidence that you think we should consider for future evidence sessions so that we can scrutinise the bill properly.

Richard Keen: We have nothing to add at this time. We have noted that we will look at a number of further provisions. If we have anything of substance to contribute to the committee, we shall arrange to submit a written response on those points.

Michael Clancy: The Law Society has given you our written evidence. We hope that it will allow some questions to be asked of future witnesses. When we get to further stages of the bill, we will make representations as we ordinarily do with bills.

The Convener: I am grateful to you for coming and in particular for signalling the areas that we need to consider for future evidence sessions. I apologise to Mr Keen for putting him into the wrong camp at the beginning.

I suspend the meeting for about 10 minutes.

10:01 Meeting suspended.

10:13 On resuming—

The Convener: Welcome to the second evidence session on the Scottish Independence Referendum Bill. I give a particularly warm welcome to our witnesses: Professor Richard Wyn Jones, professor of Welsh politics and director of
the Wales governance centre at Cardiff University; William Norton, responsible person and referendum agent for the no to AV campaign; and Willie Sullivan, the former director of field operations for the yes to fairer votes campaign.

The theme of our second session is to draw on the witnesses’ experiences of two previous referendums: on extending devolution in Wales; and on changing the voting system for United Kingdom Parliament elections from the first-past-the-post system to the alternative vote system. Both referendums were held in 2011.

I understand that all three witnesses want to make brief opening remarks.

Professor Richard Wyn Jones (Cardiff University): I should start with a confession. First, I have a cold, so my Ynys Môn accent might be a little more impenetrable than usual. Secondly, I am not an expert on electoral procedures per se. My colleagues on either side of me are much more knowledgeable than I am on that count. I have, however, written a book with a colleague, Roger Scully, on the Welsh referendum, looking at the politics and voting behaviour. Inevitably, procedural elements feature in that.

In many ways, the referendum that was held in Wales in March 2011 was deeply unsatisfactory. There was a very low turnout and the campaign teetered on the brink of farce at times. There are several reasons for that, but the most fundamental is that, in my view, the referendum was on an issue that should never have been put to the vote in that way. It was a choice between two different types of primary law-making powers, which was frankly a rather arcane issue that was extremely difficult to explain to the public, let alone mobilise them around. That makes it fundamentally different from what is going to happen in Scotland in September 2014. Nobody could claim that the Scottish referendum is on anything other than a fundamental constitutional issue.

There were problems with the framework under which the referendum in Wales was held. First, the timetable was incredibly compressed. One of the key features of the Welsh referendum is that there were no designated lead campaigns. The decision not to designate was taken on 28 January 2011 and the referendum happened on 3 March, so a fundamental decision about the shape of the referendum was made only a month out from it.

We also discovered that PPERA allows for gaming. The no side chose not to apply for official designation, knowing that the impact of that would be that the yes side would then not be allowed official designation. That was a levelling down of the playing field, in a sense, but an element of gaming was involved.

Because of that gaming, the spending limits were absurdly tight. The yes campaign was not a designated lead campaign; it was a permitted participant. It was allowed to spend only £100,000, and it costs around £200,000 to send one piece of mail to every household in Wales. So, the spending limits were absurdly low.

Even if public subventions had been allowed—this is a point that my colleague William Norton will make—it is not clear that the money would have been particularly useful. It would have arrived very late in the day and could have been used only for a very tightly controlled set of spending requirements. Even if the campaigns had been given public subventions, it is not clear that they would have been particularly useful.

It is also worth noting the limitations of the media framework, which might be more relevant. There were some Welsh-specific problems with the media framework. There is a clear tension between the media’s need for two clearly defined homogenous sides—they can count the minutes for the two sides—and the fact that in politics it is rarely that simple. What happened with the no campaign was that it fractured in the last few weeks leading up to the referendum. It fractured ideologically between people who wanted to argue for abolishing the Assembly and people who wanted to argue for something called “real devolution”, which was never defined. There was ideological as well as personal fall-out in the no campaign. In the event, the press did not cover that, but there is a real issue around how to deal with internal tensions within one or both sides in a campaign that requires two clearly defined sides. The Welsh case raises that issue.

I am not sure how much of this is directly relevant to the Scottish case, but one of my key concerns is that nobody has tried to learn any lessons from the Welsh experience. That is difficult with referendums anyway—they are one-off events and people disappear instantly. However, the Electoral Commission’s report on the Welsh referendum was an exercise in self-justification—pure and simple. The commission made no real effort to think critically about its own role. I interviewed every key participant, and everyone was pretty critical of the Electoral Commission’s role. I have seen no signs of internal lesson learning in the BBC in Wales, let alone signs that the BBC in Scotland has taken an interest in the case. My concern is whether any lessons were learned from what was in many ways an unsatisfactory experience.

I feel as though I have been trashing Wales this morning; the only positive thing that I can say about the referendum is that it had the right result, in the sense that it reflected what people in Wales thought about the issue on the ballot paper. I am
talking not just about the people who voted but about the people who did not vote—to the extent that we have any information about their views. Such things cannot be taken for granted in referendums.

William Norton (No to AV): I think that the committee has the note that my colleagues and I prepared, which sets out our reaction to the bill.

I want to pick up on a number of points that Professor Wyn Jones made. On the grant, I cannot say whether the Welsh no campaign made a tactical decision not to apply for designation. I suggest that a financial element might have been involved—I say that simply from our experience in the AV referendum a couple of months later. In theory, there was a grant—I think that we could have got £380,000—but the terms on which it was claimable meant that no one would ever get that amount, because it was a reimbursement. We would have had to spend money on certain items, such as computers, which would not be useful to the main elements of a designated campaign, which are the sending of a mailshot and the preparing of a television broadcast.

We knew that to send a mailshot to everyone in the UK and prepare a number of TV broadcasts would cost £1 million, which we did not have, and that we would have to commit to that expenditure, because with the referendum taking place at the start of May a certain lead-in time was needed to prepare 45 million leaflets. We had to commit to making that expenditure in March, before we were designated and at a time when we did not have sufficient donations to cover it. I do not want to be melodramatic, but in effect I bet my house on sufficient donations to cover it. We would have had to spend money on certain items, because it was a reimbursement. We would have had to spend money on certain items, which are the sending of a mailshot and the preparing of a television broadcast.

If the grant rules were worded slightly differently and there was a lower proportionate amount, that would get over the problem of non-designation. What is needed in a referendum is two designated campaigns—one for each side—which can give a minimum amount of information, so that voters can make a fair and informed choice. The rules should help as much as possible in achieving that, and then the voters can make their own decisions.

Willie Sullivan (Yes to Fairer Votes): We all know how important it is to get this right, so I am grateful to the committee for asking me to come and share some of my learning with you. I have circulated a paper, which touches on the learning from the AV referendum.

There are two or three principles, which I think that the Government began to consider when it produced the bill, but which we should hold in mind when we consider the bill. First, no set of interests should have more power and money to influence the outcomes, to the benefit of their interests and at the expense of most others’ interests. Transparency can help to achieve that. As far as possible, the public have to know what the participants are doing and how and why they are doing it.

There needs to be an element of challenge, not just between the campaigns but from the media and, in the widest sense possible, civil society. Assertions, claims and counterclaims should be open to challenge from outwith the campaigns. If that is to happen properly, there must be an application of ethics at various points in the process.

We should also acknowledge that referendums and elections are elite-driven undertakings—they are set up by elites—but there is a paradox in that, in order for them to be legitimate, they need popular support. We can see at the moment that representative democracy is, if not in crisis, at least in want of legitimacy. To address that, we can do one of two things: either we can be honest about the fact that the referendum is an elite thing that is really just seeking the population’s endorsement of an elite settlement; or we can genuinely try to make it a process in which citizens can take part.

The Convener: Let me begin with a question to William Norton about the written submission from the no to AV campaign. Under the heading “High Level concerns for the fairness of the Referendum”, the third bullet point refers to concerns about expenditure limits. Can you explain a little more about those concerns?

William Norton: When I was asked to come up here to provide evidence, I had a look at the bill. I was aware that the background to the discussion was that the Scottish Government wanted a referendum that was “built in Scotland”—I think that that was the phrase that was used. Most of the provisions in the bill simply carry over those that would have applied if the referendum had been fought under UK law—under the Political Parties, Elections and Referendums Act 2000. However, PPERA provides a formula that sets out spending limits for parties that is different from the one that is in the bill. My comments come simply from a comparison of what the two measures would produce.

The position under PPERA is that you can spend a certain amount that is related to your share of the vote. There is no guidance on what that would mean for Scotland, but obviously it must mean a share of the vote at the Scottish Parliament elections. Under the bill, in effect, there is a total pot for eligible spending by political parties, which is then divided between the parties depending on their share of the vote in Scotland.
That is a significant difference from the position that would apply under PPERA.

Under PPERA, the presumption is that anyone can involve themselves in a referendum on either side, and their spending limit will depend on who they are. For a normal campaigning body, the standard spending limit will apply, whereas a designated organisation can spend the most. A political party can spend somewhere in between the two, depending on its share of the vote. The approach in the bill appears to seek to cap total spending by the two sides, but it does not apply the logic of that all the way through by just having a global spending limit for both sides that is equal. That is a significant departure from PPERA.

Personally, I am not convinced by the policy argument for that.

The Convener: Did you have a chance to read the document that was produced by the Electoral Commission on 30 January 2013, which went into some detail about why it came to that conclusion and recommendation?

William Norton: Having read that document, I am not convinced of the policy argument.

The Convener: The Edinburgh agreement pointed to the need for fairness and a “level playing field” in the campaign. In its submission to the Electoral Commission, the better together campaign also said that

"the way in which this referendum is run must not only be fair, but crucially must be seen to be fair.”

The figures that the Electoral Commission produced, which were taken by the Scottish Government and put into the bill, will allow the no parties a spending limit of £1,431,000 and the yes parties a spending limit of £1,494,000. Under the example given in your submission, the no parties would be allowed £2,700,000 and the yes parties would be allowed only £1,650,000. That would be a 63 per cent advantage. Do you think that that would provide the level playing field that was sought in the Edinburgh agreement and, indeed, by the other campaign groups?

William Norton: You are overriding a general assumption that, in a free country, people are enabled to take part in an election as they so choose. In effect, you are imposing an external limit on people, depending on which side they wish to support.

For ease of reference, we can talk about it as either a bottom-up approach, which is what we have in PPERA, or a top-down approach. In the bill, we have a half top-down approach that applies only to political parties and the two main campaigns. I find that unconvincing.

10:30

The Convener: The question that I asked was not so much about the detail of one side of the argument or the other; it was about whether the figures that the Electoral Commission ended up with produce a fair and level playing field.

William Norton: They produce something that you can call a level playing field, but you are making certain assumptions. First of all, what happens if a party decides to change sides? Suppose that a party changes sides because of the brilliance of the yes campaign’s arguments. You would then have a deliberately designed unlevel playing field.

Another example is what happened in the AV referendum. A major party might decide for its own internal reasons not to register on one side.

The Convener: I recognise that it is possible for a party to change sides but, in light of where we are, I find it difficult to imagine that that concept would be realised.

William Norton: I will give you another example. Let us look at the various parties on each side in the AV referendum. On the no side, we had the Conservatives and, I think, the Democratic Unionist Party in Northern Ireland. On the yes side, according to their official positions, we had the Liberal Democrats, the Scottish National Party, Plaid Cymru and the UK Independence Party, as well as the Social Democratic & Labour Party, Sinn Féin and the Alliance Party of Northern Ireland. There were various Green parties—I am not being dismissive; I am not sure whether all of them officially joined the yes side.

The Convener: They did not.

William Norton: In name, quite a few of them did.

If the formula approach had been used to equalise spending in that situation, we would have ended up with a global figure from both sides but, in the end, out of all the parties on the yes side, I think only the Liberal Democrats spent more than £10,000.

You are assuming that, just because somebody is included in the limit, they will spend it.

Willie Sullivan: The only party that spent was the Liberal Democrats. However, what the Electoral Commission proposed for the bill provides a more level playing field than PPERA did.

Professor Wyn Jones: If one side had a 60 per cent advantage over the other and it ended up being the losing side, there would be huge questions about the legitimacy of the process as a result.
I understand William Norton’s point but, if you will forgive me for saying so, it is a little scholastic. In relation to the issue that is ahead of Scotland in September 2014, the proposal is roughly fair. The PPERA approach would give you something that would not look roughly fair to most people.

The Convener: I am not sure whether William Norton is aware of this but for the sake of accuracy I point out that the figures that he quotes for spending limits in paragraph 7.5 of his submission are not the ones that are in the bill. He might want to reflect on the accuracy of the numbers that he has used. There is not a huge difference, but there is a difference.

William Norton: It may be a rounding error, then. I am prepared to stand corrected on that.

The Convener: It is a wee bit more than that. I point it out just so that you are aware of it.

William Norton: Will you tell me which figure, so that I can check?

The Convener: Your numbers for expenditure by the Labour Party, the Conservatives and the Liberal Democrats are different from those that appear in the policy memorandum and the Electoral Commission’s submission.

William Norton: I will not quibble over numbers.

The Convener: I raise it for the sake of accuracy.

Linda Fabiani: I have a quick question about paragraph 7.8 of your submission, Mr Norton. I have to say that I found the paragraph difficult. I could not get my head round the logic of it. You said just a moment ago that you thought that the Electoral Commission’s proposal was half bottom-up, half top-down, but you say in paragraph 7.8 that it is

“an absolute ‘top-down’ limit”.

William Norton: That is the logic of it, which is why I say that it is a halfway house.

There is a rule that says that the official yes campaign can spend a certain amount, that the official no campaign has a certain amount and that those limits are equal. We might consider that to be a top-down approach, which is extended to include political parties, which are assigned notionally to the yes side or the no side, so the top-down approach is continued.

Then we come to other groups that are completely unlimited as to whether they are on the yes side or the no side. Suppose, for example, that they were to join one side, on a sort of 2:1 break. Following the Electoral Commission’s logic, would that not call that approach into question? If we are going to begin a top-down approach all the way through the political parties, the logic must be that, in order for the process to be seen to be fair—to make sure that the playing field is level—should we not continue on and say that there is a global limit for the yes side and a global limit for the no side?

There are practical problems. Let us say that, in the middle of the referendum campaign, some people—opticians for yes in Arbroath, say—suddenly decide that they are very concerned about the need to campaign for a yes vote among opticians. They decide to register with the Electoral Commission but are told, “I’m very sorry, but the spending limit has been reached: you can’t join that side.” That is why I say that a top-down approach is a significant change to the way in which politics is conducted in the United Kingdom, where people who want to campaign can register and campaign. If we have a global top-down limit, somebody, somewhere is going to be told, “You can’t join the referendum campaign because we have reached the limit.” In practical terms, if you are in the headquarters of the yes campaign, how do you know what opticians in Arbroath are getting up to? You cannot police that.

Linda Fabiani: I do not think that we would want to police that, Mr Norton.

William Norton: I think that you will find that somebody is legally responsible for campaigning limits.

Linda Fabiani: I am sorry; I was being flippant and I should not have been.

Professor Wyn Jones: William Norton touches on a real issue. In the Welsh case, the yes campaign stopped raising money in the last few weeks—that sounds a perverse thing to do in the run-up to a referendum, but it was worried about the incredibly tight spending limit as a result of non-designation. The yes campaign actually stopped raising money for fear of somebody out there doing something in its name of which it was unaware.

I have made my general view clear. There are some sticky issues—

Linda Fabiani: Hypothetically, there could be problems. I am interested in Willie Sullivan’s view.

Willie Sullivan: I think that the bill is an improvement. Under PPERA, if somebody did something that the responsible person did not know about or could not reasonably know about, that could not be included in their expenses. I am not sure that that is such a big fear. There is a question about at which point an interest group registers to be a permitted participant in the referendum. If a professional body recommended a certain position to its members, I do not think that it would have to register as a permitted participant. In fact, as I said in my paper, the
problem with not having a spending limit is that it allows the process to be open to people who can raise the most money, which tends to favour people who have benefited from the status quo. I agree that there needs to be a public grant that can be used for campaigning. I agree with everything that has been said about that; it would be an additional improvement.

William Norton: The difference between us is what we mean by being seen to be fair. It is clearly within the competence of this Parliament to take the view that being seen to be fair means that you have a top-down limit on political parties—in other words, you distinguish political parties from other campaigners. I am looking at the question of what is fair from the point of view of someone who actually has to manage a campaign. How does the bill compare to what would have happened if the referendum had been fought under PPERA? However much we argue the pros and cons, the bill represents a major change from PPERA. Clearly, the Parliament can choose to do that. I do not have a dog in this fight.

The Convener: It is an interesting question. When we take evidence from the Electoral Commission, we will need to tease it out further. Paragraph 2.11 of the commission’s report about its advice on campaign spending limits states that:

“In line with our principles, our advice is based on a ‘bottom up’ approach”.

I do not want to get into an argument about semantics and whether it is right to say that the approach is bottom up or top down, but there is obviously a difference of opinion. We can tease that out later, but I think that we have gone as far as we can on the matter and I want to move on to other areas of questioning.

James Kelly: Mr Norton, I want to clarify a point in your submission to see whether I can follow the logic of the argument. In paragraph 7.5, you seem to be saying that, although there is a spending limit for designated campaigns and political parties, the rules for non-designated organisations are weak and, as an example, you refer to the sum of £150,000. Are you contending that, if one organisation can produce 20 such donations with a total of £3 million and another can produce 10 totalling £1.5 million, it could be argued that the way in which the bill is drafted will give rise to an inequality in campaign expenditure?

William Norton: You are effectively making my earlier point about how far we take the top-down approach. Even if you take a top-down approach to capping limits for the two official campaigns and equalising the spending for parties, you will still have an imbalance at the bottom with regard to non-party campaigners, who can be funded by as many donations as they can raise. Again, it is a question of how much you want to level the playing field.

The Convener: If I remember correctly, the Scottish Government proposed a lower figure than that and the Electoral Commission increased it.

I believe that Stuart McMillan has a supplementary question on this issue.

Stuart McMillan (West Scotland) (SNP): I actually have a number of questions that follow on from this line of questioning.

With regard to the level playing field that you mentioned, Mr Norton, the question must be: what price do you put on democracy? We have heard about the spending limits but we must remember that the economic situation is challenging not just in Scotland or the UK but globally. If, as you suggest, the spending limits are increased, might that not backfire on both sides? For example, the electorate might think, “Wait a minute—these are tough economic times but these politicians just want to spend pound after pound on campaigning.” If we have a level playing field with certain limits, the public might be able to fully buy into either side’s campaigns as well as realise that things are being done in an equitable way without too much money being spent.

William Norton: I think that I am right in saying that what the political parties spend does not come out of public funds, which means that they can spend a lot of money on themselves if they want to. Of course, that will be a judgment for the parties themselves. For example, for the AV referendum, the Conservative Party had a spending limit of £5 million and spent only £600,000; the Liberal Democrats’ spending limit was not as high—I think that it was £3 million—and they spent a couple of hundred thousand pounds; and other parties would have had a spending limit of £500,000 or whatever and did not spend all of that. As I have said, what they spend their money on is a judgment for the parties themselves.

I understand your question: should we, in a time of austerity, have large spending limits? However, I am suspicious of the suggestion that a voter somewhere will trust the referendum result if the Liberal Democrats are limited to spending money and will not trust it if the Liberal Democrats are entitled to spend two blob. You are obviously closer to your electorate than I am.

Stuart McMillan: Willie Sullivan has already commented on the issue of politicians, politics and the electorate. You have said that much of the money comes not from the public purse but from donations, which is right, but many people will not distinguish the difference. They will simply see designated organisations or political parties spending money.
10:45

The Convener: Do you have a question, Stuart?

Stuart McMillan: I wanted to get that point on the record. I do have a question, however.

Mr Norton, paragraph 7.9 of your paper refers to parties changing sides, and you commented on that earlier. I am sure that colleagues around the table supporting the other side of the campaign from me will probably dispute this point, and I would not imagine Labour, the Conservatives or the Liberal Democrats changing sides in the run-up to the referendum—although there are campaign groups that support independence within some of those parties—but do you realistically view that as something that might happen in the Scottish referendum?

William Norton: It is worth considering if you are devising a theory on the basis that something is going to happen. I defer to your experience in politics, but I would point out that not everything happens that everyone expects automatically to happen.

Stuart McMillan: But, in all fairness—

William Norton: I have an example from the AV referendum.

Stuart McMillan: I would not imagine that the Scottish Conservative and Unionist party would change its mind.

The Convener: Let William finish his answer, Stuart.

William Norton: In the AV referendum campaign, for example, one of the major parties of British politics, the Labour Party, did not officially adopt a stance on either side. That took out an entitlement to spend of about £3 million or whatever—I forget the exact amount—which would have been a significant amount within the party spending limits.

That occurrence would have significantly upset the formula if a formula like the one being applied in the Scottish Independence Referendum Bill had been applied to the AV referendum. Would that have produced an unbalanced result that would have led people to think that they could not trust the referendum because the spending limits were unbalanced?

The Convener: Let us move on.

Stewart Maxwell: I wish to return to a point that was raised earlier by Professor Jones. It is also covered in Mr Norton's evidence. It is at the second bullet point in your list of high-level concerns, Mr Norton, and it relates to the issue of designation. You go into the matter in your submission in some detail, over a couple of pages.

Could you explain the logic behind your thinking? You believe that the "both-or-neither rule" that you describe should apply.

William Norton: The both-or-neither rule is the ultimate level playing field: either both sides have a designated organisation, or neither side has a designated organisation. I agree that it is far better to have a designated organisation from the point of view of getting the message out to the voters. However, there cannot be a designation on one side only as that would mean having an unlevel playing field by design.

There was a massive failure in the Welsh referendum, in that one side did not submit an application for designation. That led to a very unsatisfactory referendum result. I suspect that that happened mainly because those concerned could not afford to discharge the duties of designation.

With an AV referendum, a referendum on Scottish independence or a referendum on whether we should drive on the right or left-hand side of the road, we need people on both sides who can put a case, and we then let the voters make up their minds. It would be getting a bit Venezuelan to have one side that can send out leaflets and make television broadcasts and another side that cannot.

Stewart Maxwell: I would like to hear your opinion on that, Professor Jones.

Professor Wyn Jones: The problem, as we discovered through the PPERA experience in Wales, is that we get gaming. There was a clear case of gaming the system, and there is no doubt that finance was part of it. The no campaign was simply unable to raise funding because it had no activist support. The no campaign was aware that, if the ground campaign was essentially destroyed but a media campaign was retained, that would ensure—particularly given the importance of public broadcasting in the Welsh context—that there would be 50:50 coverage. The no campaign gamed the system.

William Norton and I clearly disagree on some of that, but the points that he made about the potential for gaming are important. People will game systems, and PPERA was not fit for purpose in the Welsh context. The other issues that have been raised about the £150,000, for example, are in essence issues about gaming. We have learned from the Welsh experience that PPERA is not fit for purpose.

The Convener: Before we turn to Willie Sullivan, let us be clear about your answer to Stewart Maxwell. Do you think that the bill that is before us takes the right approach?
Professor Wyn Jones: Yes. It is simply unacceptable that one side can take the other out of the game as happened in the Welsh context. However, there is an important addendum. William Norton makes a point about incentivising designation by allowing such an organisation to spend some money on the campaigning. I would want to do both: I would want to allow some of the money to be put into creating campaign materials, but ultimately we need some sanction to prevent people from gaming the system.

Willie Sullivan: In the lead-up to designation, we thought that it was sheer tactics on the part of the no campaign; because of the Welsh experience, there was a lot of rumour and gaming about whether it would register.

As William Norton said, there is a huge risk in registering because it involves committing millions of pounds to freepost mailings and stuff because of the timescale of the referendum. Therefore, we could have ended up spending millions of pounds on printing loads of leaflets that we would then have had to pulp if the no campaign had not registered, because we would not have been allowed to spend that money on the referendum campaign. I agree that, to remove that risk, there should be no impact on one campaign if the other campaign does not register. I do not think that we are in any danger of that happening in Scotland, but I would remove the potential for rumour generation and gaming.

I know that no public grants are proposed, but I also agree with William Norton about the incentive of a public grant that could be spent on campaigning, not just on administration.

Stewart Maxwell: Mr Norton, you have heard what the other two witnesses have said. It seems clear, from their evidence and from what I and, I am sure, others have read, that what happened in Wales was entirely tactical. I think that it is an entirely unrealistic scenario in the Scottish situation. However, surely you accept that enabling one side to block the other side, in effect, from campaigning in such a referendum is frankly ridiculous and cannot be allowed to happen. We cannot allow the process to be used as a tactic by one side or the other.

William Norton: All choices are bad in a situation in which one side does not apply for designation. Why have a designated organisation? So that it can be given access to freepost mailing, television broadcasts and public rooms. That is a sort of quasi-public duty, and I think that it sets a bad precedent if there can be an entitlement on one side and not the other.

Just to pick up on the point about—

Stewart Maxwell: Sorry—can I interrupt you for a second? The entitlement is for both sides, but one side may decide not to take it up. That is quite different from what you just said.

William Norton: I think that there is a genuine problem with broadcasters, for example. They will have a duty of impartiality, but can they discharge that duty if they make broadcasts for one side only? I do not know the answer to that. I throw that question over to the broadcasters.

If one side does not designate, all choices are bad. In the AV referendum, it was quite a fine judgment. Willie Sullivan says that there were rumours that we were not going to designate. There was a real possibility that we would not designate, and it was about the money rather than tactics. I cannot comment on the Welsh campaign. As I say, I bet my house on being able to raise the donations to pay for the mailshot.

The Convener: We will move on from that, Stewart.

Stewart Maxwell: Okay.

Tavish Scott: Can I ask a question on the same point?

The Convener: You can ask a question on the same point, or if you want to develop the debate in another area, please do.

Tavish Scott: First, on the same point, it is foggy of us to conflate the practice of what happened in Wales on AV and the principle. Mr Norton, in paragraph 6.7 of your submission, you categorise “this as a High Level Concern because paragraph 5”—of the bill currently in front of this Parliament—“clearly creates the risk of an unfair referendum.”

In the submission, you describe the principle and not the practice, but you have been dragged into talking about the practice that happened elsewhere.

William Norton: In the situation in question, all choices are bad. What is the worst outcome? Is it a referendum in which there are no designated campaigns? For the sake of argument, let us say that the yes campaign decides not to go in. We would then have a campaign in which the referendum would be defined by that fact: the single most practical point would be that one side was not competent enough to apply for designated status. Electorally, that would surely kill that side.

The alternative to having no designated campaigns is to go forward with broadcasters pumping out broadcasts for only one side and Royal Mail delivering leaflets for only one side. All choices are bad in those circumstances. As I said, I would be very surprised if that arose in practice in this referendum, but you are setting a precedent for other referendums.
Tavish Scott: Can I move to a different issue?

The Convener: Please do. I think that we have heard enough about that area.

Tavish Scott: In your evidence, Mr Norton, you discuss paragraph 25 of schedule 4, on control of ministers. I will try to paraphrase your argument; please correct me if I have got it wrong. You seem to argue two fundamental points. Scottish Government spend and the use of Government grant-funded bodies to promote independence is one aspect. Secondly, ministers—in this case, the Scottish ministers—are not subject to the same rules on activity, investigations and sanctions as other campaigners. Will you please talk us through those two issues?

William Norton: I would not quite go as far as that. I would look at it more historically. I have had experience of two referendums, in which the area covered by PPERA section 125—the so-called purdah—has been in point. As PPERA is set, it has been totally ineffective at doing what appears to be its purpose: controlling what ministers or taxpayer-funded bodies can do.

For your bill, you have taken a provision in PPERA and copied it word for word, and you have therefore carried over the weaknesses. In addition, one particular provision has been missed, and I am curious why. It will create a black hole, if you like, of unregulated activities that could happen. Whether they will happen—how realistic that is—I do not know, but it is worth asking that, if a provision in your bill is based on PPERA, why is something missing that was in the original?

Tavish Scott: Will you describe that black hole? What exactly is the provision omitted from this bill that is in the UK legislation that governs referenda?

William Norton: The basic provision says that, in the last 28 days of a referendum campaign, certain groups—for example, ministers and local authorities—cannot do anything to publicise or to encourage votes. The original legislation includes in that definition other organisations that are not public bodies but which are majority funded by the taxpayer, which are therefore regarded as quasi-public bodies for the last 28 days of the campaign. That final provision is missing from the bill.

Tavish Scott: Why do you think that that has been missed out?

William Norton: There are two possibilities. One is that there was a simple drafting mistake: they were copying it word for word, then they went and had a cup of tea and—

Tavish Scott: They just missed it out.

William Norton: That is a possibility. The other possibility is that someone has decided to take it out, which is more your end of the business than mine.

Tavish Scott: We can ask other witnesses about that.

What is the practical implication of leaving out that provision? Could all those Government-funded bodies spend money on promoting one course or another?

William Norton: In theory they could, yes. They would have to register at some point, depending on how much they had spent. The point is that there is a clear policy justification for a legal provision to stop certain entities or individuals campaigning.

Tavish Scott: Absolutely.

William Norton: It would not, for instance, stop a minister acting in a personal capacity in exactly the same way as there are rules on what can or cannot be done before an election. The same principles are carried over.

As I said, what you suggested is a possibility.

Tavish Scott: In paragraph 9.11 of your evidence, you describe detailed rules that campaigners have to follow, what might happen to them if the Electoral Commission finds them in breach of the rules and the sanctions that would apply under the law. Those do not apply to ministers, however. Is that something that needs to be addressed?

11:00

William Norton: It is a flaw that goes back to PPERA. There are fairly detailed rules on what campaigners can and cannot do. Mr Sullivan will testify that they are extremely onerous. However, in PPERA and the bill, only one provision catches the minister with his ministerial hat on, and it is the weakest provision in PPERA.

Tavish Scott: So the UK legislation is equally flawed and we will be enshrining the same flaw in this bill if we allow it to go through in its present form.

William Norton: Yes.

Tavish Scott: What is your recommendation? How could the bill be strengthened to achieve a level playing field?

William Norton: I invite Scotland to strike a great blow for democracy—

Stewart Maxwell: We intend to.

William Norton: Following a fair vote.

Tavish Scott: In bullet points in your evidence, you helpfully suggest improvements to the bill,
which is a welcome principle in evidence to any committee. You point out that

“A 28 day purdah period is too short.”

How could the period in which the campaign operates be improved, bearing in mind that we will also have the Commonwealth games and a lot of other events—including celebrations of battles that took place a long time ago—that will all involve Government ministers?

William Norton: I am sure that they would not use those as excuses for pushing a line.

Tavish Scott: Surely not.

William Norton: I am horrified by that suggestion.

Since 2000, the period has been 28 days. Since about 2004, the Electoral Commission has been producing learned reports saying that 28 days is too short, and I have submitted evidence to various committees saying that it is too short. The Electoral Commission thinks that the period should start from the beginning of the referendum period, which will be 30 May, or whatever the date is in the bill. I would start the period from the date on which designation occurs—or does not occur.

In effect, designation is the date on which publicly recognised campaigners come into being. At that point, the drawbridge would be put up and we would say that public authorities, ministers and people who take public money must stop any relevant activities. However, that would not prevent people from doing things in a private capacity.

The Convener: I will draw in our other two witnesses on the same question in a moment, but first I have a question that follows on from that. Mr Norton's suggestion would apply to the Scottish ministers and Scottish quasi-autonomous bodies, but should the same rules apply to UK Government ministers? The problem for us would be how to make that happen through the bill.

Professor Wyn Jones: My view is a resounding yes—the same rules should apply. I do not know how to make that happen, though.

Willie Sullivan: There is a difficult balance to strike in these matters. On the one hand, we do not want state money to be used to push a particular viewpoint but, on the other hand, in places around the world where we are trying to create democracies the first thing that we want to do is to build civil society and allow it to take part in the political process. Most people would agree that that is a fundamental requirement of a functioning democracy. How do we get that balance right?

I am not criticising the no to AV campaign—it ran an effective campaign in the situation, incentivised by the way things were—but it wrote a letter to any charity organisation that seemed to be supporting the yes campaign to tell it that it was breaking the law. Whether or not organisations were breaking the law, the fact that they were scared of doing so meant that civil society kept out of politics. It is difficult to find a way to balance dealing with the misuse of state funds with including civil society and encouraging it to take part in political debate.

Professor Wyn Jones: To respond directly to Tavish Scott's points, purdah is a difficult issue because it makes government difficult. I therefore understand the concern, although other people have much more experience of the issue than I do. I simply reiterate the point that any provisions must surely apply at UK level as well as in Scotland, because neither Government is a neutral player in this particular fight.

Annabelle Ewing: I have one last point on the 28-day purdah period. In paragraph 103 of the policy memorandum to the bill, the Scottish Government states that, in having a 28-day period, it is following PPERA, which applies that period for UK elections and referendums. The Government adds that its approach was

"endorsed in the Edinburgh Agreement."

Mr Norton’s paper raised the issue of grants, and the other two witnesses this morning have referred to it. Can the witnesses state their position on the issue and explain whether they are in favour of state subvention paid for by the taxpayer? If they are, can they explain why they think that the taxpayer should be asked to give their money to support a particular viewpoint? I would have thought that, particularly from the TaxPayers Alliance’s point of view—I think that Mr Norton’s colleague has links with that organisation—that would be a rather strange position to take.

William Norton: How much are you spending on the referendum?

Annabelle Ewing: Excuse me? Me, personally?

William Norton: How much is being spent on the referendum?

Annabelle Ewing: I think that I have been spending money all my life to get to this stage. However, the question was why the taxpayer should be asked to provide a subsidy for a particular point of view. That is my question to you, if you want to answer it. If you do not, then please just say so.

William Norton: I think that you are spending £12 million on the referendum. I have had a quick look through the financial memorandum to the bill and I believe that that is the figure. My suggestion is to give £150,000 to each side of the campaign. You can spend £12 million on having an ill-
informed referendum, or you can spend £12.3 million on having a first-class, world-class referendum—it is your call.

**The Convener:** Surely some of that £13 million money that will be spent by the Electoral Commission on behalf of the state on public information.

**William Norton:** Ah! Will it?

**The Convener:** That is certainly the intent, as far as I understand it. Apologies for interrupting, because I should let Willie Sullivan and Richard Wyn Jones respond.

**Willie Sullivan:** I understand why it is difficult to give public money to things like this at this point, but there are a couple of good reasons for doing it. Perhaps the two sides do not need the money in this particular case, but an issue of precedent is involved as well. If there is a reasonably low spending limit, with a public grant in it, that means that the money to be raised to run a level-playing-field campaign between the two sides is not that large an amount; otherwise, as I said previously, a no-change position would have a huge advantage because it would be able to raise money from the vested interests of the status quo. That is a good reason for having a public grant.

We might think that giving public money to the campaigns would help to shed light on the issue, but some might argue that they just make the issue more difficult to understand and complicate it. As I said at the end of my paper, perhaps we should instead consider giving public money to a process of citizens’ engagement and awareness raising.

**Professor Wyn Jones:** To respond to Annabelle Ewing’s point, of course it is difficult to justify spending public money, particularly when it is on things that will be contentious and will offend many of those who will have to contribute to paying for the literature.

The experience in Wales—I acknowledge that it was a different system—was that there was money available to pay for stuff that people did not need to pay for. For example, you can borrow an office and get hold of a computer, but what you need to pay for is the leaflet to put in the envelope or filming a broadcast. However, that was all stuff that the campaigners could not spend money on. It meant that the money that was available was pointless, in a sense.

My own view, for what it is worth, echoes what Willie Sullivan said. The referendum in Wales cost £5 million or so in the end, but there were no free designations. A lot of public money was spent on a process, but it did not actually deliver information. The Electoral Commission circulated information, but it was so bland that it was extremely difficult for anyone to come to a judgment on the basis of it.

**Annabelle Ewing:** In relation to Mr Norton’s point about the money that is provided to the Electoral Commission, that is for the commission’s duties, which are quite clearly set forth. That is not the same issue as the one that we have been discussing. Professor Wyn Jones set out clearly the position on the provision of money beyond that to particular sides in the argument, which I would have thought is a slightly different issue.

**James Kelly:** I have a specific question for Professor Wyn Jones. You said in your initial statement that, as far as the Welsh experience was concerned, you were highly critical of the Electoral Commission and that you did not think that lessons had been learned from that. What lessons can be learned for the referendum in Scotland from the performance of the Electoral Commission in Wales? What must it take on board to get things right in Scotland?

**Professor Wyn Jones:** I will make two slightly different points. My first is about the commission’s own report, which gives its reflection on the experience in Wales. I regard that report, which is available, as being purely an exercise in self-justification. Interestingly, it strikes a plaintive note when it says that the commission contacted people on both sides of the campaign, but no one on the yes side responded. However, eight weeks after the referendum, we had an election in Wales, so all the people who were involved in the yes campaign—we are talking about political professionals—were off fighting an election. Therefore, none of that experience is reflected in the commission’s report. Frankly, I am not sure that the commission was particularly upset not to have received a response from those people.

My second point is that, when I interviewed people who were involved in the yes and the no campaigns, they made a lot of critical noise about the commission, particularly about how incredibly cautious and often opaque its responses to queries were. I see that there is some nodding going on. I am not in a position to know whether that was true—I am not, as I said at the outset, an expert on electoral procedure—but I received a lot of critical comments even though I did not canvass opinion specifically on the commission. There is nothing in the commission’s own reports to suggest that it is ever anything other than jolly good.

I am sorry, but I cannot give you specifics. All that I can tell you is that there was general disquiet among the people to whom I spoke, none of which is reflected in the commission’s report.

**Linda Fabiani:** I, too, want to ask about the Electoral Commission. The Law Society of
Scotland said—I am paraphrasing here, so I might be using the wrong phrase—that it had always found the Electoral Commission in Scotland to act with absolute integrity; I think that those were the words that it used. Therefore, I am a bit concerned by Mr Norton’s high-level concern bullet point 1, which basically says that he does not trust the commission when it comes to neutrality. Could you expand on why that is the case?

William Norton: Certainly. You have given the commission a question that asks, “Should Scotland be an independent country?” You have given it the duty to increase understanding of what that question means. On the basis of my experience of the way in which the commission prepared brochures in the north-east referendum in 2004 and in the AV referendum in 2011, I do not see how it can discharge that duty in relation to that question. I am sure that Willie Sullivan will back up some of my comments.

In 2004, the commission put out a very bland document that dealt with two different referendums. One of them was on whether there should be a regional assembly in the north-east of England. In certain areas, there was to be a reorganisation of county councils. The commission’s document basically said, “If you want to know more about the first question, contact the yes and no campaigns—here are their telephone numbers.” The first that we knew about that was when people started telephoning us. It would have been nice to know in advance that 2 million of those documents were going out. That knocked out my telephone for two days, as the number that the commission gave was my private line. It also knocked out the yes campaign’s telephone for two days; I think that the campaign had to have another phone line put in.

11:15

For the AV referendum, the commission was effectively given a very normative question and ducked it. One would think that there would be a simple mechanical explanation of how the voting works in AV, and the commission produced little diagrams that showed piles of votes moving around.

I had some criticisms of that document, and I suspect that Willie Sullivan had some different criticisms, and that was just a simple description of how two voting systems work. I will be staggered if the Electoral Commission is able to produce a document on understanding that question that does not lean to one side or the other in some way, which would lead everyone to start reaching for their lawyers.

If you want that question and that duty to be given to the Electoral Commission, you will create a massive headache for it. You will get a very bland document that says that people should telephone the two campaigns. The Electoral Commission is very good on some things, and it has got better over the years. It is good on things such as procedure, and telling people, “You need to sign this form and get it in to this person by this date.” However, on anything that involves policy or that has a normative element, the commission will get back to you.

The Convener: Are you suggesting that, in the circumstances, we should just remove that power from the Electoral Commission?

William Norton: I have set out what the equivalent duty was in the other referendums: it was narrower. You probably do not need to worry about what you would do with the two designated campaigns—you cannot designate on both sides—but I would go for a narrower duty that is specific. How will the Electoral Commission get people to understand independence in a way that does not lean one way or the other?

It could do that if the question was, for example, “Should Scotland leave the United Kingdom?” That is a factual thing, and the commission could simply say, “You start off inside the United Kingdom and end up outside it, and we will not know all the terms but there will be negotiation.” That would be difficult enough as it is, but the issue is about getting people to understand the question, “Should Scotland be an independent country?” It will be very difficult to do that without leaning one way or the other.

Linda Fabiani: Do you not think that people are smart and would understand the question?

William Norton: It is not a question of you, madam; it is a question of the Electoral Commission.

Linda Fabiani: It has been tested—we have had that discussion about the question.

Willie Sullivan: The objective is to try to inform the voters as far as possible so that they can make a decision. There is an assumption that there is some sort of objective truth when there is not. You have given the Electoral Commission an impossible job to try to put that case. Both sides in the AV referendum thought that the document was biased one way or another, and that is going to happen again.

I understand that the Electoral Commission is not going to do the same thing this time, but we need to make sure. I think that you are asking too much of the commission to undertake that duty.

As I suggested in my paper, there are other ways—which have been tested by academic research around the world—to get local communities to deliberate on and think about
issues without leading them in one direction or another, such as ethically trained facilitation. We would at least consider that as a way of getting real democratic innovation in this country.

The Convener: Does Professor Wyn Jones want to comment on that area before I go back to Linda Fabiani?

Professor Wyn Jones: No, I will not.

Linda Fabiani: What we have heard from everyone on that issue is interesting. We will be taking further evidence, but it is worth putting on record that there was a unanimous view in the Parliament that the Electoral Commission should fulfil that function when it comes.

Tavish Scott: No, I do not think that that is true at all.

Annabelle Ewing: Perhaps I can be helpful here. The Secretary of State for Scotland—

The Convener: Let us not get into an argument across the table—we are supposed to be asking the witnesses questions. Are there any other questions for the witnesses?

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I am interested in hearing more from Richard Wyn Jones about the coverage of the Welsh referendum. You said that there were Welsh-specific issues in the media that required to be looked at. Could you expand on that?

Professor Wyn Jones: I mentioned two issues, one of which was the Welsh language. It was a struggle to find anybody who could articulate the no case in Welsh. At one point, broadcasters were seriously worried about how they could cover it. It would be rather strange to have a referendum on Wales without being able to cover it in the Welsh language. The BBC in particular found itself at least hovering over lines that it should not be crossing. In the event, it was the media that put the no campaign in touch with two campaigners, who became its Welsh-language spokesmen.

The no campaign was weak on the ground and lacked support. I spoke to reporters who said that they had to make multiple calls to the no side to ensure that there was something happening that they could film so that they could then show what the yes side was doing. I do not think that those examples are relevant to the referendum on Scottish independence—I certainly hope not. There were Welsh-specific elements that may be of interest but are probably not particularly relevant to Scotland.

Rob Gibson: But we have the BBC in Scotland and the BBC in London. I do not suppose that there was much coverage by the BBC in London of the Welsh referendum. However, there might well be with this one.

Professor Wyn Jones: To be fair, there was some coverage of the Welsh referendum—the BBC in London felt the need to cover it. However, if the choice between part 3 and part 4 of the Government of Wales Act 2006 was arcane for people in Wales, covering it in the so-called national media was even more difficult.

Rob Gibson: I have a question about awareness raising and the process relating to the Welsh referendum. You mentioned the Welsh-language element in that. I presume that the approach in Wales was to ensure that materials relating to the whole process, from awareness to the polling place, were available not only in English and Welsh but possibly in other languages.

Professor Wyn Jones: It would not happen in Wales these days without being in Welsh and English. There was the police commissioner example, but that is another story.

The Convener: As there are no further questions, I thank you for giving evidence, gentlemen—[Interruption.] Sorry, did you want to say something, Mr Norton?

William Norton: I just wanted to agree with the point about languages.

The Convener: If you want to submit something later, please feel free to do so. Having begun to conclude, I had better do so.

Thank you very much. I am grateful for your evidence this morning, which was very helpful. The next meeting is scheduled for Thursday 16 May, when the committee will take evidence from the Electoral Management Board for Scotland and Professors Tom Mullen and Neil Walker.

Meeting closed at 11:23.
Scottish Parliament
Referendum (Scotland) Bill Committee
Thursday 16 May 2013

[The Convener opened the meeting at 09:31]

Scottish Independence Referendum Bill: Stage 1

The Convener (Bruce Crawford): Good morning, colleagues. I formally remind people to switch off their phones. We have received no apologies. I welcome everyone to the Referendum (Scotland) Bill Committee. This is the second of five meetings during which the committee will take evidence on the Scottish Independence Referendum Bill at stage 1.

I warmly welcome our first panel of witnesses, who are electoral professionals and so are directly involved in implementing provisions of the bill. All the witnesses have appeared before the committee previously to give evidence on the Scottish Independence Referendum Franchise Bill. I welcome Mary Pitcaithly, convener of the Electoral Management Board for Scotland; Gordon Blair, chair of the elections working group in the Society of Local Authority Lawyers and Administrators in Scotland; Brian Byrne, chair of the electoral registration committee in the Scottish Assessors Association; and Kate Crawford, chair of the Scotland and Northern Ireland branch of the Association of Electoral Administrators.

I understand that none of the witnesses wishes to make an opening statement, so I will kick off with a couple of questions on the paper that the EMB has kindly submitted to us. I was glad to see that the opening and closing paragraphs emphasise that there has been significant engagement and early consultation with the Scottish Government in the development of the bill. However, the submission raises some interesting issues, and I want to ask Mary Pitcaithly about a couple of them.

The first issue relates directly to a potential change in the bill. What you have said seems eminently sensible, but I want to explore it a bit more. You state:

“a timetable with key milestones as is used in elections legislation is a major omission and should be inserted into the Bill.”

Will you tell us a bit more about that? Has that happened in previous legislation and if not, why not? Why would it be an advantage to introduce a timetable in the bill?

Mary Pitcaithly (Electoral Management Board for Scotland): My understanding is that a timetable has been included in previous legislation, and it is helpful for administrators if we have a common understanding of all the dates and times. For example, the Parliamentary Voting System and Constituencies Act 2011 contained a timetable of that nature. I do not know why there is no timetable in the bill—I am sure that it was just an oversight—but we can work on that. It would be helpful for us if a timetable was added to the bill.

The Convener: Will you expand on why it is helpful? It seems obvious to me, but I want to get that on the record.

Mary Pitcaithly: I suppose that it is just because we need to ensure that everybody has a clear understanding of all the dates. If a timetable is not added to the bill, the EMB will issue something so that all the returning officers and district returning officers have an understanding of the dates, but it would be more helpful to have that information in the bill. I do not know whether Gordon Blair wants to add to that.

Gordon Blair (Society of Local Authority Lawyers and Administrators in Scotland): A timetable gives an overview. It takes people straight to the detail in the pertinent legislation, aids understanding of the legislation and minimises the time taken to apply it. It also aids the implementation of regulations. A timetable is cosmetic, though, and nothing to do with the content of the law; it will not change the rules, but it is a useful and practical tool.

The Convener: So a timetable could be included in the bill, or the Government could insert a requirement for the Electoral Management Board to issue guidance on a timetable.

Mary Pitcaithly: Yes.

Gordon Blair: It would not be a timetable for absolutely everything. It would be equivalent to the timetable for the parliamentary election rules under the Representation of the People Act 1983, for example, or, as Mary Pitcaithly said, the timetable for the 2011 alternative vote referendum legislation.

The Convener: The second issue that I want to explore is more about clarity and is not directly related to the bill. On the declaration of results, the EMB’s written submission states:

“liaison arrangements between the CCO and COs for the count need to be the subject of consultation, with clarity on the appropriate sequencing of local and national declarations.”

Can someone extrapolate on that and explain the thinking behind it?

Mary Pitcaithly: We are thinking about the need for us to be absolutely clear about how we
will declare the final result and about all the steps that will be taken from the point when the first result is available at a local level to the point when we have the national result. There will have to be discussions between the chief counting officer and the various counting officers around the country about the process for doing that. The board has set up a workstream in anticipation of that being our responsibility. We will do some detailed work on what systems we will use to collect and collate the results and on how we will advise the public, who will be glued to their television screens and interested in the process. We will ensure that people are clear about how everything will happen.

We used a particular system for the AV referendum in 2011. The question is whether we will use something similar to that or another system that is on the market, or whether we can devise something ourselves that will allow us to be absolutely clear about the transferring of information from counting officers to the CCO.

The Convener: But I am right in assuming that that would not require a change in the bill.

Mary Pitcaithly: Yes.

The Convener: It can be done through the Electoral Management Board.

Mary Pitcaithly: Absolutely.

James Kelly (Rutherglen) (Lab): I thank the witnesses for coming along this morning. I want to discuss some issues around the organisation of the poll, but particularly applications for postal and proxy voting and the receipt and counting of such votes. It is clear that the referendum will have a much higher turnout, so the volume of postal and proxy votes will be much greater than that for previous elections. What particular issues need to be taken on board and focused on around postal and proxy voting applications, their receipt and the counting of such votes?

Gordon Blair: There are two implications. One, which is on the registration side, is about applying for a postal vote; the second, which is on the counting officer side, relates to the issuing of postal votes, returning them and processing them, which includes absent vote identifier checking. Perhaps one of my colleagues can expand on that.

Brian Byrne (Scottish Assessors Association): The postal voting mechanism proposed in the bill is fairly traditional, but there will be some changes in the postal voting mechanism for the European Parliament elections. It might therefore be worth looking at whether those changes can be incorporated in the bill. The early issuing of postal votes will happen for the first time at the European elections. If the bill retains the traditional system, we will have to change back to it, which is more or less just about the issuing of postal votes and not about early issuing.

James Kelly: I am not really aware of the changes for the European elections. What are they?

Brian Byrne: There is a possibility of issuing to the standing list a little earlier rather than waiting until the last possible date. That will also need a mechanism for cancelling a postal vote if a person is no longer registered. So it is not quite straightforward, but it is being introduced for the European elections. I understand that Government officials are looking at it, because it is worth considering.

James Kelly: Would that require legislative change?

Brian Byrne: Yes, a change in the legislation would be needed.

James Kelly: We need to keep on top of that as the bill goes through the parliamentary process.

Brian Byrne: There is also a minor—

The Convener: I am sorry to interrupt, but has the legislation on the regulation of the European Parliament elections already gone through the appropriate parliamentary process at Westminster?

Mary Pitcaithly: No. We have only just got the draft regulations, as they were published just a few days ago. We are picking these things up as we go along.

The Convener: What is the timescale for those regulations to go through Westminster and how does it compare with the timescale for the bill?

Brian Byrne: It will be July, I think.

The Convener: Okay. Thank you.

Brian Byrne: A slightly related issue is that the fact that there is only one cut-off date for applications for absent votes in the bill is, I think, an error. That would mean that the cut-off date for proxy votes and postal votes would be the same, which would be unusual. We assume that that is an error. The respective cut-off dates are usually a week apart.

James Kelly: We will pick up on that.

When it comes to organisation in the polling station on polling day, given that a much higher turnout is expected, there will be a lot more people moving through the polling station. The board’s submission comments on managing the number of people in the polling station. What are the issues there?
Mary Pitcaithly: One of the board’s key principles is that there should be no barriers to people who want to vote. We need to ensure that the polling station is welcoming to people and is not cluttered, that there are no queues and that the route to the ballot box is obvious. One of our key principles is that people should be able to vote easily when they take the trouble to turn up at a polling place. We need to ensure that, as well as running efficiently, polling stations do not present any barriers to anyone who wants to vote. The normal staffing levels might be enough, or we might look at augmenting staffing levels in our polling stations. We will have to consider such matters nearer the time.

In relation to the 2011 alternative vote referendum, the Electoral Commission gave fairly detailed guidance on the point at which a third member of the polling staff would be introduced. For example, under that guidance, there would be a presiding officer and two polling clerks in a polling station with more than 1,000 voters. Off the top of my head, I think that that was the rule, although I am not sure. That is the sort of issue that the board might consider in relation to the referendum.

James Kelly: I am sure that my colleagues round the table will agree that one of the things that the various campaigns will be interested in is the rules on campaign representatives—or people who are not part of the official campaigns, but who are interested participants—standing outside or inside polling stations. What will the rules be for managing that?

Gordon Blair: In my experience, the main area of contention is display of political material in the polling place—in other words, in the building and school playground, if the polling station is in a school—and in the place where the booths for voting are. Detailed rules and guidance are issued at each election, which usually come from the Electoral Commission, but I am sure that the chief counting officer will have guidance on that as well. The management and enforcement of that on polling day is part of the training of presiding officers at every poll. There should be no political material in the polling place. That is one issue.

You referred to the suggestion in our submission that the presiding officer should have the power to control the number of voters in the polling station, as opposed to the wider polling place. That is because the number of persons who will be entitled to be in the polling station will be much bigger than would be the case at an election. There might have to be an increase in the number of polling stations because of the higher turnout that is anticipated—some people have mentioned a turnout of 80 per cent, but the committee probably has a better idea than we do of the likely turnout. At that level, we would need to increase the number of polling stations. That would reduce the available space in buildings, which would mean that we might have to control the number of people in the polling station. Those are the two main issues on control.

James Kelly: What about the entrance to the station, which is where political parties and campaigns tend to congregate? We need to ensure that voters can enter without undue interruption. Given all the interest, has consideration been given to the situation immediately outside the polling station?

Gordon Blair: In the past, the Electoral Commission has issued very good guidance for polls, which we expect to adapt for the purpose of this poll. By “adapt”, I mean top and tail it—the principles will remain the same, as a poll is a poll, in essence. Detailed guidance will again be available for presiding officers consistently across Scotland. The issue will then be about giving the presiding officers confidence through their training to be able to enforce that guidance.

Mary Pitcaithly: I emphasise that we do not send presiding officers to the polling day unprepared. We have available very good training modules for all counting officers. Training is mandatory; we make it essential that anyone who is going to work in a polling station attends that training. We have beefed that up quite a lot in recent years. Something that used to be fairly perfunctory is now quite detailed and can last a couple of hours. People sometimes have quizzes to answer. They are asked randomly to give answers to questions and deal with incidents that they might encounter on the day. We try to do as much as we can so that people feel well prepared.

Inevitably on polling day, the phone rings and a presiding officer says, “I’m having a bit of difficulty here, and people aren’t doing as they’re told—could you come and have a word?” Alternatively, people who are being asked to move away from the front door complain about the fact that they are being asked to move. It is one of those no-win situations. We manage such issues. Undoubtedly, little incidents will happen all over the place, but the board’s interest is in ensuring that a consistent approach is taken across the country. A single set of guidance is usually most helpful in that respect.

The Convener: A number of members want to ask supplementaries. When I ask you whether you want to ask a question, please confirm that it is a supplementary; otherwise, I will need to come back to you. Linda Fabiani indicated first.

Linda Fabiani (East Kilbride) (SNP): It is a supplementary. Following James Kelly’s question,
I am interested in the different language that is being used and what you are suggesting that we do. The written submission says that the PO should be given power, which suggests to me that you are looking for the bill to be changed, so that there is something in legislation. However, in the discussion, we have been talking about guidance. Will you clarify exactly what you are asking the committee to consider? In addition, what is the precedent? What is already there? Much as we folk who horde round polling stations should know all these things, perhaps we are sometimes the cause of presiding officers phoning you.

**Gordon Blair:** The bill would need to be changed to provide the presiding officer with the power to control, which is not in legislation for elections. The reason why we suggest that is that, under the bill, people who have never before had the right to attend elections will be entitled to be in polling stations. That is the difference that we are picking up on when we suggest that such a power should be included in the bill. That is a legislative change.

The other matter, which Mary Pitcaithly talked about, is guidance. The bill is fine on that, as the chief counting officer will have powers to issue guidance or direction if required. Before guidance is pushed out the door, there will no doubt be consultation on it, not just with practitioners, but with political parties, if it has a political element.

**Linda Fabiani:** That clarifies the issue.

**Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):** I have a brief question about the expected increase in turnout. It might be a bit obvious, but I think that it is worth asking anyway. Are discussions going on about the possible need to expand the number of polling stations from the normal number? Some countries might have a tradition of queuing up for the polls, but that is not a tradition in this country, and I would hate for people to walk away and not cast their vote just because it was a bit more difficult.

**Mary Pitcaithly:** We share that concern. There is absolutely no way that we would want to hear any stories about people having to queue or getting fed up and leaving. That would not be acceptable. We will look carefully at the projected turnout figures when we make our final decision on how many polling stations to have.

We have a concern about space. It would be better to open up another room in a school or to use a different place, rather than to have too many polling stations crushed into one place. We have a rule of thumb on how many voters would normally use a station, which is based very much on what we expect turnout to be. Those matters are under consideration.

The other side of the matter is that, were there to be a significant increase in the uptake of postal voting—it is rising all the time—that would suggest fewer people using the polling station on the day. However, that might be balanced by a higher turnout than at recent elections.

**Stuart McMillan (West Scotland) (SNP):** My question follows on from the point that was made about space. I can think of at least one polling station where, by the time the booths and staff are in place, even if there are only three or four people in the room, they are bumping into one another. Will the guidance that you have mentioned suggest that individual polling stations must be a minimum size?

**Mary Pitcaithly:** I do not think that we have considered how many square metres or whatever a station should be. However, there is guidance on how a well laid out polling station should look, how to control people coming in, and how they should get their paper and put it into the ballot box without having to zigzag around the room or without potentially getting confused about which box to put the paper in, for example. I expect returning and counting officers to be clear that they should not just cram another station into a room that is potentially not big enough for that.

**Gordon Blair:** For planning purposes, we will have to estimate the percentage turnout. For the sake of argument, let us take it to be 80 per cent. We should then review in each area our polling places and the number of stations. After that, we will need to look at each of the buildings that we think will be under pressure for space, and see whether we can use other rooms in the building, as Mary Pitcaithly said. If that is not possible, we will consider whether to increase the numbers of staff. If there is no other alternative, a route to solving the matter might be to use the additional staff to steward people into the station and while they are queuing at the door or in some corridor or wherever. Polling places and stations come in all shapes and sizes—

**Stuart McMillan:** They are not all in the public sector.

**Mary Pitcaithly:** Absolutely not. A concern is about having the right number of polling stations and identifying whether they are in the right place to suit voters. We keep that under constant review. For example, I planned for a 70 per cent turnout in the last election. In the end, I did not get that—I am an optimist at heart—but it was a bit risky to plan for anything less than that. I would not want members to think that, just because turnout is normally about 50 per cent, there would be issues if it turned out to be 80 per cent. I imagine that most of us plan for between 70 and 80 per cent turnout. There will not be a huge difference in our planning for the referendum, but we absolutely
want to avoid the issues that the committee has raised.

The Convener: Before I bring in Stewart Maxwell, I want to dig a bit deeper on that. You must go through a process in making the assessment on turnout. What factors do you use? How soon before an election do you make that assessment?

Mary Pitcaithly: The returning officers make that assessment for themselves because, as you will be aware, turnout can vary significantly. Where there is traditionally a high turnout, the turnout might be even higher. Where there is traditionally a low turnout, the turnout might also go up significantly. I imagine that we will base our planning on what we read in the press, what we hear and what we anticipate the level of interest will be. There is no scientific way of doing that at this stage. Much can change in the next 15 or 16 months.

Gordon Blair: We engage with the political parties and candidates—obviously, there will be no candidates this time—in briefing sessions before the poll. For a May poll, we usually kick off those sessions in January, so we will wind back that timescale for the September poll next year. We get feedback from the political parties on whether we have enough polling stations in different locations and what turnout they expect. That is part of the information gathering that will inform us at the end of the day.

The Convener: I ask Stewart Maxwell and Rob Gibson to make their supplementaries quite tight, as I want to explore other aspects.

Stewart Maxwell (West Scotland) (SNP): I have two brief supplementaries, if the convener does not mind.

First, not that long ago, we had turnouts with percentages in the high 70s and 80s, and we managed those perfectly. I live in an area where turnout was in the high 70s—it was 79 per cent—and I do not remember that causing big queues or particular problems. I presume that the lessons from the past have not been lost.

Mary Pitcaithly: Absolutely not.

Stewart Maxwell: I just wanted to make that point.

Secondly, in response to James Kelly’s earlier question, you mentioned guidance on the display of political material. Will you lay out what is defined as political material?

Mary Pitcaithly: The guidance is clear on, for example, what types of rosettes people can wear in and around the polling station and whether they can display the name of the candidate or party or political colours or whatever. The guidance is an attempt to achieve consistency, because at one stage everyone probably had slightly different rules. This time round, there will be no candidates, so any rosettes that people might wear will probably say either “Yes” or “No”, which should be a bit simpler.

Stewart Maxwell: I am not so concerned about that but, not so many years ago, in an area where I was working, there was a challenge not about rosettes, badges or names but about newspapers lying around inside a polling station.

Mary Pitcaithly: That issue was brought to my attention once as well. In a very quiet polling station, the PO had decided to read the newspaper and laid it down when someone came in, but that meant that people could see the banner headline. Our training for polling staff is now clear that they should not leave newspapers lying around and they should be careful about anyone else who might lay something down, apparently quite casually. The polling staff are supposed to go round the polling place to ensure that that does not happen. We are clear about that.

The Convener: I will allow Rob Gibson a last question on this before I come to Annabel Goldie.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): Obviously, if there is talk of having more polling places, people in communities will need to know where they should vote, and there needs to be some consistency on that. Between next year’s European elections and the referendum, I take it that there will be no change in polling places, given the disruption that can be caused to the voting figures. People may be notified of the polling place on their card, but they might not have more information than that. Do you have any tally of the change in the number of polling places? Do you expect that other venues will be used? Those are important points, I think.

Mary Pitcaithly: I have not yet done any work to establish whether particular returning officers anticipate having two separate sets of polling schemes, if you like. I would not have thought that that will happen, but you are right that it is likely that there will be a difference in the turnout. If the tradition in European elections is maintained, the turnout for the European elections will be relatively low. Those take place a short time before the referendum vote, so we will need to look at that issue carefully. We need to make every effort and take every opportunity to ensure that people understand where they should vote. Where there is a difference between the two sets of elections, we will need to highlight that.

Rob Gibson: How do you highlight that? Is there a general regulation about that?
10:00

Gordon Blair: There are two issues. The polling places are designated by the local authority, but the issue that we have just been talking about is the number of polling stations within the designated polling place. The number of stations is determined by the counting officer or returning officer. Those are two different things.

Under the Electoral Registration and Administration Act 2013, there will be a mandatory review of polling places for Westminster parliamentary polling districts and polling places. That review kicks off from 1 October this year. We are beginning to look at whether councils might take decisions on polling places, not just under that review but for all the forthcoming back-to-back polls—the European elections, the independence referendum and, the following year, the United Kingdom Parliament general election. The last thing that we want to do is to chop and change the polling places. The review process involves public consultation. Once the polling places are designated, every elector whose polling place has changed will be notified through the registration officer's staff at the behest of the returning officer.

Mary Pitcaithly: I suppose that it is possible that, when people turn up for the European elections, there might be only one polling station in the classroom that is always used, whereas an additional classroom or hall might be used in September. Therefore, additional signage and stewarding, which Gordon Blair mentioned, might be required to ensure that people do not leave and go elsewhere because they do not see their address in the normal polling station.

The Convener: How would the PO enforce the additional powers that are being sought for them? How would that differ from an individual just using the force of personality in those circumstances?

Gordon Blair: The answer to that question is the same as the answer to the question of how the presiding officers would enforce the power, which they have always had, to remove people who are causing a disturbance. Basically, a presiding officer asks them to leave and, if they refuse to leave, the PO asks the returning officer for assistance. If the situation escalates, police assistance is asked for.

The Convener: So a process is already in place.

Annabel Goldie (West Scotland) (Con): On the declaration of the results, I am still a bit unclear about what section 6 actually means. Under section 6(3)(b), it is clear that a counting officer

“must not make the certification or any public announcement of the result of the count until authorised to do so by the Chief Counting Officer.”

Does that imply that the chief counting officer has the discretion to allow local announcements?

Section 6(4) makes it clear that

“The Chief Counting Officer must ... certify ... the total number of ballot papers counted, ... the total number of votes cast in favour of each answer to the referendum question, and ... the total number of rejected ballot papers”,

but it says nothing about the chief counting officer publishing the result. Does that mean that it could remain a big secret?

Mary Pitcaithly: If the chief counting officer could say, “I have certified the vote, but I am not going to tell you,” that would be a real power.

Annabel Goldie: Yes, the chief counting officer might say, “I have written out my certificate, and you will never know.” I am just curious, as that seems a bit of an anomaly.

Mary Pitcaithly: It could well be. That had not occurred to me, to be honest. The bill refers elsewhere to a public announcement, but that would be by the counting officers locally once they had received the authority for that.

Let me see whether there is anything about that over the page.

Annabel Goldie: Will the chief counting officer have the discretion to allow local results?

Mary Pitcaithly: There were very similar provisions for the AV referendum, for which the results were announced locally. The overall result was an aggregation of all that.

Annabel Goldie: Do you expect that to happen under the bill?

The Convener: On page 66 of the bill, in schedule 3, the declaration of the results is dealt with separately. Do the witnesses have that page in front of them?

Mary Pitcaithly: Yes.

The Convener: Subparagraphs (1) to (3) of paragraph 35 describe the process. I hope that that helps.

Mary Pitcaithly: Yes, that is okay.

The Convener: Does Annabel Goldie want to look at that and come back to the issue later?

Annabel Goldie: That perhaps clarifies the obligation on the chief counting officer, but it does not make clear whether we expect local results to be declared. We need to clarify that.

Gordon Blair: The bill does not require a local declaration. If that were desired, it would need to go in. The bill requires the chief counting officer to certify to the local counting officer that she is happy with that local count. It will then be fed into
the national result and there will be a national declaration.

At some point, we local counting officers will need to ascertain that what we certify to the chief counting officer will not be challenged locally. That is where the guidance from the chief counting officer on how we go about that will come in. It is clear that the bill is designed for a national result to be declared first before any local ones.

**The Convener:** That is different from the evidence that we took during our consideration of the Scottish Referendum (Franchise) Bill. If my memory serves me correctly, officials told us clearly that what you describe was the original intent, but they intended to change the Scottish Independence Referendum Bill to allow for local results, which could not be contained anyway because of the modern media.

We need to get clarification on paragraph 35(2) of schedule 3, which says:

“When authorised to do so by the Chief Counting Officer, the counting officer must ... make a declaration of the matters certified under section 6(2)(b).”

If I understand it rightly, section 6(2)(b) refers to local decision making.

**Mary Pitcaithly:** Yes.

**Annabel Goldie:** The public announcement.

**The Convener:** Locally.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** Paragraph 53 of the policy memorandum says:

“The Bill requires counting officers to provide the CCO with the certified results, information on rejected ballot papers and other information as soon as they are available. The CCO will then authorise the counting officer to announce the local result. When the CCO is in receipt of all certified local results, a national declaration will take place.”

That is certainly the policy intention.

**The Convener:** I think that that is what the paragraph that I just read out from schedule 3 refers to.

**Annabel Goldie:** I think that there is an ambiguity.

**The Convener:** We should note that point and write to the Government now to get clarification on it.

**Patrick Harvie (Glasgow) (Green):** I apologise to you, convener, and to the witnesses for being a few minutes late for the meeting. I could blame ScotRail or the Minister for Transport and Veterans personally—obviously, that is my preference.

**Rob Gibson:** Good morning! [Laughter.]
reports are much more important elements of the process than they ever used to be, in my experience. People are now familiar with asking for information about the verification figures, which allows them to see quickly whether the figures tally by the time that we get to the split of the papers as well. The verification tells us how many valid papers have been counted. When the papers are split into the yes, no and rejected, the figures should add up. That is a simple check that people are now quite used to making.

**The Convener:** Stewart Maxwell will raise a different issue.

**Stewart Maxwell:** It is, I hope, a small point—just a clarification. In your submission, you refer to attendance at the count, which is covered in rule 29(2) in schedule 3, which is on page 62. Rule 29(2) says:

“The counting officer must publish notice of the time and place at which the counting officer will begin to count the votes.”

You have suggested a change to that rule to make it read:

“The counting officer must give notice to observers attending the count of the time and place at which the counting officer will begin to count the votes.”

Why have you suggested that?

**Mary Pitcaithly:** Only certain people are allowed to attend the count, so it is appropriate that they should get notice of it. Obviously, the public will be interested in the count but, generally, the public are not entitled to just turn up and attend a count. A public notice could lead people to think that they could just turn up.

**Stewart Maxwell:** Clearly a lot of people—not just those who are turning up as observers—will be interested. The media and a number of individuals and outlets will be interested in when the count starts and how long it is likely to take and so on. Would your suggested change restrict that information and prevent other individuals apart from the registered observers from knowing that information?

**Mary Pitcaithly:** No. Apart from the registered observers, the media are the other main group that will observe what is happening. We will be in close contact with the media about what the arrangements are. Our view is that a public notice would lead people to believe that they could just turn up at the count and walk in without any accreditation or without fulfilling any of the requirements.

**Stewart Maxwell:** Rule 29(2) does not say that it is a public notice—the word “public” does not appear.

**Mary Pitcaithly:** It says that the counting officer “must publish notice”.

**Stewart Maxwell:** The position depends on how “publish” is defined.

**Gordon Blair:** The point in the submission is that, for every other poll, there is no publishing of a notice. The requirement is for the returning officer or the counting officer to give formal notice of the date, time and place of the count to those who are entitled to attend. The public are not entitled to attend.

What we tell the public—just for information—about when or where the count will take place is another matter entirely. However, we do not think that it would be a good idea to publish a notice, which means “to issue to the public” according to the dictionary definition of the word “publish”.

**Mary Pitcaithly:** I suppose that we are talking about the difference between giving notification and publishing a notice.

**Gordon Blair:** We are saying that, if something was good for previous polls, why not have the same approach for this poll? That is where the suggestion comes from—it is no more than that.

**Stewart Maxwell:** We will have to follow that up. At least that clarifies what the point is.

**The Convener:** As nobody has any other points to make on that issue, Rob Gibson wishes to raise another matter.

**Rob Gibson:** It is just a small issue. The submission mentions the need for “An index or contents page for the conduct rules”, which you say was included in the Parliamentary Voting System and Constituencies Act 2011. You suggest having an index in the bill. I suppose that that is a bit like your suggestion to have a timetable in the bill—you are suggesting that we do the work, rather than you.

10:15

**Gordon Blair:** That is the standard approach for all other electoral legislation. A quick reference just aids understanding.

**Rob Gibson:** So we need to make an amendment—okay.

**Annabelle Ewing:** In your submission, you talk about disregarding days of public thanksgiving or mourning. I am sure that those are defined terms but, for the benefit of the *Official Report*, will you explain how a day of public thanksgiving is defined? I am not particularly familiar with that term.

**Brian Byrne:** A day of public thanksgiving or mourning has to be passed by a Parliament. If it is,
in effect, a day off work for people, it should not be counted as part of the timetable. That is our concern. Saturdays, Sundays and public holidays are not counted.

Annabelle Ewing: I was going to come on to the general principle. A Parliament will agree that there should be a holiday on a day of public thanksgiving, but are there any examples of that? What kind of thing constitutes public thanksgiving?

Brian Byrne: It is a matter of royal proclamation. There was one example last year—the Queen’s diamond jubilee.

Gordon Blair: The computation of time for our purposes of conducting the poll treats days of public thanksgiving or mourning as exempt days, so we are just talking about consistency of approach. When fixing the timetable, an easy trap to fall into is to miss a day that is not supposed to be counted. That can be crucial. The point is just about consistency.

Annabelle Ewing: I appreciate the point. In my previous life as a practising solicitor, counting the days was an important part of the case file. Does the Scottish Parliament have the power to announce a day of public thanksgiving?

Mary Pitcaithly: I think that it is done by royal proclamation.

Annabelle Ewing: Given the precedent, your position is that the express provision of a disregard for such days is the norm and should be included.

Mary Pitcaithly: Yes.

The Convener: That helps to explain the situation.

Stuart McMillan: I have a brief point on schedule 1 and the form of the ballot paper. You suggest that the official mark should be on the front rather than on the back because of the time that it would take to turn each paper over. Is that the main issue with the official mark on the ballot paper?

Mary Pitcaithly: Yes, that is the only issue that we have with it.

Gordon Blair: The norm is for ballot papers to have the official mark on the front, because it is more easily spotted. One of the things that must be checked to ensure a good vote at the count is that the official mark is present. That prevents bogus papers from being slipped in by somebody. Having the official mark on the front makes the check easier—that is where we are coming from.

Rob Gibson: I have a supplementary question on the response to Annabelle Ewing. If we publish a timetable in the bill and a day of public thanksgiving or mourning is announced, could that interrupt the timetable as it is set out in the bill?

The Convener: That is a good point.

Gordon Blair: The answer is no, because the timetable that we envisage in our submission is the timetable that appears in legislation for other polls. It is not actual dates, but the formula that determines each step in the timetable, and that formula takes account of whether there are any days of public thanksgiving or mourning. It is the formula that should be in the timetable. Good examples of that are in the 2011 act, which enabled the AV referendum, and the parliamentary election rules in schedule 1 to the Representation of the People Act 1983.

James Kelly: During the 1997 referendum period, there was the death of Princess Diana and a very public funeral. What would be the implications of something like that happening, which we had not planned for?

Gordon Blair: Off the top of my head, I think that the only implication for the conduct of the poll is that there would presumably be a day or days of public mourning, which would become exempt. That would affect the timetable. If that was not in the timetable as a formula, the poll would continue, because the timetable would not take cognisance of such an event.

The Convener: Would the potential length of such a period and having a formula have no impacts on other statutory requirements on the time at which things need to be done before the poll?

Mary Pitcaithly: No—if dates were going to be missed because of this, it would not be possible to do that. It would impact only on things that still had to be done. It could not be applied retrospectively. I am not explaining that very well.

Stewart Maxwell: For absolute clarity, if such an event occurred, not a week, a fortnight or three weeks in advance of the poll but right in front of the poll—if the days of public mourning or thanksgiving included the day of the poll—what would happen?

Brian Byrne: I am pretty sure that there is a mechanism in the bill for that.

Stewart Maxwell: What is it?

Brian Byrne: The mechanism is that Parliament would decide whether to postpone the poll.

Stewart Maxwell: So the Scottish Parliament would decide whether to postpone the poll.

Brian Byrne: Yes, I am pretty sure that that provision is in the bill.
TheConvener: I am glad that we have drawn the matter out. We will need to discuss the issue with the Government. That takes us back to a question that I asked before: is it best to put a timetable in statute or is it best for the Government to put in statute a requirement for the Electoral Management Board to produce a timetable, which would provide more flexibility? We need to think about that in respect of where we are going to end up. If the witnesses wish to consider that point and come back with further thoughts about it, that would be helpful.

AnnabelGoldie: I have a wee technical question. At page 45 of the bill, paragraph 53 of schedule 2 makes provision about the destruction of copies of the polling list and appears to create an absolute offence if anybody hangs on to their copy of that document beyond a year. Is that a normal provision?

MaryPitcaithly: I think that that is the same as what appeared in the Political Parties, Elections and Referendums Act 2000, but I would have to check that.

AnnabelGoldie: I am surprised that that is to be an absolute offence. I guess that most political parties—never mind the designated bodies—are not too aware of that provision. I was just curious—before we all get locked up.

TheConvener: Perhaps the witnesses could get back to us with their views on that issue, which we need to consider.

I thank the witnesses very much for coming along and being prepared to deal with the issues in such detail. Part of our job is to go into that detail, to ensure that everything goes as smoothly as it can. We are very grateful to you.

10:23
Meeting suspended.

10:28
Onresuming—

TheConvener: I reconvene the meeting for the next evidence session, and I warmly welcome the second panel of witnesses. We have with us today two distinguished legal academics: Professor Neil Walker, who is the regius professor of law at the University of Edinburgh, and Professor Tom Mullen, who is a professor of law at the University of Glasgow.

I understand that neither of you wishes to make an opening statement on the bill, so we will crack on and go straight to questions.

AnnabelleEwing: Good morning, gentlemen. I am looking at section 31 of the bill, “Restriction on legal challenge to referendum result”, and at the paper that Professor Mullen has helpfully provided. I would like to hear your comments on the provisions in section 31 as it is currently drafted, and then I will go on to the issues that Professor Mullen has raised.

ProfessorTomMullen (University of Glasgow): As I am sure you understand, the provision appears to place a restriction on the availability of judicial review, so that a petition for judicial review has to be brought within the six-week period that the bill specifies. It is similar to a number of provisions that appear in compulsory purchase and planning legislation, for example, which allow for an equivalent judicial review within a fixed time limit. In those acts of Parliament, the period is six weeks.

Finality is obviously important in this matter. A lot of things proceed on the assumption that the decision is correct, and it would not be in the public interest to try to unpick all those things six months or a year later.

ProfessorNeilWalker (University of Edinburgh): I entirely agree with that. I do not want to anticipate what might be said later, but I do not think that the provision is intended to be a general ouster clause, which would exclude all other forms of judicial review. Even if it was intended as such, I do not think that it would necessarily have that effect. To reiterate what Tom Mullen said, time is of the essence and the security of the result is very important.

The provision may raise other issues. For example, it might be slightly awkward with regard to the time periods for the return of the documentation of expenses and so on, which would clearly be relevant to the probity of the referendum. That period can be as long as three or six months, if I recall correctly, whereas the statutory judicial review period is six weeks. Perhaps we can deal with that issue later.

AnnabelleEwing: On the issue of timing, we heard last week from the dean of the Faculty of Advocates, who thought that a period of six weeks was out of kilter and that it should be three months. However, in your paper, Professor Mullen, and in what you have said this morning, you cite precedent for six weeks as the time period. Can you clarify that?

ProfessorMullen: I think that the dean was referring to different legislation in which a three-month period is used. The six-week period has been copied, as it were, from planning and compulsory purchase legislation. I suppose that the question for the committee is what the most appropriate time limit would be, first in the interests of finality and secondly—to pick up Neil Walker’s point—because we would not want the
period to be too short as necessary information might not be available within the six-week period.

Professor Walker: I agree with that. I think that the dean was also referring to other draft legislation, for which the idea was that the time period would move towards a general limit of three months. That may be more appropriate in other cases but, to reiterate the point, time is of the essence in this particular context.

Annabelle Ewing: Thank you for that. I will move on to Tom Mullen’s paper, which I assume Professor Walker has had time to look at, and the wider issue of challenge.

As a lawyer, I would have thought that any bill is potentially subject to challenge on a whole series of grounds. A piece of legislation sits within the legal system of the country, so that point is axiomatic. Why is this bill any different? It sits within the legal system of the country. Yes, people can potentially challenge things and there are remedies—indeed, there are quite speedy remedies, such as taking it up as a devolution matter or going straight to the Supreme Court. It seems that the difficulty that is being raised perhaps does not reflect the reality on the ground.

Your paper is very interesting, Professor Mullen; perhaps you would care to comment on that.

Professor Mullen: The bill imposes a time limit; it does not try to prevent people absolutely from challenging any particular decision that relates to the referendum.

The background to that approach is that, at the moment, there is no time limit for judicial review in Scotland. However, there is a time limit in England and, as Neil Walker has suggested, there is a proposal to impose a three-month time limit in Scotland. Moreover, although there is no time limit, the background principle is that undue delay might lead the court to refuse the petition. As I have said, the reason for the time limit is the desire for finality and to ensure that everyone knows the outcome of the referendum. Apart from that time limit, there seems to be no restriction on the grounds of judicial review that could be used to attack any decision.

Professor Walker: It is probably also worth pointing out that not only is there no restriction on the grounds for a challenge but the time restriction seems to relate specifically to proceedings for questioning the number of ballot papers counted or votes cast.

One could imagine the possibility of, say, the referendum being questioned. It is an outlandish possibility but it might not necessarily have anything to do with the numbers of ballot papers counted or votes cast; instead, it might have something to do with gross breaches of the expenditure guidelines, for example, that would not have an effect on the votes cast but might lead people to question the probity of the overall process. In such a situation, which as I have said is pretty outlandish, one would not necessarily be restricted to the six-week limit.

Annabelle Ewing: Professor Walker described the possibility as outlandish, and that was indeed my conclusion when I read the paper.

Professor Walker: I was not saying that my colleague was being outlandish—perish the thought.

Annabelle Ewing: Of course not. I would not dare say that to Professor Mullen, whom I have known for many years.

I have to say that, when I read section 31, I did not feel that it excludes any other remedies at law. Surely it cannot do that—well, I guess that legislation can seek to do anything, but it might be quite difficult to exclude legal remedies. Should the bill contain a provision to that effect?

Professor Walker: Not necessarily. You said that legislation cannot exclude other legal remedies, but that leads us into very technical questions about what is possible.

It is possible to have a so-called ouster clause that excludes the courts except in very particular circumstances. We then get into very abstract constitutional debates about the effectiveness of ouster clauses, because judges are notoriously jealous about retaining their own jurisdiction over such questions and even something that purports to limit or oust the court’s jurisdiction will not necessarily succeed.

That said, I do not think that that is what the draftsmen are trying to do in this case. I think that they are simply trying to say, “Look—there’s a time limit for certain types of challenges to the referendum’s probity.”

Professor Mullen: I should add that my submission was not intended to be a criticism of the bill; I simply wanted to point out the legal implications of its drafting against the background framework of judicial review in order to make things clear. It had been indicated in advance that the committee was interested in the question of judicial review.

Annabelle Ewing: Two other points struck me about Professor Mullen’s paper, the first of which is the clarification:

“Election petitions under the Representation of the People Act 1983 are available only to challenge the election of a candidate and not the outcome of a general election.”

The second point of interest is the conclusion that, even in the unlikely event of a challenge on
wider probity grounds, the likelihood of a successful challenge on the basis of an irregularity at one polling place affecting the overall outcome is “remote”. Do either of you wish to pick up on those points?

Professor Walker: A very interesting aspect of my colleague’s submission is on the fundamental difference from the Representation of the People Act 1983. As you have suggested, that act deals with a general election that is made up of 600 or so local elections and, as a result, there is the intermediate sanction of questioning the result of any of those local elections. However, in the case of the referendum, you have to go straight to the nuclear option of questioning the result in general.

You cannot question the result of any particular part of the referendum. There may be criminal offences and other legal processes, but your hands are tied on the remedies that are available. You can either question the result of the referendum as a whole, which is a very big question to ask, or go down the more technical path of the various criminal offences. There is no intermediate path.

That is why it is worth pausing and reflecting on whether, and the extent to which, there could be any ground for challenge other than simply on the computation of the votes, for example. I agree with my colleague that that seems very unlikely.

Annabelle Ewing: Professor Mullen, do you have anything to add to what your paper says?

Professor Mullen: I have nothing more to add.

The Convener: I want to be clear that you are not suggesting any changes to the bill in that regard in the paper and the evidence that we have heard from you.

Professor Walker: No. I think that the provision is well drafted.

The Convener: The other area was explored earlier, as well. You are not suggesting any changes to the bill in that area either.

Professor Mullen: What was the other area?

The Convener: Section 31.

Professor Mullen: No.

The Convener: So you are content with the way in which the bill is drafted.

Professor Mullen: Yes.

Professor Walker: Yes.

Patrick Harvie: Professor Mullen’s paper discusses other possible grounds for challenge that would not be covered by the six-week limit. It mentions Watkins v Woolas. The allegation was that Phil Woolas made false statements about another candidate, and I think that that was found to be the case.

Given the conduct of the political debate about Scottish independence, it is not so outlandish to suggest that noses might be sufficiently out of joint that a similar complaint could be made. Obviously, there is a balance between legitimate cut and thrust in political debate and illegitimate or challengeable false statements. Is there anything that we ought to do to better clarify that balance and to try to close down the possibility of such a challenge being brought?

Professor Mullen: I think that that would be tricky. It is clear that other bits of law might be relevant. If a defamatory statement was made about an individual, the defamation could be challenged, but that would take time.

Patrick Harvie: I was more meaning about the referendum itself. Making a false statement about a candidate in an election is to make a statement about the issue that the election concerns—who should be elected. Making a false statement about the issue that the referendum concerns is to make a statement about independence or remaining in the United Kingdom as a future path for Scotland.

Professor Mullen: It would be difficult to have a regulatory solution for that. That would perhaps involve something such as the Electoral Commission saying that campaigners in this or that campaign had said something outrageous and untrue. That would be a great innovation in our electoral arrangements and would be highly contentious.

The risk that people will make outrageous statements simply has to be combated by non-legal means. The other side has to fight back and put its point of view. If there is such a thing as a neutral person out there, they might contribute. I think that any attempt to regulate the distinction between legitimate debate and unfair and false statements is not feasible.

Patrick Harvie: I also want to ask about legal challenges in relation to purdah. Will we come on to that issue later on?

The Convener: We can come back to it.

Patrick Harvie: I will come back with a separate question.

Professor Walker: I entirely agree with Tom Mullen on the first question. That aspect of the referendum campaign is incredibly difficult to regulate. Indeed, I cannot imagine how it would be regulated; it must be part of the cut and thrust of debate. You could regulate it pre-emptively, but who would do that? Who would basically go into the ring, separate the parties and say, “You’re not allowed to say this”? If anyone did that, their neutrality would be compromised. Another option
would be to do it after the fact through the judiciary, although the judiciary would, rightly, be incredibly loth to be second guessing.

Patrick Harvie: Or you would at least time limit it in the same way that other grounds for challenge have been time limited.

Professor Walker: Whether the issue is time limited or not, it is the sort of question that judges would see as being effectively non-justiciable.

Patrick Harvie: That is not what happened in the Woolas case.

Professor Walker: Yes, in that particular case. You are right—there is a possibility at the margins that it could be justiciable. However, I cannot imagine it happening with the referendum.

10:45

The Convener: There are a number of supplementary questions on this issue.

Stewart Maxwell: Professor Mullen, you mentioned the six-week deadline, which you thought was taken from planning law. In your paper, you talk about the AV referendum and the Government of Wales Act 2006 as examples in which the six weeks has been used. Does the fact that the Scottish Government is effectively following those precedents, and taking the same or a similar route to previous electoral legislation, not severely limit the possibility of the risk of a challenge to the result?

Professor Mullen: The longer the limit is, the more likely that there will be challenges. The likelihood is that, if there is a serious upset about the conduct of the campaign or the count, it will emerge right away. I do not think that the fact that the Government is following another statute precedent will make too much difference to the likelihood of a challenge to the result.

Professor Walker: Yes.

Professor Mullen: Yes.

Tavish Scott: Thank you.

Patricia Ferguson: I had read your paper with interest, Professor Mullen, but I had not planned to ask you a question about it. However, given Patrick Harvie’s and Tavish Scott’s questions, I would like to clarify for the record the issue of who might bring a challenge.

I realise that Professor Mullen’s paper helpfully suggests that

“The person raising the petition must have sufficient interest in the matter to which the application for judicial review relates”.

In the previous paragraph, there is some clarification about particular cases that have occurred. Forgive me if I do not know the detail of Walton v the Scottish ministers—I will now have to look it up because I am intrigued by it. Will you explain what an interest would be deemed to be?

Professor Mullen: In the past, there was a definite difference between Scotland and England on this front. The broad effect is that, for quite a few years, it has been possible in England for pressure groups such as Greenpeace or Friends of the Earth to represent the public interest. They cannot say that their members are more affected than anyone else, but they can deal with issues that affect everybody, such as environmental problems.
Cases have been brought in England on that basis, but it has been difficult to bring such cases in Scotland, because the definition of the interest involved had to refer to something more personal for whoever brought the case. However, the recent cases that I referred to in my paper have said, in effect, that the law in Scotland has to change to allow people to represent the public interest.

Perhaps somebody who is neither a member of a designated organisation nor a campaigner but who has some sort of public interest role might suggest that something has gone wrong with the referendum. The likelihood of that is slim, though, because of the practical issue of funding the litigation. It is the political organisations that will have the money to pay the lawyers to bring a case and to risk having awards of expenses made against them if they lose.

I thought that it was important to make the point that there could be a public interest role, but it is probably unlikely that anyone would take it up.

Professor Walker: I agree that it is unlikely in practice. However, this is precisely the kind of situation, legislation or case for which we need public interest litigation or the possibility of public interest litigation. We can say that everyone has a stake or an interest in it and that people should have a right to engage with that interest, regardless of whether they can prove that it is a distinctive interest or a deeper interest than anyone else’s.

The general thrust of case law towards taking a more liberal approach in that respect is a good thing, and it is not a bad thing that it raises the possibility of public interest litigation. I agree with Professor Mullen that, practically speaking and given everything else, it is very unlikely that a challenge would come from that quarter. Who can tell, though?

Patricia Ferguson: I was intrigued by something that Professor Mullen alluded to in his answer. Are you suggesting that a member of the public with some sort of standing would potentially be able to take forward such a case but that one of the campaigning organisations involved could not do so because it would be seen as acting in its own interest rather than in the public interest?

Professor Mullen: No. The public interest is, in effect, an add-on to having a personal interest, and the campaigns already have sufficient personal interest.

Patricia Ferguson: Right. That is fine. Thank you very much for that.

The Convener: As I have done for previous matters and as Tavish Scott just did, I ask you to clarify whether you are suggesting that the bill should be amended.

Professor Walker: No.

Professor Mullen: No.

The Convener: Okay.

James Kelly: I want to talk about the issue of spending limits, particularly in relation to anyone who is a “permitted participant”.

The Electoral Commission has set out the limits, certainly in relation to designated organisations and political parties, to ensure that there is a level playing field. I wonder whether there is a potential loophole in relation to permitted participants, who are allowed to spend up to £150,000. Is that an opportunity for a designated organisation or a political party that has reached its spending limit to look for a “permitted participant” as an outlet for surplus funding? Is that a loophole? How can that be regulated and controlled?

Professor Walker: I noted that the committee had a discussion last week about top-down models versus bottom-up models. On the one hand, there is value in having as precise a level playing field as possible; on the other hand, there is an argument for saying that there are so many voices in the referendum debate and that they do not necessarily divide into two obvious camps. In the final analysis, they do, but there are many voices. One of the ways in which they are reflected is by having a spending category for those outwith the designated organisations and political parties.

I think that there is a bit of a trade-off between those two ideals or goals. I like the approach that is taken in the bill, which allows for other permitted participants. I accept that, if you provide for other permitted participants and funding of up to £150,000, somebody sitting with a calculator might say that a little bit more money and a bit more oxygen of publicity has gone into one side than has gone into the other. However, by the same token, the approach allows people who do not want the debate to be dominated by the political parties or the designated organisations, or who do not like the way in which the debate is being dominated by those parties, to say, “Okay. Here’s another perspective. Here’s another agenda in the referendum debate.” I think, on balance, that that is a good thing and that the bill strikes a good balance.

Professor Mullen: I agree.

James Kelly: I understand what you say about people who do not see themselves as attached to either of the official campaigns or any of the political parties, but what about someone who tries to use the provisions to take funding from the designated campaigns or the political parties and use it as a channel to support a political objective? How do you ensure that permitted participants are
genuine permitted participants who are looking to have their voice heard in the debate as opposed to front organisations for the other groupings?

Professor Walker: It is a very difficult area of law. We cannot deny that there is a lot of regulation in the schedules precisely to deal with such circumstances. It looks for linkages between source and expenditure and it creates all sorts of offences if those things are hidden. I know that none of that is perfect, but often what you are talking about are not clandestine front organisations but ideological fellow travellers who are close in their objectives.

What can we do about it if we have people who are quite close ideologically but who nevertheless see themselves as representing a different strain of opinion? I return to my original point that I would not necessarily want to stop that, although I can see that there are difficulties.

Professor Mullen: One way of trying to combat that might be political. The rules on donation reporting might be helpful. Under paragraph 41 of schedule 4, permitted participants have to make a report on donations four weeks into the campaign, eight weeks in, 12 weeks in and then about a week before the poll. That will show who is giving donations. If it was thought that organisation A is really organisation B wearing a different hat, the donation trail might help to substantiate the case.

There is a separate question about whether the disclosure level is low enough at £7,500, but you will maybe want to come back to that.

The Convener: On the issues that James Kelly has raised about permitted participants, is your argument that the schedules have enough safeguards in them—or safeguards that are as good as we can get in the circumstances—to ensure that abuse will not happen, or do you think that there are any ways in which the schedules could be improved?

Professor Mullen: There is a case for lowering the trigger for reporting a donation to below £7,500. Under paragraph 41 as currently drafted, quite a lot of substantial donations of several thousand pounds would not have to be disclosed.

The Convener: Okay. That is helpful.

Patrick Harvie: There has already been some controversy about the need for expenditure limits and rules on donations way before the spending limits and the rules kick in. There may be more of that to come. Some of it relates to self-imposed rules that the two campaign groups have adopted, which differ from one another. I think that each has a valid case that its self-imposed rules are the right rules.

Do you think that there is a case for ensuring that limits on expenditure come in earlier or for trying to get the two campaign groups to reach a shared position on the rules for donations early on, so that we avoid such differences of opinion?

11:00

Professor Walker: The question of earlier rules is a real minefield. The referendum period is 16 weeks. This is one of those situations in which, when you look at it initially, you think that the idea of specifying how the referendum should be regulated that the bill takes on might be inappropriate, because most referendums deal with more specific issues, such as AV, in which there is less public investment and of which there is less public knowledge. Such referendums are more likely to involve a short, sharp campaign, to which having a short, sharp period of regulation of finances might be suited.

That is clearly not the case with the independence referendum. It deals with a fundamental issue, which people know about and have views on. It is an issue that has been bubbling under in Scottish politics for many years. Comparing the independence referendum with the AV referendum is like comparing apples with oranges. That said, if we were to go the whole hog and say that the way in which we should deal with that is to regulate from day 1, there would be all sorts of problems with that. It would be a minefield from the point of view of the claims and counter-claims that would constantly be made.

To some extent, I already think that the referendum debate is not necessarily enhanced by all the legalisms that are associated with it, and that would be made worse if there was regulation from day 1. I also think that, in effect, the process would probably be uncontrollable. Members of the committee know this better than I do, because they are politicians, but at present the subtext to everything is the referendum debate and the issue of independence. I think that we would be better leaving things as they are, although a period of 16 weeks is perhaps a bit too short.

Patrick Harvie: Given that the two main campaign organisations have agreed self-imposed rules about where to accept donations from, is there a case for ensuring that those rules agree, so that the same rules apply to both sides?

The Convener: Do you want to be an arbitrator, Professor Walker?

Professor Walker: I might argue that that forms part of the political cut and thrust as well—that has certainly been the case. Those who have more self-disciplined rules start with an advantage. Such matters have been well publicised. I think that it is better just to leave things that way. I do not know whether my colleague agrees.
Professor Mullen: More or less. It is probably better to leave things roughly where they are, on the understanding that, of course, there will be a significant amount of expenditure before the regulated period starts—that is inevitable. There are a lot of potential difficulties with extending the period.

Professor Walker: There are a million different opinions on this, but I think that most people round the table would agree that, for something as important as the Scottish independence referendum, it is better to have a longer period. I know that there is a lot of disagreement about how long a longer period should be, but it should be a significantly longer period, given the significance of the issues involved. It would be simply impractical to regulate from day zero.

Patrick Harvie: Given the importance of the issue, some would argue that we should do everything that we can to reduce the power of millionaires in the debate, but that takes us into a whole other area.

The Convener: Before you go any further, Stuart McMillan has a supplementary question.

Stuart McMillan: It is just a brief one. If the 16-week period was to be extended, would that introduce an element of confusion regarding the European Parliament elections, which will also take place next year?

Professor Walker: Yes, probably. That would be a complication. You are right.

Stuart McMillan: They are due to take place at that time.

Professor Walker: Yes.

Stuart McMillan: Okay.

Professor Walker: All else being equal, 16 weeks might not be the ideal period, but the practicalities are that we have a timetable in Scottish politics and we have the European elections as well.

Can I go back to the point about millionaires?

Patrick Harvie: Please do.

Professor Walker: It relates to a broader question about the possibility of public financing of the referendum. I can imagine situations in which one might be extremely concerned about the asymmetry of resources between the two sides and one might want to do certain things such as provide public funding as a way to resolve that. I might be naive, but I do not think that we are in that situation. There may be different levels of money on either side of the debate, but there is still a significant amount of money on either side and there is a significant opportunity for all sides to get their opinions and views across. I do not see this as a situation in which millionaires can buy the result—I just do not see it in those terms.

However, we have to look at issues one by one, and I can imagine that there are circumstances in which that might not be the case.

Patrick Harvie: Given the way in which the issue is sometimes reported in the press, I am always amused to read how much money the Green Party will get to spend on the referendum. My instinct would always be to reduce the amount of money that is spent, rather than bring everyone up to a higher level.

There was some discussion at last week’s committee meeting about the length of purdah. There is also the question of the different status that purdah will have for Scottish and UK Government ministers. We have a provision in the bill that can only apply to the Scottish ministers. I have been reminded that, although that legislative purdah period is not in place for UK ministers, it is included in the agreement between the two Governments.

It comes back to the question about potential legal challenges after the fact. If, in the run-up to the referendum, we had a public exchange of views and a bit of cut and thrust between the two Governments, each taking a position on an issue, which some might regard as a breach of the protocol of purdah, the UK ministers would be guilty of breaching politeness but the Scottish ministers would be guilty of breaking the law. Is that an area in which legal challenges could be brought? Does it leave us with a problem, in that legal challenges could only be brought against the Scottish ministers even though, in essence, the two Governments would have committed the same offence?

Professor Mullen: There is an argument that the Edinburgh agreement could be used as the basis of a legal challenge. Paragraph 29 of the Edinburgh agreement refers to the custom of ministers refraining and the provision in section 125 of PPERA, stating:

“The UK Government has committed to act according to the same PPERA-based rules during the 28-day period.”

It is not clear cut, but there is the basis for an argument that someone could bring a petition for judicial review to enforce what might be called the promise in paragraph 29 of the Edinburgh agreement.

Patrick Harvie: Saying that it is not clear cut implies that any challenge against UK ministers would first have to get over the hurdle of demonstrating that the Edinburgh agreement was a basis—

Professor Mullen: —was enforceable.
Patrick Harvie: —whereas a challenge to the Scottish ministers could be very clear.

Professor Mullen: That is right. The person would have to convince the court that the Edinburgh agreement was in some sense enforceable—

Patrick Harvie: —and had the same status.

Professor Mullen: Yes. It does not contain a statement that it is not legally binding, which agreements sometimes do. They can contain statements that they are binding in honour only and are not a contract. There is no such statement in this case, so that obstacle is not there.

The legal concept used would be that of legitimate expectation—namely, that the apparent promise in the agreement created a legitimate expectation, which ought to be enforceable. An argument could therefore be made that would found a judicial review. However, it would be more appropriate if, for both Governments, the purdah period was on a statutory footing. The Scottish Government might enter discussions with the UK Government about it promoting legislation, so that there was an equivalent statutory obligation on the UK Government.

Patrick Harvie: The alternative would be that the purdah period would be a matter of agreement between the two Governments and it would not have a legislative basis at all.

Professor Walker: Yes.

Professor Mullen: Yes, that is an alternative approach.

Patrick Harvie: On the more general question of alleged breaches of purdah protocol and grounds for challenge, given that—as in the Phil Woolas case that I mentioned earlier—making false statements about another candidate can become a successful ground for challenging the outcome of a parliamentary constituency election, do either of you have a view about whether such a breach would be seen as a challenge on the outcome?

Professor Mullen: That is distinguishable from the basic question. If action by one of the two Governments seems to be in breach of the purdah, we could have someone going to court saying, “Here is an illegal act.” The court might be willing to say, “Yes, we think that it is an illegal act”, but it might do no more than declare that. Therefore, the petitioner always has to say what remedy they seek—is it simply a declaration that something illegal has been done, or is it more than that? If the petitioner said, “This is an illegal act and therefore the referendum outcome is invalid”, that would be a much more dramatic statement.

Patrick Harvie: Could it clearly be seen as an illegal act, though, that was intended to affect the outcome of the referendum?

Professor Mullen: Yes.

Professor Walker: Yes, it could be seen as that. To follow up on what Professor Mullen said, the court would make a hypothetical calculation about whether the action had had a decisive effect. If it did not think so, it would not opt for the nuclear remedy.

Patrick Harvie: That would be a problem only if we were already reeling from a 51:49 outcome.

Professor Walker: Perhaps, yes.

Professor Mullen: Bearing in mind that litigation might be brought a few days before the outcome, the fact of the litigation might create reputational damage for one side or the other, so it could be significant beyond its actual legal outcome.

Tavish Scott: Gentlemen, if you accept Patrick Harvie’s sensible suggestion that the two Governments should agree how to handle purdah and the way in which both Governments would keep to those terms, that presumably opens up the question of the length of purdah. Do you have a view on that?

Professor Walker: It is 28 days at the moment.

Professor Mullen: That is another tricky question. The argument that we want to try to stop improper influence on the outcome suggests a longer period. However, there are a variety of practical objections to a long period, because everything that the two Governments have done could be picked over and arguments produced as to why an action was a breach of neutrality. That might impede, for example, the making of policy statements. One Government might make such a statement and the other side might say, “That policy statement is a disguised attempt to influence the outcome of the referendum, because you said this, this and this.” That is a practical reason for keeping purdah short.

I do not have a definitive view on how long the period of purdah should be. That is perhaps a good question to put to ministers. They could say in more detail what the practical obstacles are to having a longer period, so that the committee can satisfy itself that 28 days is the right period.

Tavish Scott: Governments will always say that they want flexibility and freedom to do things. I have been a Government minister and that is what one does.

Professor Mullen: That is true. One can at least amass a number of concrete difficulties that would arise, since there are some.
Professor Walker: It is also true that, compared with most situations like this, there is a kind of equality of arms. Provided that both parties are held to the purdah limits, both sides are in a position to manipulate, so to speak. It is often the case in such situations that only one party is in a position of government and can therefore do that kind of thing.

Tavish Scott: I take your point but, to test it properly, we would need to ask both Governments what would be the practical objections to a longer period of agreed purdah. That would be the fair question to ask.

Professor Walker: Yes.

Tavish Scott: That is helpful.

11:15

Linda Fabiani: The bill’s policy memorandum makes it clear that the 28-day period has been chosen because that is the period that PPERA applies to UK elections and referendums. That is what was endorsed in the Edinburgh agreement.

I am interested in what our professors said about the Edinburgh agreement in relation to how purdah applies to both sides. It very much reflects what Michael Clancy from the Law Society of Scotland said to us last week. He said:

“Nevertheless, I think that a distinction should be made between a statutory provision and something contained in an extra-statutory agreement that people might want to flesh out.”—[Official Report, Referendum (Scotland) Bill Committee, 9 May 2013; c 345.]

I suppose that we are doing some of that here, but the real issue is to flesh that out with the UK Government. Would it be fairly straightforward for the UK Government to put something in legislation to match the Scottish Government’s legislation on purdah?

Professor Mullen: Yes. In short, it would be straightforward. It is a matter of political will.

Professor Walker: Yes. Not everything that it wants to do is straightforward, but that would be relatively straightforward.

Linda Fabiani: That would probably save a lot of the arguments and negotiations that there might well be on enforcing a gentleman’s agreement.

Professor Walker: I underline what Professor Mullen said. The gentleman’s agreement is pretty strong. First, there is an argument for saying that it is a kind of law or a quasi-law. Secondly, there is a very strong sense that it is an undertaking made by a public body, which gives rise to legitimate expectations. Therefore, we could say that having such UK legislation would be an unnecessary additional hurdle. The other approach would be to follow Patrick Harvie’s suggestion, which I had not thought of, to equalise down rather than up and to simply take out the reference in the referendum bill.

The Convener: First, let us get the issue of “a kind of law” sorted out. That is the first time that I have heard a description of “a kind of law.” Either it is a law or it is not.

Professor Mullen: We can give you four days on that issue. [Laughter.]

The Convener: It is either a statute or it is not, I should say. Although the Edinburgh agreement might be used as a mechanism that someone could employ to take another individual into legal process, what are the chances of that being successful?

Professor Walker: The chances turn much more on the substantive question of whether they can show that there has been a breach of purdah. There is a very good chance that we can get over the threshold of saying that there is a binding commitment.

The Convener: That is helpful. That was a fascinating evidence session. I am grateful to both of you for coming and giving us evidence today. Thank you very much.

Our next meeting is scheduled for Thursday 23 May, when the committee will take evidence from the Electoral Commission, the Information Commissioner’s Office and the Scottish Trades Union Congress. Members should be aware that we will begin slightly earlier at 9.15. Please make sure that you arrive 10 minutes before the start time so that we can decide what questions we will ask. I also remind members that, following Tuesday’s stage 1 debate on the Scottish Independence Referendum (Franchise) Bill, members may lodge amendments. The deadline for lodging amendments is noon on Monday 3 June.

Meeting closed at 11:18.
Scottish Parliament

Referendum (Scotland) Bill Committee

Thursday 23 May 2013

[The Convener opened the meeting at 09:16]

Scottish Independence Referendum Bill: Stage 1

The Convener (Bruce Crawford): Good morning. I remind everyone to switch off their mobile phones. We have received apologies from Stuart McMillan, and Bill Kidd is attending in his place.

This is the third of five meetings during which the committee will take oral evidence on the Scottish Independence Referendum Bill at stage 1. I give a warm welcome to our first panel of witnesses, who are all from the Electoral Commission—most of you have given evidence previously on the Scottish Independence Referendum (Franchise) Bill. I welcome John McCormick, electoral commissioner for Scotland; Andy O’Neill, head of office Scotland; Andrew Scallan, director of electoral administration; and Peter Horne, director of party and election finance. John McCormick will make a short opening statement.

John McCormick (Electoral Commission): Thank you, and I assure you that the statement is very short. We are delighted to be back at the committee and we appreciate the opportunity to provide evidence on the referendum bill.

As you know, we have been working with Scottish Government officials over many months on the plans for the referendum as they have been developed and we are pleased that many of our recommendations have been taken on board. Across the commission, we believe that this is a strong piece of legislation that—if it is enacted within the anticipated timetable—will provide us with the necessary foundation and the time to deliver a referendum that truly puts the voter first and puts the voter at the centre of the planning.

We are currently in discussion with the Government about a few areas. It is an on-going process, which is why we did not provide a written note in advance of this session. Of course, we are happy to discuss any aspect of the bill and we intend to make a written submission to the committee before your 6 June deadline.

The Convener: Thank you, Mr McCormick; that is helpful.

I have a general question about spending limits in the bill, which came from Electoral Commission advice. It would be helpful for the committee to understand the processes and considerations behind the limits that you suggested to the Government and which are now in the bill. In previous evidence, the spending limits were not necessarily challenged but questions were asked about them, so it would be helpful to hear from you on that point.

John McCormick: As a matter of principle, we were mindful of the Edinburgh agreement between the United Kingdom Government and the Scottish Government, which referred to the aim of establishing a level playing field and a fair referendum. From our experience of previous referendums, we have articulated a principle that there should be some relationship between the electoral performance of political parties and the funding that political parties would have during a referendum period. My colleague Mr Horne will go into the details on that.

Peter Horne (Electoral Commission): I will start from the principles from which we work, which the commission set out in 2010: spending limits for a referendum should enable campaigners to campaign and set out their arguments to the voters across the area where the referendum applies; limits should be in place to deter excessive spending; and the limits should not be so low that they encourage campaigns to distort the regulatory approach that is in place.

We recommended limits for lead campaigners and political parties. On lead campaigners, we recommended a limit of £1.5 million on either side, in addition to the other benefits that are available—free mailing, the opportunity to use public rooms and the opportunity for party-political broadcasts. We came to that value having considered what would be a reasonable expectation of campaigners’ spend over a 16-week period. We took a bottom-up approach, considering the evidence that we had on expenditure in the past and the ceilings that should be in place.

We then considered the role for political parties. The approach that is set out in the Political Parties, Elections and Referendums Act 2000 implies that there should be a banding. We looked at the implications of a banding and found that there would be uneven distribution of funding on either side of the campaign. Therefore, rather than use the broad-brush banding approach, we looked specifically at share of the vote in the most recent appropriate election—the election to the Scottish Parliament. On that basis, we produced a roughly equivalent set of expenditure limits on both sides of the campaign, when we take together the lead campaigner and the political parties, as they are
currently aligned. We were mindful of the Edinburgh agreement, as John McCormick said, and our approach was to say, "In the context of seeking fairness and a level playing field, here is a ceiling that looks appropriate."

Alongside that, in a free democracy there is clearly the opportunity for other organisations to make their voices heard. Any organisation or individual can participate, but when it comes to the point at which individuals or organisations are spending significant sums of money, there should be some controls and there should be transparency. Our view is that activity should be regulated above a limit of £10,000, with a spending limit of £150,000. We determined the value of £150,000 by considering what activities organisations might undertake, and what it would be reasonable and appropriate for them to do. The limit is a tenth of the limit for lead campaigners.

The total limit that is in place is a ceiling that is set for the political parties and the lead campaigners. The commission is not seeking to control the number of campaign organisations that are in place, so we cannot predict how much money will be spent or limit the total amount of money that will be spent on either side. In summary, we have taken a bottom-up approach, by saying that campaigns can spend up to a certain limit and setting out specific limits for the political parties and lead campaigners.

The Convener: In evidence that we have taken, it has been suggested that the £150,000 limit for other permitted participants is on the high side. How do you respond to that?

Peter Horne: We need to go back to the principle of not setting a limit so low as to distort campaigning groups’ behaviour. The referendum period is 16 weeks, and there are millions of voters out there with whom organisations might want to communicate. In our view, it was reasonable to set the limit at 10 per cent of that of the lead campaigners. In the context of the total expenditure, that is roughly 5 per cent of what will be available to the political parties and lead campaigners on either side. We had to strike a balance between allowing people to make their views heard but ensuring that they could not be a significant player in the debate without having appropriate electoral support behind them.

Annabelle Ewing (Mid Scotland and Fife) (SNP): Good morning, gentlemen. On the limit of £150,000 for other participants, concerns have been raised about the effectiveness or otherwise of the so-called common plan monitoring of that provision and the ability to weed out any intention to defeat the spirit of it. Can you comment on that issue?

Peter Horne: Is your question about the opportunities for us, as the Electoral Commission, to regulate and intervene if there are concerns about campaigning organisations?

Annabelle Ewing: With regard to the Electoral Commission’s role, concerns have been raised as to whether the provisions as they are currently drafted are sufficient to defeat dummy campaign attempts. What is your view on that?

Peter Horne: As Mr McCormick mentioned, we are pleased that the legislation will be in place well in advance of the regulated period, so there is an opportunity for the commission to prepare and produce guidance and to work with potential campaign organisations. Our approach will be, first, to set out the rules clearly and to help people to understand how we will enforce them. In the run-up to the regulated period, we will explain to people what they can and cannot do.

From our experience of regulating other electoral events, we know that we can work closely with organisations and help them to understand their responsibilities. In general, that helps them to comply, because the vast majority of organisations with which we deal are seeking to comply. However, if there was evidence in the course of the referendum—either through the work of our Edinburgh office or from any intelligence that we got—to suggest that campaigns were seeking to work together and breach the rules, we would have the appropriate powers to be able to act. We could take a range of sanctions, from fixed-penalty notices through to criminal sanctions, up to and including stop notices, if multiple organisations were seeking to work together.

For example, it would be entirely valid for a campaign to be set up that is based specifically in Edinburgh or Aberdeen. However, if a campaign was set up in Edinburgh or Aberdeen and it was funded—based on the facts of the case—by the same source, using the same materials and acting in the very same way, we would view those campaigns as working together. I am talking about a hypothetical case. The expenditure of the individual campaigns, if two or three campaigns were spending £145,000 each, would be counted together if the organisations were working together. The responsible individuals in each of those campaigns would be viewed as breaching the rules, because in effect they would have spent of the order of £450,000 against a limit of £150,000.

The Electoral Commission will make it clear in the run-up to the campaign that we will come down heavily on that sort of activity.

Annabelle Ewing: Will you explain what you mean by a stop notice?
With regard to your ability to impose sanctions, how quickly could you act? If people are acting in concert in breach of the provisions of the legislation, and they are already distributing and disseminating whatever it is they want to, the commission may come in and say, “You shouldn’t have done that”, but in a sense the damage will have already been done.

**Peter Horne**: We follow due process, which takes time, but we recognise that, in the context of a referendum, which is a one-time event, there are incentives for campaigners to do what they can before the event and take the consequences afterwards.

You asked me to explain the stop notice. We use the shorthand of describing a situation in which we know that someone plans to drive a series of double-decker buses with advertising on the side of them around every city and town over a number of evenings in the lead-up to the referendum. If they were spending significant sums of money, what would we do to stop that? We have the powers, working with the procurator fiscal, to issue a stop notice. We have not done that in the past, but we are preparing for the possibility that we might need to intervene. We would do so on the basis of facts, working with individuals in the procurator fiscal’s office.

On what we are doing to prepare for that beforehand, we are working on the principle that, if people know that we have the powers available and that we are serious about using them, they are less likely to breach the rules. We will make it clear in the run-up to the regulated period that we have those powers and that we will use them if necessary. It is critically important to the commission that the referendum is fair and is seen to be fair, and we will work to achieve that.

**John McCormick**:

The discussion underlines the point that Mr Horne made earlier. The issue of people working together is one of the factors that informed our decision to set the limit at £150,000 rather than at a lower level, as there would be little incentive in doing that. We always consider that issue before setting a limit for permitted participants.

**The Convener**: If we did not know about stop notices, we certainly do now.

**James Kelly (Rutherglen) (Lab)**: You are probably aware that we examined the issue of permitted participants in taking evidence last week. One point that was raised related to the regulation of donations to permitted participant organisations. The current provision in the bill states that any donations of £7,500 or more must be reported within the designated reporting period.

It was suggested that the level might be reduced in order to ensure that those donations were strictly monitored, and that the process was open and transparent. Do you have a view on that?

**Peter Horne**: I am repeating myself, but the legislation for this poll is a significant improvement on previous legislation, in that there is transparency prior to the event. This referendum is the first for which reporting will be introduced for donations of more than £7,500 in the regulated period, so transparency has already been improved.

On the level of donation at which organisations must report, the first point is that, for any donation of more than £500, the organisation in question is responsible for checking that it is a permissible donation from an individual on the UK electoral register or from a UK-registered company.

On the level at which donations must then be reported to the Electoral Commission to be published, the level that has been set in PPERA is £7,500; that applies to all political parties on an on-going basis. Our approach currently mirrors that. It would be possible to reduce that level if there was a view that that would increase transparency. That would apply in particular to campaigners, but not to political parties because they are subject to the on-going regulation that requires them to report to the commission on a quarterly basis.

As a regulator, I obviously like to mandate transparency where I can. However, I know that those who go into campaigning wish to spend more of their time on campaigning than they do on complying with our rules, so there is a balance to be struck between how much we require organisations to report and our clear expectation that they will comply.

**John McCormick**: I emphasise that point. Because of the planning for the referendum, this will be the first time that we will have pre-poll reporting during the regulated period, which increases the level of transparency from that in any of the previous referendums that we have had.

**Stewart Maxwell (West Scotland) (SNP)**: I return to the issue that Annabelle Ewing raised. We received evidence to suggest that there was a possibility that dummy or other organisations could be established. You have explained a little how you would identify those organisations and how they were operating, and how you would identify them as being the same as other organisations.

Could you explain that a bit further and provide a bit more clarity? What is to prevent a single individual from donating to the Glasgow says no and the Aberdeen says no campaigns, or the Glasgow says yes and the Aberdeen says yes
campaigns? If those two organisations are set up independently and do not use the same printed material but print their own material, and if they do different things and effectively run two separate campaigns—both on the same side—what is to prevent that from occurring? How would you identify that they are, in effect, two organisations working as one organisation?

Peter Horne: First, there is no limit on how much an individual can donate—

Stewart Maxwell: So one individual could donate to many different groups.

Peter Horne: One individual can donate as much as they want to the groups, although if it was more than £1.5 million, that would not give any benefit.

On the question about an individual donating to multiple groups with the intent that those groups would work together, that would clearly come back to the facts of the matter, but the limit of £150,000 is set because that was viewed as how much one would need to campaign across the whole of Scotland. If we found evidence that an individual was seeking to influence the referendum campaign by setting up multiple groups, we would act and intervene, on the evidence of the case. It is difficult for me to go into more detail because, as you will appreciate, it would depend on the facts of the case. However, if an individual was seeking to set up multiple organisations and was not only funding them, but controlling them in such a way that their activities were co-ordinated to avoid being duplicative, we would take action.

Stewart Maxwell: I see how that would operate if one person was in effect trying to control that. It would perhaps be difficult to spot, but one can see why you would be able to do so and take action against them. However, that is not really what I am asking about. If an organisation is established in one city and a different organisation is established by a different group of activists in another city, and then more groups are established in other cities, those are all separate groups of campaigners operating on the one side. They could be funded by one person or by multiple persons. If enough money is coming in on one side or the other, what is to prevent multiple organisations from being established across Scotland all with a limit of £150,000 and all operating on the same side?

Peter Horne: There is nothing to prevent that.

Stewart Maxwell: Nothing at all. How do you deal with that? How do you differentiate between that kind of activity and the kind of activity that you talked about?

Peter Horne: The split in the definition for us is that we would encourage a diversity of voices in the referendum campaign. It is up to those organisations to choose how they raise funds. It would be a concern if any individual voice sought to have greater influence than the £150,000 limit by working together. Clearly, there is a slightly grey area as to what is egregious working together versus a discussion along the lines of, "We'll stick to Edinburgh and you stick to Glasgow," or a kind of nudge nudge, wink wink approach.

You asked how we would deal with that and intervene. We have a range of powers to encourage people to comply if we have a suspicion that something is happening. The first is a conversation with the regulator, which is not something that people necessarily enjoy. We could call people in during the referendum campaign, at which point we could take further action if necessary. There is not a limit on the number of groups. I cannot predict how many groups there will be during the referendum campaign, but I can say that, if organisations are seeking to work together and one seeks to make their £150,000 limit apply only to the centre of Edinburgh, one is working in Pentlands and another one is working in Oxgangs, at that point, we would have real concerns and we would act.

Stewart Maxwell: In your opening statement, you said that your primary purpose in the recommendation on the funding mechanism was to try to provide balance and a roughly even playing field. How does that situation in which there are many organisations, each of which can spend the maximum of £150,000, go back to that principle? That might or might not happen, but one side or the other could easily outspend the other by an enormous amount of money.

Peter Horne: To clarify what I intended to say earlier, we started by referring to the principles that we set out in 2010, which were about effective campaigning and deterring excessive spending. We also looked at the Edinburgh agreement, which set out the principles of fairness and a level playing field. We have set a limit on what the lead campaigners, the political parties and individual campaigners can spend. It would be inappropriate for us to propose that we set a limit on the number of campaigning organisations. In practice, if we said that there could be five organisations on either side, what would happen when organisation number six comes along and says that it wants to register? There is a freedom of speech issue.

Another point is that the limit is £150,000 and, as I understand it, raising funds for campaigning is difficult. Multiple campaigns might register, but my view is that very few as a proportion will reach the limit of £150,000.

John McCormick: As the commission has made very clear, there is no control over the number of permitted participants and groups that can register and, as a result, this democratic
expression of people’s wish to take sides in a referendum can lead to more participants on one side than on the other. Mr Maxwell makes a fair point; there can be an imbalance and it is not regulated.

Annabel Goldie (West Scotland) (Con): I was looking at something else, so I might have missed the context in which the comment was made but I believe that Mr Horne highlighted the example of two double-decker buses being driven around Edinburgh. Does the objection to the buses centre on who is funding them or what they are doing?

Peter Horne: I was trying to give an example of where it might be obvious that an organisation was spending over and above its £150,000 limit. Similarly, what action would we take if we were made aware that every Scottish newspaper had sold a cover sheet to a single organisation the weekend before the referendum and there was clear evidence that the cost was in excess of £150,000? I think that that would be a clear breach.

John McCormick: With regard to his double-decker bus example, Mr Horne mentioned Edinburgh rather than Scotland. I think that if a set of double-decker buses with the same message was going around every city and major town in Scotland, we would immediately be alerted to the possibility of collusion among independent city-based groups.

Tavish Scott (Shetland Islands) (LD): I have two brief supplementaries, the first of which is on Stewart Maxwell’s line of questioning. I appreciate that this is a very hypothetical situation, but I want to get this straight. Is there no limit on the number of campaign organisations that could raise £150,000 and then spend it on either side of the campaign in Scotland?

Peter Horne: No.

Tavish Scott: Secondly, how many staff do you have to monitor all of this?

Peter Horne: We have a team of around 20 people, but we cover the political parties across Scotland, Northern Ireland, Wales and England. In the Scottish office we have a team led by Mr O’Neill that we are building up over time; I am not exactly sure of its numbers.

John McCormick: Be it this referendum or an election campaign, we have a process for the genuine on-going monitoring of events and activity in any campaign and everyone in the commission from the legal department through the finance department to all the officers is alert and keeping an eye out. I do not think that something as high profile as full-page newspaper advertisements or buses going round every city would miss our scrutiny.

Andy O’Neill (Electoral Commission): We should also remember that the yes and no campaigns police themselves and that we get regular information from various members of the public. We have a monitoring process that allows us to find out these things.

Tavish Scott: Given that this will be the most intensely political period in all our lives, I wonder whether you have enough people to do everything that you have described in your evidence this morning.

Peter Horne: I always feel encouraged when people suggest that I should have a bigger team. With the traditional links that the commission has built up over a decade in Edinburgh and Scotland in general, and the support that we will have from both sides of the campaign as they police their opponents, we will have a lot of information coming in, although it will be difficult to parse all that and check the concerns that are being expressed.

Tavish Scott: We will ask you that question in a year and a half’s time, then.

The Convener: I think that I probably sent the commission such letters in the past.

If I remember correctly, Annabel Goldie will now ask about process issues.

Annabel Goldie: Witnesses in a previous evidence session raised the question of how the Electoral Commission can balance its obligation to raise public awareness and promote understanding of the question without compromising its impartiality. In the role that you are being called on to discharge, can you put factual information about the process out there without straying into the issues that are being raised by the respective sides of the constitutional debate?

John McCormick: As members will be aware, we tested the question through the winter months and published our report at the end of January. Although the researchers did not set out to ask this question, it was clear from people’s responses—indeed, it was so significant that we mentioned it in the report—that they wanted more information on the big issues, such as the economy, the monarchy, defence, immigration and citizenship, before they voted.

Some people also raised the need to have information about the process of what would happen the day after referendum day. They expected that some of that information would come from the campaign groups, but they also wanted to get such information from a neutral source.

We are clear that, unlike the situation in previous referendums, the Edinburgh agreement
includes no detail about what would happen after the poll. It is clear that there will be no negotiations about the terms of independence before the referendum—we are very much aware of that. It is clear, too, that such issues will be debated by each of the campaigns and will be highlighted from now on. Therefore, we accept that it is not possible to produce genuinely neutral and authoritative information of the type that voters have expressed a desire for, but we believe that clarity on how the terms of independence will be decided would help voters to understand how the competing claims of the campaigns will be resolved. That seems to be possible, and both Governments have committed to work together to agree it.

We would like the information that is provided to clarify the process that would follow the referendum in the event of a yes outcome and in the event of a no outcome. That might include information on how negotiations would take place between the Governments, the timescales for those negotiations and so on. The more information that the Governments can agree on, the better we feel that would be for the voter. We are actively discussing that with the Governments at the moment.

09:45

Annabel Goldie: To clarify, what you have just given an explanation of is information about process. It is not a case of advancing an opinion about how marvellous defence would be in an independent Scotland, for example. The anxiety that some people have is about how to make that distinction: you have an obligation to explain the process without straying into substantive debate.

John McCormick: We are very clear about that and our role in providing impartial information on the process, as distinct from the campaigning arguments. We made it clear in our report that there was a clear demand from the people who were tested by the researchers for authoritative information about the campaigning arguments, but we accept that it is not our role to provide that information. We know that the voters expect the campaigning organisations to provide clarity during the campaign. Although there is a clear demand for that, we accept in our discussions with the Governments that what they will agree on is to do not with their negotiating stance or pre-negotiations, but with what will happen after the referendum. There is a demand for information on the process, the timeframe and so on.

The Convener: Rob Gibson has a supplementary.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): We discussed awareness raising during our consideration of the Scottish Independence Referendum (Franchise) Bill. In our report, we called on the Electoral Commission to have a detailed development plan so that we could see how it would deal with the complexities of the issues. Have you drawn up such a plan?

John McCormick: I will hand over to Mr O'Neill to answer that.

Andy O'Neill: The short answer is no. The long answer is that, with 16 months to go, we are still developing our plan. You mentioned the franchise bill. Since we last met, we have started mapping out whom we need to work with in the next 16 months. We have had meetings with educationists to look at registration and the messages that we send out with regard to 15 to 17-year-old voters in full-time education. We are beginning to talk to people in organisations such as NUS Scotland.

In a sense, we have started developing our key messages. As John McCormick mentioned, they will be about process, registration, postal voting and proxy voting, the date and how to fill in the ballot paper. We will also work towards issuing a booklet to households towards the date of the referendum. The content of all of that is still subject to discussion and development.

To answer your question, we have not developed a plan, but when we do, we will be happy to provide a note on it to the committee or to come and talk to you about it.

Rob Gibson: Do you expect that to be done within the timescale for our consideration of the bill—in other words, by November?

Andy O'Neill: The situation is developing. We can come back and tell you where we have got to. Hand on heart, I would not have thought that we would have completed the plan by November of this year.

John McCormick: The first stage of our plan will be under way by then. During the annual register to vote canvass, there will be a specific campaign for young people to encourage them to vote and get themselves on the young voters register. The annual canvass takes place from October onwards. Before that, the first part of our campaign that will be visible on the ground will be the part that is directed at young voters to remind them that they have a vote in the referendum and to tell them how to register.

At the beginning of this week, we started briefing agencies about what we expect from them in terms of development plans. We are at the early stages of the process, but there is on-going work, as Mr O'Neill said.

The Convener: On the back of Mr Gibson's question, it is appropriate for me to remind committee members that we will still be able to
take evidence from the Electoral Commission on the bill after it is passed—it will probably be enacted by October or November—because we have responsibility for implementation issues as well. Therefore, if we want, we could have further evidence-taking sessions later on.

**Rob Gibson:** I want to follow up on what Andy O'Neill said about people with whom the commission has been in touch. We expect those to include counting officers and electoral registration officers, but I think that he also mentioned people in education. Are you working with Education Scotland? The booklet that you intend to use for households will have to be tested in some way, given that the information will be for 16 and 17-year-olds as well as for 70-year-olds. What plans do you have for that?

**Andy O’Neill:** The booklet will be tested for all voters to which it is directed, but specifically for 15 to 17-year-olds. On the education question, we are working with the Association of Directors of Education in Scotland, Education Scotland, School Leaders Scotland and the Society of Local Authority Chief Executives and Senior Managers. We are trying to work together in partnership to ensure that people who are in full-time education get the correct messages around registration and suchlike. There is a desire to ensure that people understand in an impartial way the issues around the referendum and how to participate. Of course, it is not just young people who are in formal education, so we will work with others as well.

**John McCormick:** With regard to a question that was raised the last time that we were with the committee, I point out that we are in contact with Colleges Scotland and Universities Scotland about working with them on the registration of students for the referendum, which will happen at a time when they might be leaving home to go to college or university.

**Andy O’Neill:** There will not simply be a booklet for young people; there will be targeted campaigns through social media, for example, which is more relevant to younger people. We will do similar work for servicemen and other groups. There will be an overarching television and radio advertising campaign, a leaflet and a helpline. There will be targeted campaigns to ensure that certain sectors get the correct messages in a way that is the most appropriate for them.

**Annabelle Ewing:** Mr McCormick made a point a moment ago about the Electoral Commission’s clear recommendation that both the Scottish Government and the UK Government should have discussions about process issues following the result of the referendum, whatever it may be. That clear recommendation was in the report that the Electoral Commission produced at the end of January. I note that Mr McCormick said that the recommendation followed the expression of a clear demand. However, I am not quite clear whether I heard Mr McCormick say that both Governments had signed up to having discussions. The reality of the current position is that although the Scottish Government is keen to so proceed and has requested such discussions, the UK Government thus far has refused point-blank to enter into them. Did I hear Mr McCormick say that the UK Government had signed up to that recommendation?

**John McCormick:** The Edinburgh agreement committed both Governments to work together. We have discussed with the Governments the demand from voters to know what will happen the day after the referendum, whatever its result. Those discussions are continuing. We hope that something will come from that work that will be informative for voters and that will appear in our booklet. The information in the booklet will be tested, and we will decide what goes into the final version on the basis of that testing and evaluation.

Before the end of the year, the commission will publish a preparedness report in which we will draw attention to the different agencies, including ourselves, and say whether we are ready for the next stage of the referendum process, which will run from the end of the year through to next September. I am optimistic—but then I usually am.

**Annabelle Ewing:** Thank you for clarifying that point.

**James Kelly:** We took some evidence on the referendum in Wales a few weeks ago. Professor Wyn Jones, who gave evidence, was very critical of the Electoral Commission’s role in that referendum, in particular with regard to the report that the commission produced after the referendum. He said that it was an “exercise in self-justification”. What is your reaction to that comment? Also, what have you learned from the Welsh experience and how the report on the Welsh referendum was handled? How has that helped to inform your approach to the Scottish referendum?

**John McCormick:** I will pass over to Mr O’Neill in a moment but I was surprised by that comment because Professor Wyn Jones has in other forums been very positive about certain aspects of what the commission did. We published two reports after the Welsh referendum. We published a report in July 2011 on what had happened. Then, in October 2011, because the Welsh and AV referendums were very close together, we published a detailed lessons learned report. In that report we covered what we thought should happen, recommendations and what we had all learned from the referendum process itself, so there were two different reports.
I stress that we are very much aware that in a referendum report, to some extent we are reporting on ourselves, but our reports are based on externally verified data relating to public opinion poll tracking during the campaign, public opinion poll tracking after the vote as to how people felt about the experience of voting—whether they were happy with the process and so on—and data that comes from the counting officers throughout the country. Externally verified independent data forms the basis—the spine—of our reports.

We have been known to be fairly critical of ourselves in some of our reports, so I was quite surprised and a bit disappointed by some of the things that Professor Wyn Jones said. In relation to a couple of his specific points, I point out that we could only publish information that we were given and that was volunteered to us. We sought information but not everybody that we sought it from provided it to us, which was a bit of a disappointment to us. However, we believe that our reports are robust. They have to survive line-by-line scrutiny by the commissioners, who ensure that they are robust, independent and based on the right kind of data—as you would expect from a public regulator such as the commission.

Andy O'Neill might want to say something—

James Kelly: Mr O'Neill may be about to cover this point, but what lessons were learned from the Welsh referendum that can inform the experience in Scotland?

John McCormick: Before I hand over to Mr O'Neill, I note one issue that we learned about from both the Welsh and AV referendums, which was the need for proper planning—not rushing from royal assent to polling day in a matter of a few weeks, which was not an ideal approach to a referendum. A proper timetable and proper planning are needed, and there is also a need to work through the process timeously so that everybody is aware of the issues at stake and there can be proper public information campaigns. That is what has been learned for this referendum. Those are the headline issues, to which Mr O'Neill will add.

Andy O'Neill: John McCormick said what I would have said. Professor Wyn Jones failed to express the fact that we were always clear that our Welsh report would be not a lessons learned report but a what happened report. We saved the recommendations for the report that came after the parliamentary voting system referendum because of the context of another referendum occurring immediately thereafter. Some of the recommendations that were in the parliamentary voting system report, in particular on gaming—the idea that one side refused to apply for designation to stop the other side getting it for some perceived advantage—was certainly a recommendation that came out of Wales and was reported later.

I re-emphasise the point that we do not self-report—or rather, we do that only to a degree, because a lot of our reports are based on evidence that we get from external sources. The research evaluation, the returns from the candidates and agents, the public opinion tracking that we run afterwards and the tracking of public awareness research are all taken in and then regurgitated in our reports. We publish the complete evidence that we use to inform our reports on our website at the same time as we publish the report.

10:00

Professor Wyn Jones said that he had garnered a lot of criticism, but he did not give you any firm evidence of that criticism. If we had received such evidence, we could have included it in our report. If you read our reports, you will find evidence of instances where we have done stuff that we were not happy with, which we reported on and from which we then learned lessons. To say that we are self-justifying is a bit harsh.

James Kelly: Can you give an example of an occasion when you have examined an approach that you have taken that you have felt has been wrong and from which you have learned lessons?

Peter Horne: I will give some specifics from the lessons that we have learned, not just from the Welsh referendum but from other activities that we have been involved in that have come through to our recommendations on the party and election finance side. First, I referred earlier to pre-poll reporting, so that voters can have transparency around who is funding the campaigns. Mr McCormick spoke about not rushing between the date on which legislation is put in place and the regulated period, so that we can put guidance in place in time to enable campaigners to understand and comply with the rules.

We considered the issue of designation. The Electoral Commission has a role in designating lead campaigners. Prior to the present referendum campaign, either we had to designate the lead campaigners on both sides or we did not designate any lead campaigner. In the context of the referendum for Scotland, we took the lessons learned from Wales, where we were not able to designate, and the board considered and made the recommendation that it would be possible to designate a single lead campaigner on one side and not on the other in the event that there were no applicants on one side.

Those are the specific lessons that we have learned. There are clearly other points that could be picked out beyond that, but those are some of
the examples on the party and election finance side.

Stewart Maxwell: The Law Society of Scotland raised a question about section 24, which is headed “Report on the conduct of the referendum” and which says:

“the Electoral Commission must ... lay before the Scottish Parliament a report ... as soon as reasonably practicable after the referendum”.

The Law Society questioned whether that was feasible, given the three-month and six-month time limits for providing the commission with returns on referendum expenses. Is there a problem there? The Law Society thought that there may well be.

John McCormick: We do not think that there is a problem. On the referendums that took place in March and May last year, we presented our first reports about what happened in July, and our considered report, with issues arising and recommendations to Parliament, came out in October. We think that that reflects reasonable timetables, with time to consider and time to set out the issues. I do not think that we are concerned about the timetable.

Andy O’Neill: A report on the conduct of a referendum is a report on the conduct of a referendum—it covers the public awareness aspects, the work of the chief counting officer and so on.

We have been in discussions with the Scottish Government about issues around reporting separately on our investigating and sanctioning powers, referring to the compliance end. That is more difficult—we have to get the campaign returns in after three or six months, so we could not do a report “as soon as reasonably practical” in that case. The fix for that is that we are allowed to report on that aspect later. As I say, we are discussing the matter with the Scottish Government.

Stewart Maxwell: So, there would not be one single report covering all those aspects; there would be separate reports, dealing with the different bits.

John McCormick: Yes, there could be. That is what we did in 2011. We are open to doing that. It depends on how the current discussions with the Government on reporting go, but we are open to having separate-stage or two-stage reporting or one omnibus report. It is more likely to be two-stage reporting.

Stewart Maxwell: Any long delay in a later report dealing with the issues that Mr O’Neill has just covered would be rather problematic, given that those issues could be critical in determining the public’s view as to how accurate, reasonable and fair the whole process was.

John McCormick: I agree. We could make a quick report based on the facts of what happened, which would presumably reflect whether people were happy with the outcome of the referendum and the process. A considered report takes a bit longer. We are addressing those issues with the Government at the moment, and we feel fairly confident that we can provide the right kind of scrutiny of the referendum in timeous reports that would be satisfactory, but we are not at the end of those discussions yet.

Stewart Maxwell: When do you think that those discussions will conclude?

Andy O’Neill: Fairly soon.

John McCormick: We are not anticipating any difficulty. We understand the spirit of Mr Maxwell’s question, and we have no wish to delay unnecessarily or to be leisurely about this. We understand the importance of quick and timeous reporting, and we are working through the details to ensure that we can fulfil exactly the spirit of his question.

Andy O’Neill: You have to remember that, if the yes and no campaigns spend more than £0.5 million, they have six months in which to deliver their campaign returns to us, so a lot of the issues might not emerge until we get that information. We are tied into a timeframe by the legislation that allows better together and yes Scotland—or whoever is conducting the yes and no campaigns—to supply those returns.

The Convener: Annabelle Ewing has a question.

Annabelle Ewing: I would like to go back to expenses and the regulated period. Can the witnesses comment on the length of the period, which is 16 weeks? We have heard some evidence to the effect that the period should be longer, and I would like some information as to how that timeframe came about.

Peter Horne: In previous referendums, under PPERA, there has been a minimum of 10 weeks, and the limits have sat at around 11 to 12 weeks. Sixteen weeks is the period that applies to a range of elections that take place in Scotland—the Scottish Parliament elections, European elections and UK parliamentary elections. The UK general election has a limit of one year in advance.

There is an interlinked relationship between the amount of money that people are allowed to spend and the period of time that is set, so if you were to unpick one you would probably have to unpick the other. Our view was that 16 weeks was a sufficient period of time for people to build up to a campaign and put their arguments to voters.

We are exploring with the Scottish Government the opportunity—which arises specifically because
of how well prepared the poll is—to pull the designation timetable for lead campaigners forward. As the bill is currently drafted, the designation timetable starts when the regulated period starts, so although the starting gun sort of goes at the end of May, there is a four-week period for campaign organisations to apply to become designated as lead campaigners, so the campaign period is actually compressed into 10 or 11 weeks, rather than 16 weeks.

Bringing the designation timetable forward would allow us to have the lead campaigns in place before the start of the 16-week period, so that the 16-week period would be, in effect, the full period. On the question of making the period longer, I reflect a concern about whether the point at which the bill is passed and becomes an act is the point at which we start being able to explain to campaigners what they can and cannot do. I feel that it is fair to give people time to understand that before we present them with the rules that will apply to them.

To me, the 16-week period strikes the right balance. It will be a long campaign. I know that activity is going on at present, but in those critical last few months, regulations will kick in and people will be clearer about the rules that are set for them.

Annabelle Ewing: You expressed a slight concern about an extension in relation to the need for all parties to understand the rules of the process. I presume that that concern would not apply to the same extent if there was a slight, but not excessive, extension beyond 16 weeks.

Peter Horne: It is possible that there could be a period of 17 or 18 weeks—a shift is possible there. However, the limit of £1.5 million for lead campaigns essentially comes down to a few pence per voter per week. As we extend the regulated period, we start to push that and make it tighter, so the ceiling becomes lower. When we made the recommendations in the early part of this year, the recommendation was that we should say that there is a set amount of money for a set period. If we were to change the set period, we would open up that discussion again. There was agreement on both sides of the house on that one, so I am comfortable with the length of the period. I can see that there are arguments for extending it, but I am not convinced by them.

John McCormick: The commission’s board—the 10 commissioners—considered earlier this year whether, given that the bill will receive royal assent in such good time before referendum day, there was a strong case for recommending a longer period. A 16-week regulated period was one of the recommendations that we made in our report following the referendums in March and May 2011. We were pleased that, in the bill, the Scottish Government has accepted that recommendation—we wish it to be accepted wherever there are referendums.

I stress two points. First, as Mr Horne said, we could agree with the Scottish Government that the bill should be amended with regard to the process of designation. At present, the bill allows a maximum of four weeks for people to come forward and be interrogated to see whether they meet the criteria. In this case, we already know that there are two well-established organisations and there is much speculation that they may put themselves forward for the lead designation process. I would not like to presume anything, convener, but if there is agreement that we should bring the designation period forward, it will preserve the purity, as it were, of the regulated period of 16 weeks, and we will have the additional four weeks, which will overlap with the regulated period for the European elections.

Secondly, we are aware that the better together and yes Scotland campaigns have agreed to volunteer information on their donations. We are pleased and encouraged by that. There will be a period of voluntary publication of donations that they have received in the months up to the regulated period. That gives us encouragement as well.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Good morning. I have some questions about the purdah provisions in the bill. I understand that they are largely based on PPERA, but we have had evidence from one organisation suggesting that, although that is the case, one area that has not been taken from PPERA is the need for compliance by grant-funded non-public bodies. Will you comment on that?

Peter Horne: I am happy to do that. My colleagues might want to add more detail.

The rules under PPERA are rather broad and, in the commission’s view, given examples of previous electoral events, they are not as specific as they could be. As we discussed earlier, this will be an intensely important discussion about the nature of democracy in Scotland, but there will also be a requirement for on-going Government and public administration, and a line needs to be drawn at some point. It was a commission recommendation that the prohibition period should apply only to ministers, parts of the Scottish Administration, the Scottish Parliamentary Corporate Body and the Scottish public authorities to whom it applies.

There are difficulties around what action could be taken to enforce the purdah period. Could a public body take that action? In our view, and in our experience of previous campaigns, the court of
public opinion is the most effective way of trying those organisations that breach the purdah period.

10.15

Patricia Ferguson: Okay. I am still not 100 per cent clear why that particular distinction was made. If that rule applies in other election circumstances, why will it not apply in the referendum?

Peter Horne: The experience of past referendums and electoral campaigns is that the PPERA rules are so broad that entirely valid activity that was undertaken by organisations could be seen as being covered by the clauses in PPERA.

On the change in this case, it is clear that, in communicating to voters, we wish there to be opportunities for education authorities, for example, to offer advice on how to vote—on the process, as opposed to how to make one’s choice. The clauses in PPERA would have covered such things. The recommendation in this case is particularly to cover action on behalf of political activities.

Patricia Ferguson: What would you consider to be public bodies? Most people would think of a local authority and, by extension, its education department to be a public body.

John McCormick: Is the question about whether the recommendation that we are discussing is too narrow or are you concerned about the change whereby the use of PPERA has been modified for the bill?

Patricia Ferguson: I was interested in why it has been changed. Mr Horne has explained that but, in explaining it, he mentioned the fact that we would want the provisions not to debar schools and education authorities from being able to give out information to young voters. I wonder whether the court of public opinion might think of an education authority, which is part of a local authority, as being a public body in some way. What is the distinction between the organisations that are covered and those that are not?

John McCormick: In defining a public body, I would not like to make a generalised statement that may not be pinpoint accurate. We have a note about the matter and some background information on it. It is probably best if we clarify it for the committee in writing, if that is acceptable.

Patricia Ferguson: That would certainly be helpful.

It has been suggested to us that you may not have enough sanctions or opportunities to ensure compliance with the purdah rules. Do you have a view on that?

John McCormick: We are realistic about the 28-day period. Mr Horne talked about the sanction of public opinion and public discussion. Uniquely in this referendum, we have the Scottish Government on one side of the argument and the UK Government on the other side, so the monitoring and scrutiny will be quite intense. The implicit point behind Ms Ferguson’s question is valid. It is a 28-day period, and during the referendum campaign there will be active public scrutiny of whether each side is obeying the rules.

The Convener: On the issue of the two different Governments, we took evidence last week from Professor Mullen, who said:

“It would be more appropriate if, for both Governments, the purdah period was on a statutory footing.”—[Official Report, Referendum (Scotland) Bill Committee, 16 May 2013; c 411.]

Have you had any discussions with the UK Government about its being able effectively to make it a level playing field?

Peter Horne: It is worth stating that the Electoral Commission does not have a role under PPERA in regulating any breaches of the 28-day period, nor does it have a role under the bill as drafted. I read with interest last week’s evidence, but we have not had discussions with the UK Government about making that a statutory issue for that Government.

John McCormick: I remember that the last time we were here, in a slightly different context, I said that it would be presumptuous for the Electoral Commission, as a regulator, to comment publicly on the conduct of the Government or the Parliament. That is why we believe that public scrutiny is the best test in this regard. As Mr Horne said, it is quite difficult to envisage our being given a role in scrutinising that.

The Convener: Some members have supplementary questions.

Patrick Harvie (Glasgow) (Green): Good morning, Mr McCormick. Mr Horne talked about the “court of public opinion” being the main sanction here. If there is a statutory basis for purdah for one Government but not for the other, surely there is a danger that one Government or the other will be at an advantage in the public debate if there is an alleged breach of the undertaking on the one hand or the statute on the other.

John McCormick: Your point is perhaps valid, but we do not anticipate breaches. We will not go into the campaign thinking that there will be a breach during the 28-day period. There is a tradition of Governments accepting and observing the 28-day rule. I suppose you might say that that view comes from the sunny, optimistic side of my personality. However, we cannot have a role in
monitoring or scrutinising the 28-day rule. We do not have that role and I cannot see us fulfilling it in any realistic sense.

Patrick Harvie: I am an optimist as well, but given the tone of the debate, it might be a realistic possibility that, even if there are no intentional breaches of purdah, there might be allegations or suggestions of breaches. Would it not be cleaner for the same basis to apply to both Governments, either on a statutory basis or, if that proves impossible, through an undertaking for both Governments rather than just one?

Peter Horne: We referred earlier to the Edinburgh agreement. It sets out the UK Government’s principal approach, which mirrors the PPERA approach as far as it applies to the UK Government. There are a significant number of undertakings in the Edinburgh agreement—not least that both Governments will respect the outcome of the referendum—which are not set out on a statutory basis. I noted the discussion between the distinguished lawyers who were in front of the committee last week, who did not have an answer to the question. Not being a lawyer and having no claim to be distinguished, I will say that I do not know.

Mr Neill would like to add something.

The Convener: Are you distinguished, Andy?

Andy O’Neill: I would never be so bold as to say that.

To answer Mr Harvie’s question, in paragraph 29 of the Edinburgh agreement, the UK Government committed to living under the same PPERA rules as the Scottish Government. That commitment is already there in writing.

Patrick Harvie: Another difference between the referendum and elections that have a purdah period is that, during elections, the Parliament is dissolved and members of the Scottish Parliament—or members of Parliament, in the case of Westminster—no longer exist. Assuming that all MSPs choose to stand again at the next Scottish Parliament election, none of us will be able to present ourselves as MSPs for that election; we can present ourselves only as candidates. That is partly about avoiding giving an advantage based on incumbency and ensuring that all candidates have the same status, but it also prevents MSPs—or MPs, in the case of Westminster—from using public funds to campaign for their own policies or positions on matters of public debate.

That will not be the case in the referendum purdah period; it will apply to the Governments, but the Parliaments will still be sitting. Is there anything to prevent parliamentary offices and resources from being used to promote positions in the referendum or to campaign for a particular outcome?

John McCormick: Andy O’Neill and Peter Horne are competing to come in.

Peter Horne: The expenditure that is regulated during the campaign period is that on broadcasts, advertising and so on. I have my list here. Anything that looks and tastes like campaigning is campaigning, and that will be regulated. If individuals who have access to public funds used those, I presume that, first, it would be a breach of the controls over how they may spend such funds, and secondly it would be a breach under PPERA rules, which are that public funds are not permissible donations. The rules would be broken in relation to who the money was sourced from, and the law would be broken in relation to the spending of money from public funds on political campaigning.

Andy O’Neill: To add to what Peter Horne said, I note that MSPs are governed by the rules or standards that govern them internally as MSPs, so they will not be able to use public money to campaign. An example off the top of my head is that of the newsletters that you send to your constituents. There are clear rules about what you can and cannot include in them, and those rules will continue for the referendum. However, the direct or proper answer would come from the parliamentary authorities.

Patrick Harvie: Those rules do not prevent us from advocating a position or from using staff who are paid for from public resources to issue press releases that relate to issues under public debate. Clearly, that would relate to the choices that are before Scotland and the policies and positions that people are setting out across the divide.

Andy O’Neill: Again, you would need to look to your own rules and the parliamentary authorities for the answer.

Tavish Scott: I have a number of questions on this area because I am concerned by the narrowness of the focus that you have described in relation to public bodies. Are you saying that it will be permissible for all the Scottish public agencies, quangos and Government-funded public bodies of any kind whatsoever to take a line and that that will not be scrutinised other than in the “court of public opinion”?

Peter Horne: First, the Electoral Commission does not have a role in scrutinising that aspect of the legislation.

Tavish Scott: Who does? No one?

Peter Horne: If an individual or organisation wishes to complain about it, I believe that there are two routes for them. First, there is the
challenge among the press—we are talking about a debate as to providing information. Secondly, if people wish to seek action and complain, they can do so.

**Tavish Scott:** But, in effect, the whole weight of Government in the period that you described—the regulated period starting 16 weeks before the date of the referendum—could be used by all the agencies to campaign for independence.

**Linda Fabiani (East Kilbride) (SNP):** Or against.

**Peter Horne:** In the event, we are working with both the Scottish Government and the UK Government on this because, as we have said, it is not our role. We are looking at ensuring that there will be a contact individual. I am not sure whether we have finalised who that will be within the Scottish Government administration, but we already have the name of the team in the UK Government Cabinet Office to which people will make complaints if, in their view, an Administration is breaching the rules.

**Tavish Scott:** So, in your view, Government announcements can continue to be made all the way up until purdah starts 28 days prior to the referendum, and that will just be fine.

**Peter Horne:** Yes.

**Tavish Scott:** You do not see any difference between this once-in-a-lifetime referendum and a run-of-the-mill general election where we all understand the rules of the game. There is a difference.

**Peter Horne:** As we described earlier, we view individual referendum polls as distinct activities. The difficulty in this referendum is that, up to the point of the poll, there will be on-going Government activity at both the Scottish Government and UK Government levels. The challenge is how we get a balance. I agree that there should be a point when there is quiet and no intervention. However, to state that the Governments in both Scotland and England cannot undertake public activity in a period beyond the 28-day period would be very difficult to do.

**Tavish Scott:** Why?

**Linda Fabiani:** Because they have got stuff to do.

**Tavish Scott:** Can I ask the witness? Would it be all right if I asked the witnesses, rather than being interrupted by the nationalists?

**Linda Fabiani:** Oh!

**Tavish Scott:** Touchy, aren't they?

**The Convener:** Can we keep the conversation between Tavish Scott and the witnesses at the moment? Others can come in later.

**John McCormick:** I recognise that concern has been expressed on the issue. The Electoral Commission regards it as a matter for Governments to regulate and ensure that the 28-day period is respected. However, I recognise the concern about it and the question about clarification of the position of public bodies, which is why we would like to write to you, convener, with a considered view on that.

10:30

**Tavish Scott:** Thinking about public bodies, let us say hypothetically that the SCVO—a voluntary organisation that is funded by the Government—takes a view on independence and comes down on one side or the other. Do you have a view on whether that is admissible, or whether that would pull that organisation into your ambit and regulations?

**John McCormick:** The STUC, did you say?

**Tavish Scott:** The Scottish Trades Union Congress is not funded by the Scottish Government, but lots of organisations are directly funded by the Scottish Government and we can take any of them as the example.

**Peter Horne:** If an organisation is making a statement of its position, that is reasonable. If an organisation is using funds to advocate a position and it is spending above the limit of £10,000, at that point it becomes a regulated campaigner.

**Tavish Scott:** Thank you for that—but did you say that it is fine for the organisation to state its position?

**Peter Horne:** It is not the role of the Electoral Commission to examine the stated positions of a range of organisations—

**Tavish Scott:** Despite the fact that they are funded by the Government, whether it is the UK Government or the Scottish Government.

**Peter Horne:** It is not our role to determine what people do or do not say. Our role is to consider where people are spending money and whether or not the sources of that money are permissible. If organisations become participants—they would need to become regulated campaigners—we will regulate them at that point.

If public bodies seek to campaign using public funds, it brings up the issue around political campaigning that we see in any election. It is not acceptable for them to use public funds—that is not a permissible source of funding. As to whether an individual body could make a single statement, I do not believe that that would be regulated.
Tavish Scott: Thank you—you have clarified the matter for me. It is a free-for-all, as far as I can see. I am grateful for the clarity.

Stewart Maxwell: I return to your earlier comments about permissible use of public resources by MPs and MSPs. Clearly, if they were campaigning using public resources, that would be a breach. If an MP, for instance, wrote to constituents with a survey and asked the referendum question, “Should Scotland be an independent country?”—

yes or no—using parliamentary resources, would that be a breach?

Peter Horne: I am not sure—

Andy O’Neill: That is a question that would need to be addressed to the House of Commons authorities. We do not have the detail of the rules with us.

Stewart Maxwell: I thought that you said that using public resources to campaign in the referendum would not be permissible.

Peter Horne: I will follow up on the point that I made earlier.

Across the UK, in the National Assembly for Wales, the Northern Ireland Assembly and the Scottish Parliament, elected representatives receive funds through which they can administer their constituency business. There are restrictions on how they can use those funds. I am not the responsible accounting officer who sets those restrictions for those funds. You would need to check the restrictions with regard to what you receive and how you can use it.

Stewart Maxwell: I thought that you were very clear earlier on the fact that it would be a breach if somebody carried out that behaviour. You now seem not to be sure.

Peter Horne: There is clearly an area in which elected representatives will be continuing to work with their constituency, dealing with complaints and questions on an on-going basis. That is normal activity.

There is a point where that moves to activity that is clearly campaigning activity. That dividing line is already set out in the rules and regulations. I am not an expert on what those are for the Scottish Parliament, but they are already in place for elected representatives up and down the country. A breach of those rules would be dealt with by the authorities as appropriate.

Stewart Maxwell: Let us leave the Scottish referendum for a second. For the Welsh referendum, would it have been a breach if a Welsh MP had used his office resources, such as paper and postage, to write to people and ask them their opinion by asking them to answer the question in that referendum?

Peter Horne: I was not working for the commission at the time of the Welsh referendum.

Andy O’Neill: For an AM, it would have been a matter for the Welsh Assembly.

John McCormick: The regulatory role and the detail would be for the Assembly authorities.

Andy O’Neill: In a sense, you need to follow the money. You need to consider where the resource that is used for the action comes from and what the rules are on the use of that money. If it is clearly Scottish Parliament money and it is clear that it cannot be used for the activity in question, the member will be in breach of the rules. If the MSP, AM or whoever is funded by some other resource—as long as it is permissible—and not by public money, it will be clear. It depends on the instance that you are talking about.

The Convener: I will allow one more question on this area, and then we really must move on because there are other things that we need to look at. I think that Linda Fabiani has a question.

Linda Fabiani: I do, but I want to clarify something first because I think that we are getting a bit jumbled up here. Different organisations have different remits and different responsibilities, and we have to be clear about that. If colleagues are concerned about what MSPs can do, I suggest that they read the rules that already exist, and I presume that the same would apply for MPs at Westminster. Sorry—there is muttering in my ear. We have to be clear about who is responsible for what, and we can check that out.

I know what the Scottish Parliament responsibilities are in relation to the use of allowances—they are very clear—but I am unaware of what Westminster MPs work to. There is clearly concern round the table about who can do what. It might be worth while to find out what rules Westminster MPs work to. Ours are already there to be seen and they are clear.

I return to the evidence that we have taken previously on the purdah period and paragraph 29 of the Edinburgh agreement. It is worth while to state again that the Law Society said to us:

“I think that a distinction should be made between a statutory provision and something contained in an extra-statutory agreement that people might want to flesh out.”—[Official Report, Referendum (Scotland) Bill Committee, 9 May 2013; c 345.]

The Law Society seems to have flagged up a potential concern about the purdah period and whether it will be a level playing field. It is also worth recognising that, when asked, Professor Mullen reckoned that it would be straightforward for the UK Government to put something in
It continues: “as soon as they are available.” and all the rest of it
"with the certified results, information"
and all the rest of it
“as soon as they are available.”

The Convener: Do the witnesses wish to comment on that?

John McCormick: We are aware of the commitment that the UK Government has made in the Edinburgh agreement and the points that Mr Harvie and Ms Fabiani have made about the difference between a non-statutory agreement and the law. If there is concern about that, the committee may wish to raise it with the UK Government, or it could be raised between the Scottish Government and the UK Government.

We understand the commitment in the Edinburgh agreement to be a very public commitment to adhere to the rules. In other aspects of the referendum, a number of things have to be taken on trust. The Prime Minister gave a clear public commitment when he was in Edinburgh but, if there is real concern about the difference in status between the two Parliaments, it may be something that could be clarified further.

The Convener: We have three other areas to get through, so we need to make some progress. Annabel Goldie has some questions on the declaration of the result.

Annabel Goldie: Last week, some ambiguity emerged about the facility for declaring local results. The convener wrote to the Deputy First Minister to seek clarification. I do not know whether our witnesses have seen the letter from the Deputy First Minister.

John McCormick: We have.

Annabel Goldie: It is interesting. The Deputy First Minister seems to indicate that there has been a slight change of position and there is a desire to allow the facility for local results to be declared. However, there still seems to be uncertainty about when that can happen.

The policy memorandum states, at paragraph 53, that counting officers are to provide the chief counting officer
"with the certified results, information"
and all the rest of it
“as soon as they are available.”

It continues:

“The CCO will then authorise the counting officer to announce the local result.”

However, that is not what the bill says.

In paragraph 35 of schedule 3, while the obligation on the local counting officer is clear—they have to gather all the information and give it to the chief counting officer—there is no definition of when the chief counting officer is to authorise the local counting officer to declare the local result. The chief counting officer seems to have unfettered discretion on timing. Are you satisfied with that?

John McCormick: I will ask Mr Scallan to comment on this, but my reading of the Deputy First Minister’s letter would clarify the point if translated into the legislation. Otherwise, we would be putting certain strictures on the process, and I am not quite sure what I would be dissatisfied about.

The big issue for us in the Electoral Commission was that we thought, in the nature of things, that it would not be possible—or practical—to hold back all the local results until the national result. The chief counting officer, working with the counting officers, will agree a process by which local results will be declared timeously, as soon as they are ready and have been verified. Having satisfied that, I did not seek any further precision than that. Mr Scallan might have other views.

Andrew Scallan (Electoral Commission): The Deputy First Minister’s letter made clear our understanding. However, you have raised a point, and we will go back and look again at the legislation.

The purpose of the stages of the referendum is the need for certainty at a local level. The law says that each counting officer will make a count and check back with the chief counting officer to ensure that there is hardly any difference between the verified ballot papers, the for and against ballot papers and the spoiled ballot papers. When the chief counting officer is satisfied with the mathematics that have gone on in each local counting area, they will say, “I’m now accepting it as chief counting officer.” That is the stage at which the declaration should be made locally.

I think—

Annabel Goldie: Do you accept—

Andrew Scallan: We will go back and check the detail of the legislation.

Annabel Goldie: I am sorry for interrupting. Do you accept that the bill as drafted, if literally interpreted, means that the chief counting officer could authorise the local counting officers to publish the results two minutes before the chief counting officer publishes the national result?
Andrew Scallan: It may well do; I would need to go away and look at it.

Recognising what goes on in the various count locations, the idea is that, although it will not be made obvious to everybody what has happened at any particular count, for those who are tallying up what is going on elsewhere the result will be very clear.

Let me take my answer a bit further. The certification of the result by the chief counting officer will come some time after the result is known. There is the formal process in which the chief counting officer says, “This is the final result.” However, unless the result is very close, what has happened will become obvious at some stage during the day or night—depending on when the count takes place.

The purpose of the local count is absolute certainty. If the chief counting officer is satisfied with the count, they will authorise the local counting officer to declare it locally. If past practice happens again, that will take place fairly quickly. If the chief counting officer is satisfied that, within any particular local authority area, the count is concluded, there is no need to do anything else.

Annabel Goldie: So you are working on the understanding that, all things being equal, each local result will be published once the counting officer has ticked all the boxes required by the chief counting officer. There should not be any impediment to the timeous publication of the local result. That is your understanding and the basis on which you would like the process to work.

Andrew Scallan: Yes.

John McCormick: And we expect the spirit of that, as contained in the Deputy First Minister’s letter, to be translated into the legislation.

The Convener: As there are no more questions on that issue, Rob Gibson has a question about the ballot paper.

Rob Gibson: The committee has received a number of submissions urging that the bill should be amended so that the question on the ballot paper is set out in Gaelic as well as in English. Do you have any views on that issue?

John McCormick: As the committee knows, we tested the question that we were given by the Government, which was in English. During that process, we tested the question with groups of Gaelic speakers in different parts of Scotland to ensure that there were no ambiguities for anyone whose first language was Gaelic and whose second language was English. We have not tested a Gaelic question.

Our public information campaigns and information that will be available in polling places on how to vote and what to do will be available in Gaelic as well as in many other languages. However, we have not been asked to consider a question in the Gaelic language. If we were, we would strongly recommend that it be tested separately from the English language question.

10:45

Rob Gibson: Andy O’Neill told us during evidence on the Scottish Independence Referendum (Franchise) Bill that we have used the languages to which Mr McCormick has just referred, and he imagined that they would be used in future. Do you have examples of how those languages are used in promoting awareness and in the polling place?

Andy O’Neill: In the past, we have provided template posters and information leaflets, which can be displayed in polling stations and polling places in a number of languages, including Gaelic. It would be for Mary Pitcaithly, the chief counting officer, to guide or direct her counting officers to use those posters as appropriate. Such material can be made available, and we will work with Mrs Pitcaithly to provide the resources in the context of the event.

Rob Gibson: So it would be down to the electoral managers to decide where they would be used.

Andy O’Neill: Yes. They know where various communities are; certain languages would be redundant in certain places.

John McCormick: It would be a matter for the chief counting officer, as convener of the Electoral Management Board for Scotland, whether to issue a direction, to advise, or to take local advice on the matter. As Mr O’Neill said, we would provide the basis for that, and it is up to the EMB to decide.

The Convener: Patricia Ferguson has a question on civil penalties.

Patricia Ferguson: I understand that the Electoral Commission will have the power to impose sanctions in certain circumstances, but those circumstances and the rules that cover them are not in the bill and will be set out at a later stage in a statutory instrument. Are you aware of the reason for that, and do you have a view on whether that is the most appropriate way to proceed?

Peter Horne: We used only to have criminal sanctions, but we now have an established approach in which we have civil sanctions in place, and we have implemented our enforcement policy on that for a number of years. I note that the current draft of the bill suggests that we should consult on our approach to sanctions and set it out. Our view is that, although the Scottish
renewed has its own facets, we should continue to be consistent with the lessons that we have learned from the past, which will inform our approach.

Patricia Ferguson: Is it coming at a later stage because you are consulting on the issue?

Peter Horne: Yes.

John McCormick: It is the same legislation, so it has the same impact.

The Convener: We have come to the end of that session. I am grateful to the witnesses for coming along to give evidence, for being so clear on most of the areas that we have addressed, and for their promise to come back to us on one specific point.

10:48
Meeting suspended.

10:55
On resuming—

The Convener: We begin our next session of evidence taking this morning. We have with us Dr Ken Macdonald, who is the assistant commissioner for Scotland and Northern Ireland from the Information Commissioner’s Office.

I pass on apologies from the STUC—unfortunately, because of a late illness, its representative could not attend today. However, it has said that, if we cannot find another slot, it is happy to provide fuller written evidence to us in due course.

I welcome Dr Macdonald—you have appeared before us previously, and I am glad that you are here again. I understand that you do not wish to make an opening statement, so we will go straight to questions. The first question comes from Bill Kidd.

Bill Kidd (Glasgow Anniesland) (SNP): Good morning, Dr Macdonald. In the past, the commissioner has given guidance to parties and campaigners. Is there a way in which you can intervene if particular activities of parties or campaigners cause concern during the campaign?

Ken Macdonald (Information Commissioner’s Office): Yes. As you say, we have given guidance before, and we have taken enforcement action at general elections against political parties that have breached what is known as PECR—the Privacy and Electronic Communications (EC Directive) Regulations 2003—which is an additional piece of legislation that we use. PECR covers telephone marketing, spam texting and so forth.

When we have taken action at elections in the past, we did not have the same amount of powers that we do now. We were limited in what we could do, which was mostly just to tell people to stop.

For the past couple of years, we have had the option of imposing civil monitoring penalties when the regulations have been significantly breached. In the past six months, we have started issuing such penalties. For example—although this relates to a completely different sector—we fined a telephone marketing company in Cumbernauld £90,000 for continually breaching regulations.

To date, we have written to the chief executives of the two main campaign organisations, Better Together and Yes Scotland, to remind them of their obligations. We have included our guide—which is also on our website—to political campaigning with regard to the application of data protection legislation and PECR.

In the past, we have worked with our colleagues in the Electoral Commission to ensure that they provided guidance when they communicated with political parties, and we will do the same on this occasion.

Bill Kidd: You have said that you will monitor the activities of permitted participants and designated organisations during the campaign. Will that ensure compliance with data protection principles? Does the bill give you the powers to do that?

Ken Macdonald: We already have the powers through our own founding legislation. The Data Protection Act 1998 is a framework that sits alongside and works together with other pieces of legislation. We will monitor and pick up intelligence ourselves, and we will get complaints from members of the public who think that the legislation may have been breached.

Bill Kidd: Do you perceive that there are any data protection concerns arising from the bill as it is currently drafted?

Ken Macdonald: I do not immediately see that there are, certainly with regard to canvassing or the promotion of any particular side’s view, because those areas are covered separately under the part of the 1998 act that relates to direct marketing and written correspondence. The main legislation that covers the marketing side is PECR, which is being implemented more strongly.

11:00
Bill Kidd: That is extremely useful. You said that you can impose a penalty of up to £90,000 on a company and that you have done so in the past. How many breaches have to occur before such a penalty is incurred?
Ken Macdonald: In the case that I mentioned, there were a significant number of breaches. I cannot tell you the precise figure, but the information is on our website. The number of breaches must be significant, but we must be sure that the complaints are genuine. People had received quite distressing phone calls from that particular company, and that influenced our decision.

I should say that the level of fine is not based simply on the volume of complaints that we receive. We also take into consideration the organisation’s assets, so we have to undertake a balancing act.

Tavish Scott: Dr Macdonald, I want to understand your role with regard to the point that Bill Kidd just made. If people are getting fed up with telephone calls that they receive during the campaign, is it the case that you are not the person to whom they would go—or would they be able to pursue a data protection issue with you?

Ken Macdonald: That would be our role. People would report complaints to us through our website, by phoning or emailing us or by contacting directly our head office in Wilmslow, just south of Manchester, from where we run our investigations. In situations in which there is a clear Scottish dimension to any enforcement action, I would be called in to give my views and some background information, and to help to determine what type of action we should take.

Tavish Scott: In your professional experience, do people understand that your office is the point of contact? You made wider points to Bill Kidd about campaigns in other walks of professional life, but do people understand that they should contact your office with such concerns?

Ken Macdonald: People are often signposted to us; they do not automatically think, “We’ll contact the ICO.” They may go to trading standards or to citizens advice bureaux, and they are directed to us.

Tavish Scott: Is it the role of both campaigns and the designated organisations to ensure that they are part of that signposting, and that people who have any concerns are able to obtain your assistance?

Ken Macdonald: That could be done in certain literature and when the campaigns are collecting information. However, the Electoral Commission and our office should work together to draw our role to the public’s attention.

Tavish Scott: Is that happening? Is it part of your work?

Ken Macdonald: We have not started it this time round, but we have done it in the past for general elections.

Patricia Ferguson: Good morning, Dr Macdonald. You will recall—and I am sure that you are well aware—that the committee has been concerned to ensure that the provisions in the franchise bill, which we dealt previously with, do not in any way infringe the rights of young people, particularly as they are going to be included in the electoral register at a much earlier age than usual. Does your consideration of this bill suggest to you that it also makes a point of ensuring that young people are adequately protected and that their rights to privacy and so on are not infringed in any way?

Ken Macdonald: Yes, although the issue of protecting children relates much more to the franchise bill than to this bill. It comes into play, for example, in relation to the fact that there is a single register, which is also mentioned in this bill. There are also protections for anonymous franchisees when they get their polling card. Those provisions appear to be quite reasonable and they appear to fit in with the data protection legislation.

When I previously gave evidence on the franchise bill, I raised the issue of including a provision for the destruction of the register. I am pleased to see that there are clearly defined purposes for the register and offences that apply if the register is used for any other purpose. That will be regulated by the Electoral Commission, but in some situations we may be brought in, too, and we can work together with our colleagues in the commission.

Annabelle Ewing: Good morning, Dr Macdonald. In your view, considering the campaign rules on reporting on campaign expenditure in particular, are there any protection and privacy issues that arise?

Ken Macdonald: I have not picked any up personally, but I have focused very much on the handling of personal data in the register. We expect transparency from donors and some protection for the smaller individual. It is clear that, the bigger the donation, the more reasonable it is to expect the public to be told who is making the contribution.

That is perfectly fine under the data protection legislation, but donors and recipients of expenditure should be made aware that there are requirements on the disclosure of information on who has given the money and where it has been spent, just as there are for MSPs in their day-to-day working lives.

Annabelle Ewing: Just to clarify, there is nothing that leaps off the page as a concern in that area.

Ken Macdonald: No.
The Convener: I see that no one else has any questions for the commissioner. Annabelle Ewing raised the specific issue of expenditure, but I have a more general question. From your perspective, Dr Macdonald, are there any data issues at all arising from the bill of which we need to be aware?

Ken Macdonald: As I said, there are issues that I have previously raised or addressed, such as the use and destruction of the register and the security of the anonymous registrants. There is nothing about which I have a major concern, and I am pleased that, in this bill and in the franchise bill, data protection has been taken very seriously.

The Convener: In that case, I thank you very much for giving evidence. The session has been short but very helpful.

Before I close the meeting, I remind colleagues that at our next meeting, which is scheduled for Thursday 30 May, we will hear from Yes Scotland and Better Together. The committee will then hold a round-table evidence session with the Federation of Small Businesses, the Equality and Human Rights Commission Scotland, the Scottish Council for Voluntary Organisations, Inclusion Scotland, the Scottish Youth Parliament and Professor Aileen McHarg. Next week’s meeting will begin at the same time of 9.15.

I also remind members that the deadline for lodging amendments to the franchise bill is noon on Monday 3 June.

Meeting closed at 11:07.
Scottish Parliament

Referendum (Scotland) Bill Committee

Thursday 30 May 2013

[The Convener opened the meeting at 09:15]

Scottish Independence Referendum Bill: Stage 1

The Convener (Bruce Crawford): I remind everyone to switch off their mobile phones. We have had apologies from Linda Fabiani, and Bill Kidd is attending in her place. Stuart McMillan has to leave after the first panel for a private engagement.

Patrick Harvie wants to say something at this stage.

Patrick Harvie (Glasgow) (Green): Convener, I do not think that this is a formal registrable interest, and I do not think that it will come as a surprise to committee members, but in the interest of transparency I put it on the record that I am a member of the advisory board of Yes Scotland.

The Convener: Thank you.

This is the fourth of the five meetings in which the committee will take oral evidence at stage 1 of the Scottish Independence Referendum Bill. I welcome the first panel of witnesses. From Yes Scotland we have Dennis Canavan, who is the chair of the advisory board, and Blair Jenkins OBE, who is the chief executive. From Better Together we have Blair McDougall, campaign director, and Craig Harrow, the director. I understand that Blair Jenkins and Craig Harrow would like to make short opening statements, and Dennis Canavan wants to say something after they have both had the chance to say their piece.

Blair Jenkins (Yes Scotland): Thank you, convener. It is a great pleasure to be here this morning. As you say, Dennis Canavan will talk a little bit about Yes Scotland's advisory board.

We are delighted to be taking part in this process. We share the aspiration of every member of the committee that we should have a good referendum process. We are acutely aware of the historical importance of the referendum for Scotland and the Scottish people. We are determined to run the kind of positive campaign that will engage and enthuse people in Scotland, and I am sure that that aspiration, again, is shared by all members of the committee and both campaigns. We are pleased to be part of this process. I hand over to Dennis Canavan for his remarks.

Dennis Canavan (Yes Scotland): Convener, thank you for inviting us. I chair the advisory board of Yes Scotland, which consists of about a dozen members from various backgrounds such as politics, the business community, media and entertainment. Yes Scotland is a broad-based, inclusive organisation, and that is reflected in the membership of our advisory board, which includes people from different political parties and people who are not members of any political party. We are more of an advisory committee than an executive committee. Our job is to advise the chief executive and the management team on matters about the yes Scotland campaign. I look forward to this evidence session.

Craig Harrow (Better Together): Convener, I thank you and the committee for inviting my colleague Blair McDougall and me along this morning. On behalf of Better Together, we welcome the opportunity to give evidence to the committee. The rules and regulations governing any electoral contest are, of course, important but they are of heightened importance in a once-in-a-lifetime referendum on an irreversible decision such as dissolving a 300-year-old union. We all have a duty to ensure that we deliver a result that is not only fair but seen to be fair.

For our part, we have striven to act in a transparent manner. We supported the involvement of the Electoral Commission and its rules as a matter of principle from the outset. Better Together was the first campaign to release details of our donors and we have decided not only to meet the normal standards of electoral law but to go further by banning any foreign donations to our campaign. Better Together considers the sensible recommendations from the Electoral Commission to be a big step forward in ensuring that we have fair referendum rules. As the committee would expect, we have followed its discussions and we are pleased that the work continues to ensure that the process of the referendum is properly scrutinised.

We have been particularly interested in the discussions about permitted participants. It is important to us that dummy organisations are not established and that campaigning groups properly account for expenditure in the regulated period. We want to ensure that there is clarity on which groups are formal accounting units of our organisation. In that way, regulators and the media will know which organisations are part of Better Together for the purposes of recording expenditure and which are not and so would be considered as other participants. In simple terms, we are operating one accounting unit. In other words, our women's; lesbian, gay, bisexual and
transgender; rural; youth; business; and trade union groups will not set up separate bank accounts or separate funding vehicles. We are happy to discuss that issue or any other issue with the committee.

The Convener: Thank you, Craig.

I want to ask both campaign groups about an issue that has arisen during our evidence taking—the situation that arose in Wales, where only one body decided to define itself as a designated organisation. My question is simple: Do you intend to apply for designated organisation status? Are there any circumstances in which you would envisage not applying for that status?

Blair Jenkins: We will certainly apply to be the designated campaign organisation campaigning for the yes vote. In fact, we would welcome early designation as the official yes campaign organisation.

Blair McDougall (Better Together): Absolutely. I cannot envisage any circumstances in which we would not seek to be the designated official organisation. Indeed, Blair Jenkins and I talked outside about our wish to have early designation, if possible, so that everybody is clear about where both campaigns stand.

The Convener: You both talked about early designation. What do you mean by that?

Blair McDougall: In theory, designation will be a short time before the start of the regulated period, in June. I think that the Electoral Commission has expressed an interest in looking at whether early designation would be possible, and I presume that that would be some time earlier than that, in 2013. From my point of view and that of Better Together, the sooner the designation, the better, because it will give certainty about status.

Blair Jenkins: I think that the Electoral Commission has its own processes to go through, which we have to respect. However, subject to going through the due process, “as soon as possible” and “the earlier, the better” are the appropriate phrases.

The Convener: I want to clarify something for the record. Blair McDougall said “2013”, but I think that he meant 2014.


The Convener: I wanted to clarify that, particularly as there are people behind you scribing.

Dennis Canavan: We are unaware of any competitor organisation, so I do not see any problems with our being the sole designated body.

The Convener: Okay. I needed to put that on the record, because concerns have been raised in evidence, particularly given the experience in Wales. I am glad that you have clarified matters.

James Kelly (Rutherglen) (Lab): I thank the witnesses for coming to the meeting to give us evidence.

I note from your earlier comments that your organisations intend to be the lead organisations for each side of the argument. I think that that makes great sense. It will place a great responsibility on you in relation to how you conduct the campaigns and how you account for your expenditure. It is clear that there is a limit of £1.5 million for each lead organisation, and within that you will have to account for each item of expenditure over £200. That will be a major operation for each campaign. What accounting policies and practices will you put in place to ensure that that is done correctly and in compliance with the regulations?

Blair McDougall: On the steps that we have taken, we have tried to ensure that there is clarity on which organisations are part of Better Together for accounting purposes so that there is also clarity on which organisations are not part of it. It is clear that the issues around permitted participants and co-ordination arise from the issue of an organisation being separate for the purposes of the overall amount of money that it is allowed to spend, but then being co-ordinated with the main organisation. Notwithstanding the cross-party nature of things and the individual parties having their own spending limits, we are trying to give clarity on which organisations are formally part of Better Together.

As Craig Harrow pointed out, we are trying to ensure that the various organisations, which are politically autonomous, are not separate in terms of accounting. We do not want to get to the regulated period and find that we cannot account for X thousand pounds that has been spent in our name. As every item of expenditure over £200 will have to be accounted for eventually, it is useful to be clear about Better Together’s expenditure and who in our view is permitted to spend that money on our behalf.

Blair Jenkins: The key principle is transparency and ensuring that people understand the difference between the official campaigns and other bodies that might or might not have a view on either side of the argument. For example, on the pro-independence side, a group called women for independence is campaigning for a yes vote, but it is not formally part of the yes Scotland campaign. A business group called Business for Scotland is also advocating a yes vote in next year’s referendum, but again it is not connected to us. We make a distinction between the spend of
the official yes Scotland campaign and any activity by other organisations that might be part of the independence movement but are not formally part of Yes Scotland. We are being very well and expertly advised on the matter by people with a great deal of experience.

James Kelly: I will come back to the individual groups that are close to or aligned with each of your campaigns but, to get a feel for this, I will give you a practical example and ask you to demonstrate how expenditure is controlled and recorded. What if yes Scotland Forfar or better together Forfar decides to spend £500 on leaflets for a campaign weekend? How will that be paid for and the expenditure authorised and recorded?

Blair McDougall: The guidance, advice and day-to-day support that we would give local groups in such examples are pretty clear. We do not expect them to set up local bank accounts and that sort of thing. To the best of my knowledge, they are not doing that at present but, if they are, we will take action to sort that out. If a group wished to spend £500 on leaflets, the money would have to come from our central bank account and it would therefore appear in our accounts within the regulated period as an item of expenditure. Theoretically, of course, groups could have a separate bank account without our knowledge but, as I have said, we are trying to ensure that they do not and at present, to the best of our knowledge, that is the case.

Blair Jenkins: Yes Scotland is in a similar position in that local yes groups, of which there are now more than 170, have not been encouraged to open their own bank accounts and any local expenditure during the regulated period would have to be totalled up with Yes Scotland’s national spend. There must be clear mechanisms to ensure that we are aware of any spend that is locally incurred by an official yes group.

James Kelly: Like Better Together, you have a central bank account and all authorisations and expenditure come from the centre.

Blair Jenkins: Ultimately, yes.

James Kelly: Right. With regard to associated organisations, am I correct in thinking that a number of groups that are working with the better together campaign are not separate organisations and that any expenditure that they incur must come through Better Together?

Blair McDougall: The situation for those groups is identical to that for the local geographical groups that we have established. For example, we have asked them not to have separate bank accounts. If an individual wanted to financially support the work of one of our rural groups, they would donate the money to us rather than directly to the group and we would ring fence it to ensure certainty with regard to accounting. Although all the groups are politically autonomous and distinct, they are in house in organisational and accounting terms.

James Kelly: That is clear.

Mr Jenkins, in the examples that you gave, which included women for independence, you seemed to suggest that, although the groups support your campaign’s objectives, they are separate from the campaign itself. Am I right to say that they would come under the remit of permitted participants and would not be included under the Yes Scotland umbrella?

09:30

Blair Jenkins: Yes. I have not asked that group the question, but my assumption is that that is how it would wish to register; it took the decision not to affiliate formally with and be part of Yes Scotland. As with the better together campaign, there is a mixture of groups, some of which have chosen to be formally affiliated and others that have chosen not to be.

With regard to the committee’s concerns on the matter, I imagine that most of those groups—women for indy is a clear example—will not be incurring large sums of money. I do not think that the more ad hoc groups of enthusiasts and supporters who are organising themselves in a fairly low-cost and basic way raise concerns about a financial impact on the campaign. As I have said, if there is a potential concern, it would be around the number of entities that register and are either able or intending to spend up to £150,000. I am sure that people will want to keep a close eye on who or what is getting involved to that extent.

James Kelly: You will be aware of the committee’s concerns about permitted participants, the £150,000 that each is able to spend and the mechanism not being open for other organisations to use surplus funds from the lead campaign organisations. Mr Jenkins, you have made it clear that the various examples that you have highlighted will be separate from Yes Scotland, but have you considered keeping them all under one umbrella to ensure that expenditure can be more tightly controlled and authorised and that there are no concerns that loopholes are being used to channel surplus funds into permitted participant organisations?

Blair Jenkins: First, I do not expect to be in the position of having surplus funds. Indeed, I think that both campaigns will be actively fundraising to meet the limits that have been set. However, it is
up to organisations that are campaigning on either side of the debate to decide whether to be formally under the umbrella of one of the official campaign organisations. The rules and regulations are fairly clear about when organisations are deemed to be acting together or in concert with the official campaign organisations. As I have said, my concern is not about activist and enthusiastic supporter groups such as women for indy, but about parties coming in with a high level of expenditure and how many of them there might be.

**Dennis Canavan:** Mr Kelly might also be interested to learn of an organisation called Labour for independence. I very much doubt that it will be getting any money from the Labour Party, although I am sure that it would welcome it. I have not discussed this with the group, but it could register as a permitted participant, in which case it would be allowed to spend a maximum of £150,000. It could also decide to come under the Yes Scotland umbrella. If we gave such an organisation any money, we would make every effort to ensure that that was done transparently.

**James Kelly:** What discussions has Yes Scotland had with the separate organisations that have been used as examples about coming under the Yes Scotland banner or continuing to operate separately?

**Blair Jenkins:** The discussion will be different with different entities. Some have not approached us to talk about the issue; they are simply up and running. With other organisations such as women for indy, we have had a discussion about their formally becoming part of the yes Scotland campaign. Sometimes, people like the freedom of departing from the campaign narrative and making their own case in their own way, and that is entirely legitimate and proper.

**The Convener:** In relation to the permitted participants, you talked about £150,000 being a "rather large sum", if I have that right. What did you mean by that? Were you suggesting that the sum is perhaps too high?

**Blair Jenkins:** As you probably know, convener, we recommended that a rather lower sum of £50,000 be adopted for permitted participants. We accept the outcome of the Electoral Commission's deliberations and we accept that £150,000 is the limit that will be in place. One can do a lot with £150,000 in a referendum campaign and everyone—in this case, it is organisations more than individuals—needs to understand the potential. Everyone needs to understand that that is a lot of money in campaign terms. If a large number of entities come from outside Scotland, for instance, and put such sums of money into the referendum campaign, that would raise legitimate questions.

**Stewart Maxwell (West Scotland) (SNP):** I want to explore an issue that we dealt with last week and are dealing with again—permitted participants and the possible establishment of a variety of organisations with the £150,000 limit. From the answers that Better Together gave to James Kelly, I am not absolutely clear about its exact intention with regard to how it is establishing its organisation. Will all the groups be under the Better Together umbrella and all be within the £1.5 million expenditure, or will there be separate groups that are classified as permitted participants so that there will be the £1.5 million plus £150,000 for each group?

**Blair McDougall:** There are two elements to the issue. One is about the overall level of expenditure. I understand the concern that circles around the £150,000 figure, but in legal terms one only has to spend £10,000 to trigger the permitted participant requirement. The other issue is about accounting for expenditure—it is about co-ordination between the dummy organisations and the umbrella campaigns. If an organisation is co-ordinating with us, it will be in house so that there is no risk of our falling foul of that co-ordination issue.

**Stewart Maxwell:** Sorry—I thought for a minute earlier on that you were saying that you would not have those separate organisations as permitted participants and that everything would be under Better Together, but you are not saying that now.

**Blair McDougall:** I am saying that all the organisations that we co-ordinate with—our trade union organisation, our women's organisation and our LGBT organisation—will be politically autonomous, but organisationally and financially they will be part of the central Better Together bank account. If other organisations spring up—none spring to mind at the moment—that are outside that group and they need to have permitted participant status, that is fine. However, given that the issue of co-ordination is what triggers this as a legal issue, the organisations that we co-ordinate with at the moment are in house.

**Stewart Maxwell:** Sorry, I am going to push this one last time. Do you expect that there will be separate no campaigns that are permitted participants but are not part of the umbrella organisation?

**Blair McDougall:** I do not anticipate that that will be the case.

**Stewart Maxwell:** Okay. I ask Blair Jenkins what the situation is as regards co-ordination between Yes Scotland, as the designated organisation, and other participants that are under that umbrella. Also, what about the issue of separate permitted participants who are supporting the yes campaign?
Blair Jenkins: Mr McDougall covered the point in more or less the same way that I would. If there is any intention to co-ordinate as regards how people campaign and there is joint funding of things, for example, the position is fairly clear on what constitutes co-operation and co-ordination. If we intend to be integrated with a group to that level, or to any extent, the group has to come under the funding limit for Yes Scotland as the designated campaign organisation.

I expect that some entities will choose to be permitted participants and I suspect that some will not. I mentioned women for indy. I doubt that that group will be a permitted participant because I doubt that it intends to spend £10,000, so I suspect that it will not be brought under that particular aspect of the process.

I imagine that a group such as Business for Scotland might meet the trigger point and it might therefore have to register as a permitted participant. I am not aware as yet of any other entity that has made itself known to us that would be at that level of expenditure and would be a permitted participant.

Stewart Maxwell: Last week, we had a discussion with the Electoral Commission about the possibility of multiple organisations—we will call them dummy organisations—being established and funded by an individual, individuals or groups, effectively to make use of the rather big envelope of up to £150,000 per permitted participant. Do any of you have concerns about that?

Blair McDougall: I would be concerned if that happened. There are two aspects to the guidance that the Electoral Commission will have to draft. One is to make the guidance on co-ordination with that type of organisation so strong that it deters us from co-ordinating with such organisations behind the scenes.

Part of the reason why we have organised ourselves in the way that we have is that the previous guidance about co-ordination is incredibly stringent. It is difficult to read it and see how even a cross-party campaign—Yes Scotland and the Scottish National Party, say, or us and the three parties under our umbrella—would not fall foul of the co-ordination rules. I am pretty confident that the guidance will be strong enough to deter us from co-ordinating with the organisations that you mention, which is not to say that someone will not do that. If large numbers of people were doing that, it would be a concern. However, as the Electoral Commission has said, it is difficult to prevent that while maintaining people’s right to free speech.

Blair Jenkins: It is a concern. It remains to be seen whether that materialises as we move into the final part of the referendum campaign.

Given the position that Better Together has taken on donations from other parts of the United Kingdom, people outwith Scotland have been encouraged, if you like, to become actively and financially involved on the no side of the campaign. Given that there is that implicit or explicit encouragement for people in other parts of the UK who are against Scottish independence to get materially and financially involved in the campaign, I would be surprised if organisations and entities in other parts of the UK did not commit a level of funding to the no campaign as we move into the final period of the referendum.

Dennis Canavan: On the yes side, I cannot envisage any of the organisations with which we are in contact having as much as £150,000 to spend. At the end of the day, though, some of these organisations are fairly autonomous, with strong-willed people in the leadership, and it is really up to them to decide whether they want to register as permitted participants. We cannot dictate to them on that. On our side, I do not see it as a huge problem, but I will be watching the other side carefully to see what emerges.

Craig Harrow: The other thing that is obvious from the evidence from the Electoral Commission is that the time that we have before the regulated period allows us to get these things absolutely right.

Tavish Scott (Shetland Islands) (LD): Just for the record, Mr Jenkins, your campaign takes donations from overseas as well, does it not?

Blair Jenkins: Yes Scotland takes sums of money below £500—

Tavish Scott: But that is the donation policy—

Blair Jenkins: As you know, Tavish, the legislation does not treat anything below £500 as a donation.

Tavish Scott: Yes, but you made a statement earlier, so just for the record, is that the case?

Blair Jenkins: Yes—that is right.

Tavish Scott: That was not the question that I wanted to ask. I think that Mr Jenkins has mentioned Business for Scotland twice in response to Mr Kelly. He said that Business for Scotland is “not connected to us.” Given the Electoral Commission’s advice to the committee last week, what is your understanding of what “not connected” means?

Blair Jenkins: Business for Scotland has its own plans and agenda. As I understand things, the referendum is not the only part of its remit as an organisation. It was launched while I was out of
the country, so I have not sat down and had a detailed discussion with it. It has a broader agenda than just the referendum of next year. I think that it wants to promote a business agenda as well as the independence agenda.

Business for Scotland will conduct its own membership drive and its own activities, and I am sure that it will issue its own statements. It is not clear whether those activities are co-ordinated with us in that sense, and is an entity in its own right. As far as I can see, however, it is certainly going to be campaigning on the yes side of the argument.

09:45

Tavish Scott: I appreciate that.

I ask this question of both campaigns: Do you have a view on how tightly the Electoral Commission’s advice should be drawn in respect of that notion of connections?

Blair McDougall: In the past, advice has been drawn up in an incredibly stringent manner—so stringent that we have concerns, which we are discussing with the Electoral Commission, about whether it is logical to have such stringent controls on the relationship between a party within a cross-party campaign and the central cross-party campaign.

The advice must be stringent for organisations that lie outside the umbrella campaigns. The discussion about dummy organisations has circulated around the anticipation that wealthy individuals will wish to set up organisations so that they can spend £150,000, say. Legally, it takes just £10,000 to trigger the legal requirement to account for expenditure. We have taken the view that, if an organisation is co-ordinated with us in any serious way, it should come in-house.

Blair Jenkins: We have been in informal dialogue with the Electoral Commission for some time now, and I expect that dialogue to be ongoing, on this and other areas. My experience of the Electoral Commission to date indicates that it will keep us mindful of such things and that it will give us very clear advice on what is and what is not permissible.

In the spirit of transparency, which was referred to earlier, I am sure that both campaigns wish to observe all the conditions that will be attached to the process.

Tavish Scott: Thank you—that is helpful.

I have a further question about the Forfar for independence, or yes Scotland Forfar example, which Mr Kelly discussed earlier. Mr Jenkins, did I hear correctly when you referred to spending in respect of Forfar for independence or Forfar for better together—whatever side such an organisation might be on—“during the regulated period”? What is your view on expenditure that will take place, or that might already be taking place, between now and the start of the regulated period?

Blair Jenkins: As you know, we are not reporting expenditure before we get to the regulated period. We are, however, reporting the level of donations that we receive during that time. A different framework operates before we get to the regulated period.

Tavish Scott: So, it is a statement of fact that about 100 organisations have been set up across Scotland—I know the one at home—and are certainly spending money. That is okay; that will go on. There is no limit on any of that expenditure for either campaign between now and the start of the regulated period, is there?

Blair Jenkins: That is correct.

Blair McDougall: It is difficult to control expenditure. Through control of bank accounts and accounting, we are seeking to ensure that, as far as possible, organisations are not creating distinct personalities in financial terms.

The Convener: I need to move the discussion on a bit. There are still members who have supplementary questions on this area, and we have only really discussed donations and permitted participants. There is other ground that we need to cover.

Patrick Harvie: Witnesses and members have both used the term “dummy organisations”. I am a wee bit uncomfortable with that because the rules allow for permitted participants who are not part of the Yes Scotland or Better Together organisations. There will obviously be issues around ensuring that everyone complies with the rules. Can the witnesses from both campaigns clarify whether they are content with those rules? Are the rules around permitted participants, as set out in the bill, appropriate? Would you ask for any change that would prevent separate organisations from registering and legitimately campaigning?

Blair McDougall: We are content with the intention behind the provisions. As I said, however, we are in discussions with the Electoral Commission about its written guidance. For instance, the guidance is almost written as if Patrick Harvie, who is a Yes Scotland board member and is involved with setting Yes Scotland’s strategy, must forget what he knows about the Yes Scotland strategy when he then runs the Green Party’s campaign, and must ensure that those two strategies do not connect. Given the cross-party nature of the campaigns, there is a risk of getting into some slightly ridiculous situations in that respect.
However, I guess that the reason why I used the term "dummy organisation" is that I would draw a distinction between the types of organisations that Patrick Harvie is talking about and rich individuals who have no real grass-roots support and who, it is feared, might come in and set up £150,000 funding vehicles. The guidance on that has yet to be written, but we seek to engage with the Electoral Commission on that.

**Blair Jenkins:** The position on who can register and then proceed to spend large sums of money is very loose. I agree that it would be pretty difficult to limit that or to put a controlling framework in place in respect of what constitutes a proper organisation to be a registered participant. Other than on the funding limit issue that I mentioned earlier, we accept that we are where we are and that is how the position on permitted participants will apply.

**The Convener:** Does Annabel Goldie have a supplementary question?

**Annabel Goldie (West Scotland) (Con):** My question has been answered.

**The Convener:** I am trying to move the discussion on from this area, but I will allow a supplementary question from Patricia Ferguson.

**Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab):** No problem: I will be quick.

Excuse me for not knowing the answer to this, and I am sorry if this sounds one-sided, but I know the answer on one side, but not on the other. Mr Canavan mentioned Yes Scotland’s advisory board. Can you elucidate on the membership of that advisory board?

**Dennis Canavan:** I have the list of the board’s members here. As I said, we include people from the world of politics, from business backgrounds and from entertainment. This is not a comprehensive list, but the board includes Tasmina Ahmed-Sheikh, who is a lawyer, producer, actress and mother of four; Elaine C Smith, who I am sure needs no introduction as a famous actress and comedienne; Pat Kane, who is a musician, formerly of Hue and Cry, and a commentator on various things; Sarah-Jane Walls, who is a director of The Residence in Glasgow and a businesswoman, wife and mother of two young girls who has been in the fitness industry for more than 12 years; Dan Macdonald, who is a Highlander and proud of it, who was born on a nine-acre Sutherland croft, was educated at Dornoch academy and is now chief executive of Macdonald Estates; Colin Fox, who is well known to everyone in this room as a former member of the Scottish Parliament and national spokesperson of the Scottish Socialist Party; Nicola Sturgeon, who also needs no introduction; and Andrew Fairlie, who is a Perth man and patron of the eponymous restaurant Andrew Fairlie, which is within the Gleneagles hotel and resort. We also have a young lady called Ellie as our youth representative, who gives us very useful information about the feelings of young people on various issues.

Blair Jenkins will tell me if I have missed anyone out.

**Blair Jenkins:** You have missed out Patrick Harvie.

**Dennis Canavan:** I apologise, Patrick.

**Patrick Harvie:** I am such a quiet wee mouse in the corner that you would never know I was here.

**Dennis Canavan:** I said at the start that the list is not comprehensive.

**Patricia Ferguson:** It is absolutely clear why Patrick Harvie did not need to be mentioned; we all know who he is. Ellie Koepplinger happens to be a constituent of mine, so she needed no introduction. I thank Mr Canavan for that helpful answer.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** Convener, I have a wee supplementary.

**The Convener:** This must be the last question on this area, as we must move on to other areas.

**Annabelle Ewing:** Good morning, gentlemen.

In answer to a question a moment ago, Blair McDougall seemed to qualify co-ordination by the adjective “serious”, when he talked about organisations that might be "co-ordinated ... in any serious way". In that context, let us consider the issue of permitted participants from the more realistic perspective of what is likely to pan out in the course of the campaign.

If, for example, a well-known Conservative figurehead came along and wanted to dish out £150,000 in favour of a no vote, would he be encouraged to give that to Better Together, or would he be encouraged to become a permitted participant? Equally, if a trade union indicated, as I think happened a couple of weeks ago, that it intended to campaign for a no vote, would it come under the umbrella of Better Together, or would it be a permitted participant? That is not clear to me from the discussion thus far.

**Blair McDougall:** To be clear, the legal issue is triggered by co-ordination. We are saying that if there is co-ordination with us, by which we mean co-ordination in a way that would fall foul of the guidance that the Electoral Commission will draft, we will seek to account for any expenditure centrally through our single accounting system and bank account.
On your point on outside permitted participants, if we were to encourage such an individual to set up Edinburgh citizens against independence, for example, that would be co-ordination and we would fall foul of the guidance.

In terms of business and unions, the Electoral Commission specifically talks about such groups, which have their own legal regulatory framework in addition to what the Electoral Commission will say. If they spend more than £10,000, they will have to be permitted participants. In a way, it will become an issue for us if we co-ordinate with them. That is why we are saying that those organisations that would meet the definition of co-ordination in the Electoral Commission’s guidance would be brought in-house.

The Convener: Right. Let us move on to another area. Bill Kidd wants to explore a separate issue in the bill.

Bill Kidd (Glasgow Anniesland) (SNP): Welcome, gentlemen.

The issue that I want to address is separate, but it follows on from the previous discussion in that you are raising the money not for the sake of a bank account, but to use it for something.

Are you happy with the provisions in schedule 4 that relate to your expenditure? Are you happy with the provisions relating to referendum broadcasts, mailshots, newspaper inserts and such things, or do you foresee problems in how you will use those outlets to encourage people to vote in your particular direction?

Blair McDougall: Broadly speaking, we are happy with what is in the bill and with the guidance that the Electoral Commission has set out so far. We will certainly have no problem with using free mailshots and things like that.

Blair Jenkins: The one area that I would pick up on is that of broadcasts during the controlled period in the final stages of the campaigns. It has been suggested that as few as two broadcasts may be allocated to each campaign during the 16 weeks of the regulated period. I know that that is still subject to discussion and debate, but my view is very much that it would be more appropriate to have a larger number of broadcasts over such a prolonged final period. I would have thought that four might be a more appropriate number of broadcasts over that period, but we will need to discuss the matter.

Bill Kidd: Have you given any thought to the participants in and expenditure on the referendum broadcasts, as I think they will be termed, which could be highly professional jobs. They will all be professional, but they could be glossy Hollywood-style things or they could try to get the message across in a more innovative way. Given that they will incur costs and that the amount of money that you, as central organisations, will have will be limited, do you think that more money should be channelled towards referendum broadcasts than will be channelled towards standard leaflet mailshots through doors and such like? I do not want to dig too deeply into your plans, but do you believe that agreement will have to be reached between both organisations and the Electoral Commission about the money that will be spent on such broadcasts?

Craig Harrow: Are you suggesting that there should be a limit to how much can be spent on a broadcast, within the £1.5 million limit?

Bill Kidd: I just wonder whether agreement could be reached by all participants on how the money should be spent, given that you will have only a limited number of broadcasts. As Blair Jenkins said, you will not have a dozen broadcasts each. Would you be willing to co-operate to limit expenditure? Would you encourage such co-operation?

10:00

Blair McDougall: More airtime is always welcome. You are right to point out that a high-quality party-political broadcast is an expensive thing, but it is some years since PPBs have been made solely through the medium of the three-minute slot on television. YouTube advertising and social media sharing tend to be used more now.

There is an opportunity cost to doing anything in a campaign; a judgment has to be made on which way to go. I have been involved in enough campaigns in which budgets have been limited—this perhaps reveals my Labour background—to know that, even with a limited budget, it is possible to fill a two-minute slot.

Blair Jenkins: I doubt very much that the two campaigns could come to an agreement on the production costs that they will incur in association with broadcasts.

However, in answer to the question, I can confirm that our broadcasts will be professional and innovative.

Bill Kidd: Okay.

From my reading of the bill, it is quite thin on what you are allowed to do as regards the message that you put across. Obviously, you will have to stay within the law in how you refer to other people and so on, but schedule 4 does not give much guidance on what you must do, as opposed to what you might want to do. Are you in talks with the Electoral Commission about how you will proceed in that regard?
Blair McDougall: We are not, at the moment. Is your question about whether we would choose to use the airtime?

Bill Kidd: No. It is just that, although there are rules in the bill, most of them seem to relate to central and local government and how they might operate in publications and so on. Schedule 4 mentions designated organisations, but it says very little about them and does not expand on their role. We are aware that the organisations Better Together and Yes Scotland are the two major participants in the referendum, but the bill seems quite thin on what they are allowed to do. Are discussions taking place on how the bill’s provisions might be filled out to provide guidelines that mean that neither side feels uncomfortable with what the other side is doing? Do you have any thoughts on that?

Blair McDougall: More guidance is always welcome, regardless of whether it comes from the Electoral Commission, broadcasters or whomever.

Blair Jenkins: The reality is that any set of guidelines for an electoral event is usually more likely to say what cannot be done rather than what can be done. What is stipulated is what is not permissible to a much greater extent than what is permissible.

I return to what I said at the beginning. What people will look at is the way in which the two campaigns are conducted; they will look for the campaigns to be conducted positively, and with courtesy and respect being shown. I have always believed—I did so even before I knew that I was going to be involved in Yes Scotland—that the process that we go through and the way in which Scotland conducts the independence debate are extremely important. The outcome is what the two sides are keenly contesting, but the process is important, too. It is hugely important that the people of Scotland feel that they have gone through a very good process.

Craig Harrow: The tone is important, but Willie Sullivan has made the point that, essentially, referendums are run by elites. We must ensure that in this referendum we get to as many people as possible. I am sure that both sides share the ambition of ensuring that we are innovative and creative in our approaches.

Dennis Canavan: Whatever additional guidelines may be issued, we shall certainly work within the law, rules, guidelines and expenditure limits to ensure that professionally produced programmes are put out to inform the general public and to get our message across. As you can see from the names that I previously mentioned, we have on our advisory board people who are experienced in media productions, so we are confident that we can get our message across by that means.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): The witnesses have had quite a lot of engagement with the Electoral Commission. I would be interested to know what their experience has been of engagement on awareness and information, on which the commission and the witnesses have a role to play.

Blair Jenkins: In the discussions that we have had up to this point with the Electoral Commission, it has quite properly seen it very much as part of its role to build awareness of the referendum, encourage participation, encourage people who are not on the electoral register to register and encourage people who are on the register but do not vote to vote.

Yes Scotland is focused on getting a high turnout. For all sorts of reasons, that is hugely important. Therefore, we will be involved with the Electoral Commission—and, I am sure, with Better Together—in any initiative that is aimed at building voter awareness, building public awareness and ensuring a high level of participation. Separately from that, we will do our own things to try to secure greater participation and turnout.

Blair McDougall: I echo what Blair Jenkins said. Few people in Scotland are not now aware that a referendum is coming. Therefore, the challenge for the Electoral Commission concerns the process issues, such as ensuring that, in a high turnout, we do not have a situation in which people who might not have voted before or been registered before are moved to vote and turn up at a polling station but discover that they do not have the franchise. We always want to avoid that in any electoral process. In one as important as the referendum, we need to go the extra mile to do that.

Rob Gibson: We have been interested in and have asked about the Electoral Commission’s detailed development plan and how it will roll that out. It told us last week that that would be some time coming yet. Are you concerned about people knowing the difference between the general information side of the Electoral Commission’s role and your job of providing information for your campaigns?

Dennis Canavan: I have spoken at more than 20 public meetings since the beginning of the year. When I speak, I always try to get a positive message across for the yes Scotland campaign, but there is always a question-and-answer session after the speakers, and people in the audience sometimes ask questions about the technicalities, such as the voting procedure.

There is an educational element to the meetings that we are having the length and breadth of
Scotland—from Stornoway to Stirling and from Dunoon to Dunfermline. It is not just preaching to the converted; other people are coming along. Apart from getting our message across, we are helping to raise public awareness of the importance of the referendum and the procedure for holding it.

Craig Harrow: As Blair McDougall says, we must ensure that people are on the electoral roll. Especially as we are dealing with younger people, we must ensure that the Electoral Commission gets into schools, colleges and universities and that people get on the roll. From now on, we all have a duty to try to encourage people to get on it.

Rob Gibson: The Electoral Commission made it clear in its recommendations that it felt that the Scottish Government and the UK Government should discuss the process that would occur following the referendum and that it is necessary to have information about that as part of the referendum process. Do you agree that those discussions ought to take place now?

Blair McDougall: I agree with what John McCormick said in his evidence last week and what you have just referred to. I understand that those discussions are going on between the two Governments.

Blair Jenkins: I am very much of the view that such discussions should happen. In its advice in its initial document earlier this year, the Electoral Commission was very clear that the two Governments should make clear what process would follow a yes vote or a no vote. It felt that both Governments could outline the process to be followed without showing their hand or jeopardising the positions that they would have in any negotiation that would follow a yes vote. There is a great deal to be said for both Governments following the Electoral Commission’s advice.

I note what Blair McDougall says about discussions being under way, but part of Better Together’s campaigning strategy has been to suggest that no form of agreement whatsoever will be possible between Scotland and the rest of the UK following a yes vote.

Craig Harrow: I am not sure that that is true.

Blair Jenkins: There is almost a campaign preference for confusion, which is part of the explanation for Better Together’s reluctance to talk about what the process would be following a yes vote. The two Governments ought to be able to agree on and outline in very clear terms the process that would be followed, as the Electoral Commission suggested.

Rob Gibson: My final question is to Blair McDougall. You said that you thought that discussions were on-going. Will you elaborate on those discussions?

Blair McDougall: I do not claim to speak for the Scottish Government or the UK Government, but I understand that discussions are under way between them on the matter.

I will pick up on what Blair Jenkins said. John McCormick said:

“It is clear that there will be no negotiations about the terms of independence before the referendum” and

“clarity on how the terms of independence will be decided would help voters.”—[Official Report, Referendum (Scotland) Bill Committee, 23 May 2013; c 431.]

There is a difference between pre-negotiating terms of independence and providing the kind of information that the Electoral Commission has spoken about.

Stewart Maxwell: I was interested in Blair McDougall and Craig Harrow’s responses about the provision of information by the Electoral Commission. In its response to the Electoral Commission, Better Together stated:

“We strongly feel that no taxpayers money should be spent on an information campaign on the referendum.”

Have you changed your view on that?

Blair McDougall: The context for that was a Scottish Government-led information campaign. It had been suggested that the Scottish Government would spend taxpayers’ money on sending booklets and pamphlets that set out the case for independence to every household in Scotland. Our campaign and the yes campaign exist so that such political information can be given to people by the campaigns and not funded out of taxpayers’ pockets.

Stewart Maxwell: So you have no problem with the Electoral Commission providing unbiased information to voters about the process and so on.

Blair McDougall: That is not political information; it is factual information about the voting process and the process of what happens with post-referendum negotiations.

Stewart Maxwell: I would call that a referendum campaign. Would you not?

Blair McDougall: Yes, but the context of what we were talking about is pretty clear in our submission. If it is not, I am happy to make it clear that we are talking about the Scottish Government’s suggestion that it would send information to every household about the case for independence, which taxpayers would pay for. In our view, that would be wrong.
Stuart McMillan (West Scotland) (SNP): Both sides have indicated that they intend to apply for designated organisation status as soon as possible. Blair Jenkins said a few moments ago that he would like to see more than two television adverts. Is there an argument for extending the regulated period beyond 16 weeks?

Craig Harrow: The Electoral Commission made it clear when it was here that, if that happened, the spending limits would have to be changed. It would be kind of unpicking things, which we would not recommend.

Blair Jenkins: Stuart McMillan raises a good point, which occurred to many of us at an early stage. The difficulty of having a longer regulated period is that it would overlap with the European elections next year. I would certainly have sympathy for people who work in my previous industry—broadcasting—if they had to factor in simultaneously those two competing sets of demands and balance them out because they were already into the regulated period for the independence referendum.

Although good arguments have been made about the length of that regulated period, we have ended up in the right place, and I am not concerned about the 16 weeks. We have settled on the right figure.

Stuart McMillan: That is helpful.

10:15

Patrick Harvie: In a way, what I will say leads on from the issues that the witnesses discussed with Stewart Maxwell a moment ago about the role of Governments in making a case for or against. Those who have counted carefully will have noticed that there is one Government on each side of the debate. The bill and the Edinburgh agreement suggest that the formal purdah period during which the Government’s machines have to become neutral and not issue publications or make statements to make a case for or against or to try to influence the outcome is 28 days. For the Scottish Government, that is in the bill, and for the UK Government, that is an undertaking in the Edinburgh agreement.

Are both campaigns content with that general approach? Are you content with 28 days as the appropriate time? Do you accept that, before then, both Governments will be advocating the case for or against independence?

Blair McDougall: My view on those issues is slightly informed by my being a special adviser during governmental purdah periods. Our submission to the Electoral Commission sets out a slight concern about a disconnect between the regulated period and the purdah period, which is about there being a slight messiness between the two.

My experience from being on the inside of purdah is that the real sanction, or what makes us behave ethically, is the court of public opinion and the increased scrutiny that comes from the media during that time. There is a reason why the annals of electoral history are not full of Governments having fallen foul of purdah rules. The scrutiny of both Governments from the campaigns and from the media during that time is the real thing that will keep people honest, if you like.

Craig Harrow: Another thing is that, during a Scottish general election, there is an agreement but there is no statute, as there is for when Westminster is in purdah. However, the Government sticks to the approach, so there is a precedent.

Dennis Canavan: That is an important point. Purdah for the Scottish Government is laid down in the Scottish Independence Referendum Bill so, if we assume that it will be passed, purdah will become a statutory obligation, whereas the UK Government’s purdah period is simply agreed under the Edinburgh agreement. Representations could be made to the UK Government to introduce a statutory instrument or something to oblige the UK Government to stick by the purdah period in the same way as the Scottish Government will have to. That should apply equally to both sides.

Patrick Harvie: Can I just check with Blair McDougall about the earlier comments on objecting to the idea of a Scottish Government-funded information campaign? I presume that you would apply the same argument to a UK Government-funded information campaign; the same rules should apply to both sides. Are you content that the same rules apply on both sides?

Blair McDougall: Yes and yes.

Patrick Harvie: Another difference between the purdah period for the referendum and one for an election is that, during an election campaign, there are no parliamentarians in the Parliament that is being elected. That is understandable. MSPs should not be able to go out campaigning and saying, “I am your MSP,” or using the resources of an office that is funded by the taxpayer to campaign in an election.

It will be for the Parliaments to decide what rules might apply. Do you have views about the extent to which parliamentarians should or should not be able to use public funds to campaign during the run-up to the referendum?

Blair McDougall: Both Parliaments already have fairly clear rules about what constitutes political campaigning and the use of expenses.
That is not a new thing. Guidance is dusted off every few years when there is an election.

The issue goes further than parliamentary staff. Someone mentioned to me yesterday that local government officials will not be politically restricted for the purposes of the referendum, for example, because there is no connection between the referendum and who directly employs them. This is probably not a question for the bill or our campaigns, but any public body—such as a Parliament or a council—that oversees staff who touch the political sphere, if you like, will have to come up with appropriate guidance.

**Dennis Canavan:** From my experience at Westminster and in the Scottish Parliament, the Westminster rules appear to be a bit more flexible. I have a slight—perhaps even more than slight—concern. If the committee or the Scottish Government decides to make representations to the UK Government about purdah being a statutory obligation, we should ask the powers that be at Westminster, perhaps through the Speaker, to ensure that during the period MPs abide by a code of conduct that is very similar to that which operates in the Scottish Parliament.

**Tavish Scott:** Do both campaigns envisage that their respective Governments will make announcements during the regulated period, leading up to the start of purdah?

**Blair McDougall:** I imagine so. The purdah period is the only period that is regulated. The business of government, in Scotland and across the UK, will continue.

That goes back to my comment that the real policing of purdah is done by the court of public opinion. If there is suddenly a huge slew of announcements from either Government in the weeks before the referendum, I think that voters will understand what is going on. They are not daft and neither are the media.

**Blair Jenkins:** I broadly agree, although I have no idea what announcements the Scottish Government might or might not make in the period before we get into purdah.

**Tavish Scott:** The Deputy First Minister sits on your advisory board.

**Blair Jenkins:** I am not privy to announcements that the Government will make.

**Tavish Scott:** You have opened up a whole area that I had not thought about. Is there no co-ordination between the yes campaign and the Scottish Government on announcements?

**Blair Jenkins:** There is, in relation to the independence campaign, but I understood you to mean the kind of announcement that would not be directly related to the independence campaign but might, for instance, be intended to win public approval on other policies. I thought that that was the ground that you were covering.

**Tavish Scott:** I do not think that anything will be announced in summer 2014 that will be about anything other than the independence campaign. I am not that naive, Mr Jenkins.

**Blair Jenkins:** To clarify, there is a high degree of co-ordination among all the participants in Yes Scotland.

**Tavish Scott:** I am grateful for that fair answer.

Does either campaign think that there is any argument in favour of extending the purdah period to allow freedom for the campaigns, rather than Government, to make the case—even to the extent, for example, that Government should stop its pro campaigns once Parliament has risen in London and Edinburgh?

**Blair McDougall:** As I said earlier, in our initial submission to the Electoral Commission, we were concerned about the disconnect between purdah and the regulated period. That arose out of the initial Scottish Government-suggested spending limits, which were about half what the Electoral Commission eventually said that they should be. When campaigns on the ground in the regulated period were to spend £1.5 million, the debate would feel quite well rounded, but we feared that, if the amount was half that, the debate would not be well rounded. There is a messiness about the disconnect between purdah and the regulated period. I guess that the counter-argument would be that the business of government has to continue throughout that four-month period.

**Blair Jenkins:** The point that Governments have other functions had occurred to me, too. Whether in London or Edinburgh, the Governments will no doubt be busy with other matters throughout the summer next year. I have given no great thought to whether purdah should be extended for the referendum. I am not sure that I see a compelling case for that.

**Tavish Scott:** My point is that once both Parliaments have risen—as Mr Canavan will know from his experiences in both—the ability of MPs or MSPs to hold their Government to account ends, because Parliament is not there. The Governments could carry on making announcements outwith Parliament during the rest of the summer, when Yes Scotland and Better Together will be campaigning for their positions on independence. Is there not an argument for saying that the purdah period should start when Parliament rises for the summer recess, to allow the campaigns the space to make their arguments?
Dennis Canavan: Government cannot be suspended for a prolonged period.

Tavish Scott: I am not arguing for that. I am asking whether both Governments should stop making politically motivated statements and announcements during the summer, which is what they will both make.

Dennis Canavan: That would be very difficult, if not virtually impossible, to implement.

Tavish Scott: I do not think so; it could be very easy to do that.

Dennis Canavan: Ministers are politicians—

Tavish Scott: Exactly.

Dennis Canavan: They are asked at public meetings about all sorts of things, so to try to shut them up for 16 weeks or whatever would be completely unrealistic.

Tavish Scott: I was not arguing that we should shut them up; as you rightly say, that would not be possible. I think that they should not be able to use the trammels of Government and taxpayers’ money to campaign, but you think that they should.

Dennis Canavan: I think that the purdah period of 28 days, as laid down in the bill, is sufficient to meet your concerns and mine.

Tavish Scott: We will agree to disagree on that one.

The Convener: I have a question for both sides. The Scottish Parliament and the Houses of Parliament in London rise for summer recess on different dates, so would it not create complexities if we followed Tavish Scott’s suggestion that purdah should begin with recess?

Craig Harrow: I think that 28 days is fair for both sides. As you say, if the purdah period was from the start of the recess, that might be more difficult, and it could be argued that that would be less than fair. The 28 days is a compromise.

Blair Jenkins: Perhaps I am thinking journalistically rather than politically, but it seems to me that it would be almost impossible to make a distinction during that time between a Government announcement that was politically motivated towards the referendum and one that was not.

Blair McDougall: Notwithstanding my previous comment that external scrutiny and pressure from the media and others will police the process, I would say from my experience as a special adviser that the other thing that shapes behaviour during purdah periods is the guidance that comes from the civil service, much as the guidance that comes from the Electoral Commission is as important, in many ways, as the legal framework that sits behind it.

The Convener: We will have one supplementary question, then I will go to Annabel Goldie for a final, sweep-up question.

Annabelle Ewing: I will go back to the imbalance in the fact that the Scottish Government is subject to a statutory provision on purdah in the bill but the UK Government is not, and the suggestion—which has been made previously and which Dennis Canavan made again this morning—that a statutory instrument could be laid at Westminster to deal with that imbalance. Will Blair McDougall and Craig Harrow clarify for the record their side’s position on that? Would you support an SI being laid at Westminster to guarantee balance in the purdah obligations?

Blair McDougall: I do not claim to speak particularly for the UK Government and the UK Parliament, but I think that the reason for the current statutory situation is that it would be quite difficult to unpick from what the UK Government does what would or would not be a relevant political announcement to Scotland during the purdah period, given that the business of politics will continue during that time. To return to what I said, the real sanction will be not law but public scrutiny.

Annabelle Ewing: I just want clarification from you on the purdah point, which I put to you as a representative of the better together campaign and because you referred to the point in your submission to the commission. I therefore think that it is a fair question to ask you. The idea has been mooted of seeking to have a statutory instrument laid in the Westminster Parliament to impose a similar purdah obligation on the UK Government, to balance the purdah requirements. Does the no campaign support that?

Craig Harrow: Ms Ewing, you have already got the Edinburgh agreement and there has been debate around this table—

Annabelle Ewing: It is not a statutory provision.

Craig Harrow: Well, that is as may be, but the fact is that the UK Government has made it very clear that it will abide by the 28-day period.

Annabelle Ewing: It seems that you do not support a statutory instrument being laid at Westminster to ensure that there is, on a statutory footing, a balance on purdah. I do not want to put words in your mouth, but you have had the opportunity three times to—

Craig Harrow: I think that it is a matter that the committee might want to take a view on.
Annabelle Ewing: You do not have a view on it as a representative of the better together campaign.

Craig Harrow: I do not. I think that the UK Government has made its position very clear on the 28 days.

Annabelle Ewing: A point was made about the parity of Westminster and Scottish Parliament allowances systems for MPs and MSPs. With his knowledge of both Parliaments, Mr Canavan suggested that the Westminster system is a bit more flexible. Do you think that there is parity between the systems? Would you support parity on the referendum?

10:30

Blair McDougall: Similar standards should apply to both Parliaments. I have not sat down and laid the two pieces of guidance side by side but, given the uniqueness of the situation, both Parliaments will have to look at their procedures and issue new guidance.

The Convener: We have to move on, because we are getting close to having to wind up the evidence session. Annabel Goldie has a catch-all question to end.

Annabel Goldie: I have a broad question. Is there anything in the bill that should not be there? Is anything missing from the bill that should be there?

As Mr McDougall described, there is a stringent regulatory framework in the bill for compliance and organisations. Do any aspects of that concern you as—potentially—the two main organisations in the referendum campaign? Are the time limits reasonable for compliance with some of the obligations?

Blair McDougall: As I said, broadly speaking, we think that the bill is in pretty good shape. That has fallen slightly out of what the Electoral Commission reported.

Our main concern is about how we balance ensuring that genuine dummy organisations, if you like, are not set up with not creating slightly odd situations in which existing party activists who are leading cross-party campaigns nationally or locally are artificially taking one hat off and putting another on, especially given that spending limits have been set for the political parties within an envelope that was intended to give even spending to each side. That is a concern, but the Electoral Commission is actively working with us to make sure that such a situation does not arise.

Annabel Goldie: What about the technical aspects of post-referendum compliance, such as returns, audits and all the rest of it?

Blair Jenkins: I agree but, in response to the general question, it would be true to say that this is an unprecedented electoral event and, in all our contact with the Electoral Commission, it has recognised that. The reality will go beyond what is in the bill when it is enacted. I suspect that issues will come up during discussions in the next year and that the two campaigns and the Electoral Commission will just have to sort them out.

I am not sure that we have necessarily uncovered everything that might come up between now and the referendum. I believe that both campaigns and everyone else who is concerned would try honestly to resolve any issue that comes up but, as committee members know, we are in uncharted territory with quite a lot of the issues that we have discussed today.

The Convener: Thank you. Gentlemen, we were not able to cover a number of areas today, so we might write to you to make sure that we have all the evidence that we require for the record. In the meantime, I thank Dennis Canavan, Craig Harrow and the two Blairs for being so helpful.

Dennis Canavan: Convener, could I say—

The Convener: I am sorry, Dennis; we need to move on.

10:33

Meeting suspended.

10:40

On resuming—

The Convener: I welcome everyone back to our round-table session. Obviously, we will be talking about the bill itself, but I expect that the discussion will also cover wider issues such as registration, access and information. This will not be a normal evidence session; I want to let the conversation flow as much as possible and, instead of going through a series of questions, I will highlight a number of areas for discussion.

I welcome to the meeting Professor Aileen McHarg, professor of public law at the University of Strathclyde; Bill Scott, chief executive of Inclusion Scotland; Colin Borland, head of external affairs Scotland at the Federation of Small Businesses; Kyle Thornton MSYP, vice-chair of the Scottish Youth Parliament; Euan Page, parliamentary and Government affairs manager at the Equality and Human Rights Commission.
Scotland; and John Downie, director of public affairs at the Scottish Council for Voluntary Organisations. At this point, I should also give apologies from Stuart McMillan, who cannot be here because of a private engagement.

We will start the discussion with the three areas that I have highlighted: registration, access and information. Some of the organisations around the table have addressed the issue of registration in their submissions, and I want to harvest some ideas about how we can get as full a register as possible before the referendum.

Who wants to kick things off? John Downie, how about I pick on you? What are the SCVO’s thoughts on how we might make a better contribution with regard to registration?

John Downie (Scottish Council for Voluntary Organisations): A few weeks ago, we held a round-table session, chaired by Charlie Jeffery of the University of Edinburgh, to which we invited both campaigns, academics, the Electoral Commission, third sector organisations, Dave Moxham from the Scottish Trades Union Congress and Willie Sullivan, who gave evidence to the committee last week. Concern was expressed at the fact that just over 50 per cent of people voted in the last Scottish Parliament elections and 39 per cent voted in the local government elections; indeed, in Glasgow Shettleston, only 37 per cent voted in the Scottish Parliament elections and not quite 22 per cent in the local government elections. It is clear that many of our citizens are disengaged from the democratic process or politics itself and the purpose of the round table was to discuss what a better democracy would look like and how we can engage people more in the process.

A lot of interesting stuff is happening. Last year, the SCVO gave seedcorn funding to the so say Scotland project to run an event at our gathering fair to get people together and discuss the future of Scotland and this year, we have given seedcorn funding to Angus Hardie’s Scottish Community Alliance local people leading organisation to help it to set up about 20 community events that it wants to run in the autumn. We feel that it is important to engage people; part of that might be to do with the debate or the media, but it is obvious that people are disengaged and we need to make stronger efforts in that respect.

At this stage, it is not really about providing information or raising awareness; we just need to engage people in the process and the issues that affect their communities. In what it is calling its big vote campaign, local people leading has proposed the interesting process of getting a community together to decide on the issues that it wants to be discussed and then say to the referendum campaigns, “This is the issue we want you to talk about instead of just coming in and making a political speech.”

We need to do much more of that. We and the STUC believe that the UK and Scottish Governments need to think about how to facilitate that process, for instance by setting up a fund that community organisations can access in order to set up a series of discussions.

10:45

We have plenty of strong local organisations that could be leading on the matter but, if we do not make an effort now, the referendum turnout might not be as high as people want it to be. We will have the European elections, the referendum, the UK elections and Scottish Parliament elections in a short period. We must think about the voter engagement process in the medium to longer term, because people can be turned off.

Tomorrow, I am going to go to a session of the poverty truth commission, at which there will be people who are active in the community but disengaged from the political process. It is those people, who are concerned about issues and want to change things, whom we need to engage. We think that we could facilitate organisations such as local people leading, which I mentioned earlier, to do something about that. We are not talking about big national organisations, although the effort would have to be overseen. Helping those local organisations would be a neutral way of engaging people in the debate, and I think that we can facilitate that. However, we need to start now.

Bill Scott (Inclusion Scotland): I very much agree with John Downie. There is a serious degree of disengagement among a lot of people in our most deprived communities and in particular marginalised groups, such as disabled people. Some good work was done by the civic participation network, which was funded by the Scottish Government equality unit. It evolved a toolkit called talk for Scotland. That was designed to meet the needs of people with communication difficulties, but it can be used to enable any community to gather round and talk about their issues and then say to the decision makers, politicians and campaigns that those are the issues that they want them to speak about. It allows people to set their own parameters. A lot of people who live in our most deprived communities might not have a communication impairment, but survey work by the Scottish Government has shown that a lot of them have communication difficulties.

We are very much in favour of there being good written material that is easy to read and understand, but you need to engage someone’s interest before they will read it. You and I know
that any number of leaflets drop through our doors, but it is only the ones that we have an interest in that make us stop and say, "What does this mean to me?"

The work is about active participation and drawing people into the process rather than just letting things flow and hoping that people turn up on the day. A lot of good work could be done by local authorities, community learning and development workers and the third sector on this issue to try to increase voter engagement.

Voter engagement is an important issue for all of the elections that John Downie mentioned, but the referendum is the most important political decision that people will make in their lifetimes. Further, if we get the approach right for the referendum, that will have a knock-on positive effect for future elections.

Kyle Thornton (Scottish Youth Parliament): The referendum has generated a lot of debate. Speaking as a member of the Scottish Youth Parliament, I can see that, although a lot of young people are not interested in party politics, the referendum has sparked a little bit of thought and debate among them.

My biggest worry in terms of information awareness raising is that people are not registered to vote and will turn up on the day thinking that they can cast a vote, only to find that they are not on the electoral register. A lot of people who have not voted before or who have rarely voted will want to vote in the referendum. The Electoral Commission and the third sector have to make a big push to raise awareness among 16 and 17-year-olds of the need to register to vote and of the process of voting. That must go along with the debates that are held in order to raise the profile of the referendum.

It is for the campaigns to make the case and for the third sector to help to provide the forum for, and access to, that debate. The Scottish Youth Parliament can help gather young people together and mediate a debate between the two sides. They can make their arguments but, ultimately, all that work can be undermined on the day by people turning up and not being able to vote.

As a group who do not ordinarily vote, young people in particular need to be educated. It is important that schools educate them about the process of registering to vote and rolling registration so that they know, if they have not registered before, what the deadline is for them to submit their form to get on the register. That will mean that all the good work on the debate can be actioned at the ballot box.

The Convener: I will let John Downie in as well. Can we bore down a bit more on registration? Kyle Thornton has begun to flesh out how we can get better at registration and increase the percentage of people who are registered. That would be a useful matter to go into.

John, I do not know whether you were going to go into that anyway.

John Downie: Partly. My comments follow on from Bill Scott’s point. We need a bottom-up approach, not a top-down one from Governments and the campaigns. I have spoken to both campaigns and they seem to be on board and want to participate.

In our written submission, we used the example of the active citizenship campaign that was run in Ireland to increase voter registration. There are many other good ideas but, as Bill Scott said, we need to fund and resource trusted local organisations—well-established community organisations—to get out and engage people on the issue. It is about local issues—the issues that people are concerned about in their communities and which get them active.

Bill Scott and I see that at the moment in the welfare reform debate. We know how hard it has been to reach people and get to talk to them about the changes that might affect them, because many people are putting their heads in the sand about potential changes. It has been difficult for statutory agencies to engage with people on that. There are lessons to be learned in that. The partnership that Bill Scott’s organisation and other third sector organisations have with West Lothian Council on welfare is a good example of how we can reach people and engage with them on the issue if everybody works together.

Professor Aileen McHarg (University of Strathclyde): Although registration and turnout are connected, they are not the same. Lack of engagement is only one reason why people might not be registered. Non-registration is much more localised to particular groups of voters. Therefore, whatever strategy you adopt needs to be targeted on the particular circumstances of those groups of voters.

With young voters, the issue is primarily knowledge, because they do not normally get to vote in elections. I would think that that is relatively easy to deal with through awareness campaigns in schools.

There are all sorts of other reasons why people in deprived communities do not register. Those are connected with fear of being on the register and the publicity that comes with that. That is a much more difficult issue to address. It requires different sets of strategies, but I do not know what those might be.

The Convener: I have a specific question for Bill Scott. I ask him to expand on some of the stuff
in his written submission about easy read and British Sign Language issues. That leads into registration and encouraging people to vote.

**Bill Scott:** Particular impairment groups have difficulties in engaging with the electoral process because the information about it is not in a format that they can readily understand. Easy read in particular is a really good way of communicating with the whole electorate. It has been designed for people with learning impairments, but it works very well with people with low literacy levels.

We know that we have a large section of the population with poorer literacy than we would like and they live in the most deprived communities. They tend to be in low-paid work if they are in work at all. To reach them with the information that they need in order to understand what is happening, we need to render it in a format that they can readily grasp. That means symbols, pictures and an easy-to-follow process. That is a lot easier with a two-question, or rather one-question, ballot—I am sorry; I will not get into the politics around the questions. Essentially, people are being asked to go one way or the other in this vote. People can follow that a lot more easily.

The idea of getting people together is important. We can then tackle some of the mythology around non-registration. A lot of that started with the community charge/poll tax and so on. That is not really relevant any more, but people got into the habit of not registering. We need to get through to people, and the best way of doing that is through word of mouth and local events.

One of our member organisations, Glasgow Disability Alliance, held an event on the referendum about five or six weeks ago. Both campaigns were represented and had speakers. About 300 disabled people turned up to that event. There is not a lack of interest, as long as we can say what is happening and why people should be there to hear the issues being discussed first hand.

It is possible to stir up interest, and people can get a better handle on why the question is important to their lives. That is the main thing about the whole referendum: it has to be made real to those people in deprived communities who are disengaged from the political process. That includes a lot of disabled people, who are more likely to live in social housing and in deprived areas.

I have said that easy read is for disabled people, but I have worked in deprived communities for just about my whole adult working life, and people need to know what the referendum means to their everyday lives, to make it real for them. They need to be involved. Once their interest is engaged, they will take the steps to register and they will be able to vote on the day.

It is a good thing, in many ways, that people will be individually registered to vote—registration used to rely on the head of household. There could potentially be problems with 16 or 17-year-olds not being registered, simply because the head of household did not register, meaning that none of the people in the house was registered. Hopefully, some of those difficulties can be overcome through individual registrations.

**Patricia Ferguson:** I was really interested in what Bill Scott was saying about easy read. You gave us some examples. Could you expand a bit on what that would look like on the registration form? Sorry—I am not asking you to be specific about the text.

**Bill Scott:** That is just as well—I am not a specialist.

**Patricia Ferguson:** In general terms, though, how would a form using easy read be different from the forms that are currently available?

**Bill Scott:** It would be image heavy and text light. The way in which the text and the imagery are aligned helps people to follow a flow of information, which can otherwise be quite difficult for somebody with a learning impairment or literacy difficulties. They will be able to follow it, in an easy, staged process: they need to do this, this and then this. That can be helpful for people with lower literacy levels or with learning impairments. The more text there is, the more chance there is that the person will become confused about what they are meant to do.

The issue is one of confusion, lack of confidence and disengagement. People do not like to think that they might make a mistake, which can mean that they do not want to risk doing it at all—they do not want to look a fool in public, going into a polling station and not knowing what to do. They can ask for help, but they would rather not be the person who has to ask for help. They want to look up at something on the wall and think, “Right, that’s what I’m doing.”

Some of that has begun to happen, but more needs to be done, by the campaigns as well as by the Electoral Commission and other organisations, to ensure that the information is there and that it is easy for people to follow what to do in the process.

**Patricia Ferguson:** Would you make all the registration forms in that format?

**Bill Scott:** That would be the ideal. If there was other information that a person needed or wanted to see, it would be useful to have that somewhere else, rather than having references to legislative processes on the registration form, for example.
Patricia Ferguson: That is very helpful.

Tavish Scott: Bill Scott touched on the issue that I wanted to ask about. Forgive me if this is a stupid question, but I have been struck by taking voting and polling stations for granted. Voters go into a strange little box and someone gives them a piece of paper—it all seems bizarre if a person thinks about it from first principles. Is there a role for returning officers and local authorities to work with the groups that you are describing to make the process better, easier and more comfortable?

11:00

Bill Scott: Yes, there is a role for them to do that. We ran an event—to consider what barriers to voting remain—with the Electoral Reform Society, registration officers who work for local authorities and disabled people, and in which there was good engagement. The registration officers in their evaluations said that it had been really useful to hear at first hand what the barriers really are, as opposed to what they thought that they were.

People think that once the physical barriers have been removed that is the end of the access issues. For example, if a wheelchair user can get into a building, people think that the problem has ended. However, the disabled people—they had a range of impairments—said that it is sometimes difficult to follow the information that is provided and wanted to know whether more could be done on that.

A person with a visual impairment might not be able physically to use the ballot paper because it is too small for them to see where they should place their cross. However, when they ask for assistance they are told that they cannot have any. It is strange that a person who has a physical impairment such that they cannot use their hands is allowed to nominate a person to place their cross the ballot paper, whereas somebody who has a visual impairment and who literally cannot see where to place a cross is not allowed such help. That anomaly needs to be addressed. However, that is getting into the voting process rather than registration.

The Convener: I have a list of MSPs who want to come in, but I will break up the discussions as much as I can, so I encourage witnesses to indicate to me when they want to speak. John Downie wishes to make a point.

John Downie: To pick up on Tavish Scott's point, leaving aside young people who are in the Scottish Youth Parliament, we have a group of young people at college and university who are particularly disengaged. The referendum is about their future, so we must think about how they communicate and see things. I know that we cannot do it for this referendum, but we need to think more about electronic voting and how we connect with people through mobile phones, for example.

I was struck by what the chief executive of the Scottish Court Service said in relation to tackling the numbers of witnesses who do not turn up for cases. Witnesses now get a text two days before their appearance, which has led to an increase in the numbers who turn up at court. There are lots of simple things like that to consider. For example, how do we use the National Union of Students Scotland—there are 48 students unions in Scotland—and similar organisations to engage and connect with young people? There are ways to do that, but those relate to the process, which, as Tavish Scott said, people do not see.

The Convener: I will ask Kyle Thornton to talk about that matter because he is less chronologically challenged than the rest of us.

Kyle Thornton: It is thought that election campaign information must be on paper and that, in the name of fairness, nothing can be done electronically or put online. However, it would be good to do things electronically for young people and for people who have difficulties accessing information on paper. For example, a text could be sent to say what day the poll is on and where the polling station is. That could be a simple reminder to turn up on the day. Most people intend to vote, but when you talk to those who did not do so, they say that they forgot or that it was not top of their list of priorities on that day. We must make a real push on voter information and engagement, especially for young people, for this referendum.

We make our work in the Scottish Youth Parliament more accessible—it is less about half-hour speeches from every candidate and then sitting in plenary for questions and answers, and more about something a bit more like a round table with quick-fire questions and answers, so that it is less dry. That engages young people, especially on the issues that they are concerned about in relation to the referendum campaign.

The decision that the country makes will affect young people from any group in society for a long time. You might think that pensions, for example, are of no concern at all to young people, but if someone says that pensions will be £X here in 50 years, pensions will begin to become an issue for young people because it will be a factor later down the line. If we vote to change our constitutional settlement, that will not reversible easily in 15 years. The importance of the vote means that we need to focus on it.

Using the Electoral Commission and local electoral offices alone would be a mistake—especially for young people—because they do not
do things very well now anyway, in that they are not great at encouraging young people to turn out in normal elections. The people who already engage with young people need guidance and support, whether through resources or financial support, to get out there and engage with young people and have face-to-face conversations.

**The Convener:** I have a specific question about texting. An organisation such as the Electoral Commission or the Electoral Management Board for Scotland perhaps would have to capture all the telephone numbers. Would young people or, indeed, anybody be comfortable with giving their mobile number to an organisation that would, in effect, be acting on behalf of the state, although it would not be an organ of the state?

**Kyle Thornton:** That is not so much an issue for young people; young people give their telephone numbers and email addresses on electronic forms every single day. I would phrase my answer by saying that it would become more of an issue the less comfortable a person is with technology.

**The Convener:** Okay. I will not ask you any more questions like that one.

**Colin Borland (Federation of Small Businesses):** There is a business angle to that. The more we use alternatives, the less we have to go through the rather bizarre process of closing down primary schools, which means that working parents have to make alternative arrangements for childcare. As we know, that is incredibly expensive, and may have a knock-on effect on their wage packet and their employer. Moving towards smarter ways of voting or voting at weekends would have a measurable impact on business, although I know that we are not going to do that this time.

**Annabel Goldie:** I have two practical points that arise from Inclusion Scotland’s submission and Bill Scott’s comments on it. The first is to do with physical access to polling stations. It should not be beyond the wit of man to get local authorities to confirm how many of their polling stations do not have access for people with disabilities. It would be helpful to Bill Scott’s cohort to know that a station that will be used is not accessible for them. Individuals could then make alternative arrangements—for proxy voting, or whatever. What could the committee do to help with that? As I said, it is not beyond the wit of man to get the 32 local authorities to confirm which polling stations are unsuitable. Something practical could then be done to anticipate the situation and to help.

Secondly, I have learned something that I did not know. Inclusion Scotland’s submission says that people who have visual impairments find that “polling station staff are under instructions not to assist” them when they “ask for help in casting their vote.”

Bill Scott enlarged on that by saying that people who have physical disabilities can get help. I was completely unaware of that. Is that the law?

**Annabelle Ewing:** Yes—it is because of the possibility of an attempt to interfere with a person’s democratic secrets.

**Annabel Goldie:** Surely somebody, such as the polling officer at the polling station, could help. We are not talking about allowing maverick wayward individuals to help.

**Patricia Ferguson:** People other than the polling clerk could do that.

**Bill Scott:** That is right.

**Patricia Ferguson:** I do not necessarily think that it was right, but when I took an elderly lady to the polls about 20 years ago—long before I was personally involved in elections—the polling clerk more or less told me to help the lady to cast her vote. I was very disappointed by where she wanted me to put her cross, but that is another story. I abided by her wishes.

**The Convener:** The issue plays directly into the bill, obviously.

**Patricia Ferguson:** What Bill Scott has said is absolutely right. I have always thought that that is an anomaly that should not be allowed to continue unchallenged.

**Bill Scott:** It is very frustrating for people who have a visual impairment. Most polling stations now display a large-scale version of the ballot paper. People go in and ask for it, look at it and take it to the polling booth, and the polling booth clerk has to say, “You can’t use that. You have to use the standard-sized one.” The person then says, “I can’t see where to place my cross on that. I can see where to put it on this,” but they cannot use it. There is a real problem, which could be addressed by having a nominated individual who can assist people in casting their votes.

**Annabel Goldie:** Would it be competent to make a one-off provision for that in the bill?

**The Convener:** That is possible. Do you know why that has not happened before?

**Bill Scott:** I am not sure. There was a review of electoral arrangements in 1999 or so, and people were allowed to nominate someone to accompany them to the polling station and assist them with voting if they had a physical impairment that prevented their doing that—if, for example, they had no use of their hands or had cerebral palsy and were unable to hold a pen. However, the change did not apply to people with visual impairments; a person had to be literally physically
unable to make a cross. A person who has a visual impairment would be able to make a cross but might not be able to see where to put it. It is an anomaly that has not been taken into account.

Rob Gibson: There was a lot of ironic laughter when we talked about awareness raising and the need for materials that people can use in the polling place. We have been discussing with the Electoral Commission how it tests out material, and we are looking for it to do more of that in different languages and formats. You talked about easy read and you laughed. If the Electoral Commission is to use easy read in the various processes of awareness raising through to the polling place, should the bill insist on that range of materials being available?

The Convener: I apologise, Rob, for not paying attention. I am getting carried away with the bill.

Rob Gibson: We all got carried away with bills, convener. We are looking for the Electoral Commission to test materials such as those that Bill Scott mentioned—indeed, we are looking for such materials to be included in its detailed development plan. However, it has not yet said when that will kick in, nor has it given us any indication about such matters.

The Convener: Would that be helpful, Bill?

Bill Scott: That would definitely be helpful; it would provide an opportunity for the Electoral Commission to test run materials with people who know best whether they would work. There are specialists who can assist the Electoral Commission in devising easy-read formats without losing the information that people need to go through the process.

John Downie: The SCVO hosts the Scottish accessibility forum. We are redesigning our website at the moment, and the forum’s advice has been invaluable in our thinking about how to make the website accessible.

The Electoral Commission has a strict remit. In the discussions that we have had it at a round table, its big point was that, as Professor McHarg said, people need a hook to vote. It goes back to what Bill Scott said earlier: if we are going to engage people, we must tell them the reasons why they need to vote. How people then register and vote are the technical aspects, but the broader issue is that all the political parties, the campaigns and the Parliament need to address is how we get people engaged in the process. That is a much more difficult issue to address. We can talk about electronic voting and Saturday voting, because there is a case for taking a broader look at the technical aspects of our electoral processes, but the key issue is that we have a multifaceted capacity-building campaign that engages people through trusted community organisations. The technical stuff should be the easy part; the challenge is in engaging people.

The Convener: I take that point, but before we move on let us not lose sight of the other issue—the anomaly. Paragraph 22 of schedule 3 states that

"a voter ... who is incapacitated by blindness or other disability"

can seek help from the presiding officer.

Annabel Goldie: The Presiding Officer?

The Convener: It states that

“the presiding officer must, in the presence of any polling agents, cause the voter’s vote to be marked”.

Bill Scott: The difficulty is that people can be visually impaired short of blindness. I know several colleagues in the disability movement who need text to be in size 18 font to make it intelligible, but who are not registered as blind.

11:15

The Convener: It would be useful to hear suggestions on how the bill might be improved to deal with that specific anomaly. I am sorry, John. I do not want to lose your point—I think that Kyle wants to comment on it.

Kyle Thornton: I completely agree with John Downie. We can get registration right and get people on a register—we can get the process right—but without a debate, people might just decide that they will not bother turning up to vote. “Young people” seems to be being bandied about by both campaigns. We see news stories in the press where “Young person X says this,” and then the other campaign hits back with “Young person Y says that”.

We need local community-led events in schools, youth clubs, colleges and universities. We need to target young people who are in work or who are not in education, employment or training as well. We need to bring people together just to have a chat about the issues. I am sure that the campaigns would be happy to engage in that process. It would benefit them in that they would get to reach groups that they find it hard to reach. The benefit for everyone else is that they would get to hear about the issues.

We need to ensure that specific groups are targeted—groups that find it harder to engage in the debate because a lot of it is quite high level at the moment. A lot of the debate in the media is very detailed and for a lot of people, it just goes over their heads. People are either interested or they find it genuinely difficult to engage with the issue.
Stewart Maxwell: I understand what has been said about making it easier to vote, electronic voting and all that, but I am far from convinced that we are anywhere near electronic voting for a whole raft of reasons, not least security, so I would not support it. As far as Saturday voting is concerned, a whole group of people would strongly object to it for religious reasons. It would not be an easy shift to make, although it seems easy on the surface.

My question is: have any of the groups around the table had any engagement yet with the Electoral Commission or with the Electoral Management Board to raise those very points about registration, disabilities, young voters and so on? If not, are there any plans to meet those bodies?

The Convener: I will ask Euan Page to start because he has not yet had a chance to contribute. Euan, where does your organisation stand as regards the Electoral Commission?

Euan Page (Equality and Human Rights Commission): We have contact with the Electoral Commission. Some of our legacy bodies—the Disability Rights Commission, for example—and organisations such as Capability Scotland worked quite closely with the Electoral Commission over the past decade to learn lessons about improving accessibility in polling stations. The Electoral Commission is the regulatory body with prime responsibility on equality and access issues with regard to elections. There is an on-going dialogue, but we have not had a sustained conversation thus far. We will be looking to have that down the line.

The Convener: Does anybody else want to tell us about their experiences with the Electoral Commission?

John Downie: We brought along the Electoral Commission to a round-table discussion. We generally tend to engage with it before every election because a lot of third sector organisations, including us, are producing manifestos. Although we are not advocating one political party over another, we certainly always talk to it about the guidelines that it is giving to people. The situation is clearly no different this time.

The third sector has had the Office of the Scottish Charity Regulator putting out some proposed guidance as well on what people can or cannot say, so there is a fairly wide debate about the issues in the third sector at the moment.

Bill Scott: We have engaged with the Electoral Commission in the past, but not in the recent past—so not around the referendum. We worked with Leonard Cheshire Disability’s citizenship academy, which was funded through the Electoral Commission to help to increase voter registration among disabled people. We did quite a bit of joint partnership work around the European elections in particular, but we have not done such work of late.

Annabelle Ewing: I want to go back to the very important issue that Annabel Goldie raised about access to polling stations for disabled people. I would have thought that, under the Equality Act 2010, there is a requirement on local authorities to ensure that there is access; it is not for local authorities to say, “We’ll try our best”. Is it not a requirement as a matter of law? We have two experts here: Professor McHarg and Euan Page. Can they comment on that? I think that we are moving on: it is no longer sufficient to try our best; we have to ensure that people can access premises.

Euan Page: That is a slightly anomalous area, in that the reserved statute that is the regulatory responsibility of the Electoral Commission takes precedence over our role under the 2010 act. However, there are similar provisions and the Electoral Commission has order-making powers in relation to identifying and requiring improvement to accessibility where barriers are identified. We keep in touch about that. Therefore, there is a statutory obligation.

It is also blindingly common sense that, when returning officers and local authorities look at the location of a polling station, they do not put it at Joe Bloggs primary school just because that is where it has been for the past 50 years. If there is a better alternative up the road, it makes sense to use that. We should ensure that people are aware of the legal requirements and also that they ask the right questions, such as, “Are we going to use this primary school just because that is what we’ve always done?”

Bill Scott: As far as we know, very few polling stations are not fully accessible. There were a few places in 2009, mainly in remote rural areas where there were not easy alternatives, but a lot of communities now have accessible village halls. Therefore, we go back to the issue of whether the usual place is used, rather than a new resource that is in the same community but which traditionally has not been used for polling.

Euan Page: That is an important point. We are looking at a picture of steady improvement in physical accessibility but, as Bill Scott says, there is still an issue in some areas. Notwithstanding that, it is important not to lose sight of the wider questions of disengagement on which many of our contributors this morning have picked up: the questions about how we engage in the debate communities and individuals that are several steps removed from even thinking about accessing a polling station.
Bill Kidd: I have found this discussion extremely interesting and enlightening.

There is a big crossover between process—how voting can be accessed and so on—and the message: in other words, whether voters can be bothered. That is very important. People from the two campaigns, yes Scotland and better together, should probably have been sitting here and listening to what has been said. Perhaps they will be meeting with all the different people here.

In reality, making people interested enough in the referendum and the result that will come out of it—whatever that is—will be the biggest thing that makes people go out to vote and use the accessible places for which I hope we can press.

Kyle Thornton talked about registration issues, especially the use of rolling registration and so on. As he said, we have to reach out to young people and make them want to register in the first place. I am not having a go at the Electoral Commission because it is a great organisation, but when it is speaking to groups in schools or youth clubs is its message jazzy enough—I did not want to use a pejorative term—to get young people interested?

The Convener: The word that you are looking for is “hip”.

Bill Kidd: Aye—sorry, granddad. [Laughter.]

Are young people going to be interested enough not just to listen to the reasons why they should vote but to pick up on the issues, too?

Kyle Thornton: The Electoral Commission tries, but it needs to make much more use of younger people and young community champions. I would obviously use members of the Scottish Youth Parliament as an example of people who are totally neutral on the issue and able to work with the Electoral Commission to present information in a more youth-friendly way, which is important.

If the commission created a three-minute video animation—which it has done before and which has been very good for young people—on the official information that is given out, how to register and the process of voting, that would work really well.

One big thing that I have noticed as a young voter is that the Electoral Commission’s website is really good. Young people can go on to the site and fill out the form, and they are then asked to print it and post it. However, I thought, “Well, I’ll just not bother printing off the form—I’ll wait until the annual canvass comes round and make sure I’m on the register then”, and I am an engaged young person. The Electoral Commission needs to discuss such issues with those who work with young people.

To go back to Stewart Maxwell’s question earlier, I am not aware that the commission has had any real discussion with the Scottish Youth Parliament, which is used to getting young people out to engage in the voting process, as we work with 12 to 25-year-olds.

The Electoral Commission needs to start talking to young people directly. It could start by getting together a group of young experts to advise it on how it can best do that, especially with regard to 16 and 17-year-olds.

The Convener: I am very conscious of the time constraints. We need to complete the session by 11.40, and some members may have questions. I see that Tavish Scott is indicating that he does. We will see where Patrick Harvie’s questioning leads, but we are very tight for time.

Patrick Harvie: Briefly, is there a danger that the way in which the commission and other organisations engage with younger voters, disenfranchised people, those who have not been voting and particular groups in society—whether that involves disability or any other factor—might end up being a wee bit patronising?

If we try to dress the referendum up as though it is a reality show, we end up demeaning the whole process. It is a serious matter, and all those groups are capable of understanding it as such and of being approached as people who are—as indeed they are—capable of engaging with it at that level. Is there a danger that we might go a wee bit too far down the razzmatazz-and-showbiz route and end up with people feeling patronised?

The Convener: How would you go about dealing with the business of show business?

Professor McHarg: I am stunned by that. [Laughter.]

There is an issue in trying to engage people in a serious way that does not necessarily require jazzy videos and gimmicks, but there is also an issue with people being turned off by the way in which the debate is currently being conducted. We need to find ways to bring into the debate those people who would not otherwise get involved.

The type of models that I have been hearing about involve things such as community engagement events and getting people together with mutual facilitators to discuss issues in a serious—and quite old-fashioned—manner. I do not perceive that there is much show business attached to that, but I may be wrong.

The Convener: John Downie submitted a lot of written material on the issue. Perhaps he can capture it for us quickly.

John Downie: There is a role for the Electoral Commission in relation to the factual stuff, but we
need to engage local people. The big vote referendum roadshow, to which I referred earlier, is working with local facilitators and local people, and that is the way to engage.

With the best will in the world, the Electoral Commission is a public body, and there are issues with trust and engagement with regard to how it does things. Engagement needs to be bottom up and community led, with expert organisations that provide their expertise. That will provide the help that is needed.

11:30

**The Convener:** Some of the evidence in SCVO’s written submission was very helpful and thought-provoking with regard to how we can do things differently.

I will bring in Euan Page before I close the session.

**Euan Page:** It is important that we avoid the patronising dad-dancing-at-a-disco scenario in our engagement; I speak from experience. [Laughter.]

As John Downie said, engagement is a bottom-up process, and old-fashioned methods can be among the most effective. We held a useful round-table session last week with civil society organisations, academics and others. What came out of that was the idea that, if we want people to engage in debate about the constitution, the last thing that we want to talk about is the constitution. People are utterly disengaged from the language and arguments of high constitutional politics, just as they often are from the language and concepts of human rights. We have to start with what exercises people—for example, their frustrations with unresponsive, clunky and bureaucratic public services, getting adequate services for their kid who needs additional support, or trying to ensure that their granny can stay in her own home rather than being put into residential care.

The disconnect between the grating perennial public policy challenges that wear people down and the actual difference that will be made either by having different constitutional levers or keeping the same ones is where we need to start.

**The Convener:** That is a strong message on which to leave this particular conversation.

I thank you all for coming along this morning, helping to stimulate some ideas and giving us food for thought. The Government, the Electoral Commission and the Electoral Management Board—and the campaign groups—will no doubt pick up on the evidence that you have given today, and I hope that it will increase their engagement with you and your groups as we move forward. In the meantime, I thank you sincerely for coming to give evidence today.

Our next meeting is scheduled for Thursday 6 June, when the committee will deal with stage 2 of the Scottish Independence Referendum (Franchise) Bill. I remind members that the deadline for lodging amendments is noon on Monday 3 June. The committee’s next and final evidence session on the Scottish Independence Referendum Bill will be on 13 June, when we will hear from the Deputy First Minister.

*Meeting closed at 11:33.*
Scottish Parliament

Referendum (Scotland) Bill Committee

Thursday 13 June 2013

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning, colleagues, and welcome to the 17th meeting in 2013 of the Referendum (Scotland) Bill Committee. The first item on the agenda is to decide whether to take in private at next week’s meeting our review of all the evidence that we have received on the bill to give a steer to the clerks and help us put together our stage 1 report. Do we agree to take that in private?

Members indicated agreement.

Scottish Independence Referendum Bill: Stage 1

10:01

The Convener: We move to the second and main item on today’s agenda. I warmly welcome the Deputy First Minister, Nicola Sturgeon, who is supported by three Government officials: Steve Sadler, head of the elections team; Helen Clifford, the bill team leader; and Graham Fisher from the Scottish Government’s legal directorate.

Do you wish to make an opening statement, Deputy First Minister?

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): I suppose that I should provide some context, convener. As everyone knows, the Edinburgh agreement confirmed that the referendum should be legislated for in the Scottish Parliament. The Scottish Independence Referendum Bill contains the Government’s proposals for the running and regulating of the referendum in a way that will command the confidence of the Parliament, both sides of the campaign and the wider Scottish public. I must stress that the bill’s contents have been informed by a successful consultation that attracted a very large number of responses as well as independent expert advice.

The bill sets out the referendum’s date, the wording of the question, the rules and spending limits for campaign funding, and the detailed rules for the conduct of the referendum itself. As the committee will be aware—and as is accepted practice—the Government proposed a form of words for the question that the Electoral Commission tested and reported back on, and we have accepted its recommended changes. Similarly, we have accepted its recommendations on spending limits, and they are reflected in the bill.

As for the conduct of the referendum, the bill mirrors as far as possible the standard arrangements for elections and referendums in Scotland and the United Kingdom because we want the referendum to be run in a way that is as familiar to people as possible. We have worked very closely with the Electoral Management Board for Scotland, the Electoral Commission, electoral registration officers and others to ensure that the arrangements are fit for purpose, to incorporate lessons from recent polls and to ensure that we are thinking through all the practicalities. I know that the committee has taken evidence from the board and the commission, both of which have
stated in broad terms that the legislation is indeed fit for purpose.

The commission has suggested some possible amendments to the bill—on the provision of guidance to counting officers and the deadline for proxy votes, for example—and we are continuing discussions with the commission and other electoral professionals on the small number of such technical issues that remain. The commission has also suggested that all permitted participants should have access to the polling list, which would include details of people on the young voters register, but as the committee will be aware from our previous discussions we are trying to strike a balance between putting young voters on an equal footing with other voters and safeguarding their details. I know that the committee was genuinely supportive of such an approach at stage 1 of the Scottish Independence Referendum (Franchise) Bill.

One other item that might come up in discussion is the concern expressed by the commission about campaigners’ access to registers for the purpose of checking donations. All campaigners will have access to the information that they need to comply with donation controls and they are entitled to a copy of the local government registers for Scotland. As people on the young voters register are not permitted to donate more than £500, the issue does not arise in that respect. However, we cannot legislate for the sharing of other registers in operation either in Scotland or in the rest of the UK, although I point out that even if a donor is not on the local government register there are other ways of checking their eligibility as a donor.

In conclusion, the committee has received a wide range of evidence, most of which is broadly supportive of the bill. A number of issues have been raised on which we will consider lodging amendments at stage 2, and discussions are ongoing on a number of mainly technical points that we might well touch on this morning. However, for the purposes of stage 1, I hope that the committee agrees that the bill provides a sound basis for delivering a fair and transparent referendum that commands the confidence that I mentioned earlier.

The Convener: Thank you, Deputy First Minister. A number of my colleagues want to raise questions about the purdah period. I ask Linda Fabiani to kick off on that, and then I will take a number of supplementary questions on the subject.

Linda Fabiani (East Kilbride) (SNP): I am happy to do that.

We heard evidence from the Law Society of Scotland and from academics on the purdah period for the Scottish Government for which the bill will legislate. Concern was expressed that there will be no similar legislation to cover the United Kingdom Government, although the view was given that it would be fairly easy for that to be implemented. Deputy First Minister, what is your opinion about the relationship between Westminster and Holyrood through the Edinburgh agreement and so on? How confident are you that the purdah period that will apply here will be matched by the UK Government?

Nicola Sturgeon: That issue was discussed in the negotiation leading up to the Edinburgh agreement. As the committee will be aware, we cannot legislate here to subject the UK Government to the purdah period that applies to the Scottish Government and Scottish public authorities. However, we think that it is right that that period applies to the Scottish Government, which is why it is included in the bill.

The UK Government agreed to include a provision in the Edinburgh agreement to make clear its intention voluntarily to submit to the same rules. I have no reason to question its good faith on that. I fully expect the UK Government to honour that commitment in full, and I have no reason to expect that it will not do so.

It is not for me to say what the committee will want to comment on, but the committee might want to ask the UK Government about how it will ensure that the provision is complied with. Members should be in no doubt that I would be very concerned if it turned out that the provision in the Edinburgh agreement was not complied with, although I have no reason to expect that that will be the case.

The 28-day period is appropriate and is in line with existing electoral law. I do not think that the period should be any longer. Clearly, we have to strike a balance between fairness in the referendum period and allowing the Government of the day to get on with the business of being the Government. We have struck the right balance for the Scottish Government, and I certainly hope and expect that the UK Government will honour the commitments that it has given in the Edinburgh agreement.

Linda Fabiani: Below that level, we had a discussion a couple of weeks ago about the limits of what can be sent out using parliamentary resources in periods running up to elections or a referendum. I should probably say that, as a member of the Scottish Parliamentary Corporate Body, I was party to the discussion on the rules that apply to parliamentarians in Holyrood. Has there been any discussion at ministerial level about how the Parliaments will deal with the issue? Although I was not present during the discussion a couple of weeks ago, I understand that both the yes and no campaigns said clearly that there should be a level playing field in that regard.
Nicola Sturgeon: I absolutely appreciate the intention and concern that lie behind the question. Fundamentally, that is not a matter for ministers and the Scottish Government; it is for the parliamentary authorities here in the Scottish Parliament and in the Westminster Parliament to decide on the appropriate rules for conduct of elected members during that period.

I know from experience that it is dangerous for a minister here to try to speak on behalf of the SPCB. However, I absolutely agree with Linda Fabiani that there should be a level playing field, and I hope that the parliamentary authorities in both Parliaments will take reasonable and appropriate steps to ensure that that is the case.

A general point that applies to my previous answer and to this one is that there will be public scrutiny of the way in which politicians conduct themselves during the referendum. The public would take a very dim view of any politician on either side—I make it clear that I am not casting aspersions on anybody—who was in any way seen to be abusing a public office or taxpayers' money.

I therefore hope that there will almost be a self-regulating pressure on politicians but, equally, I hope that the Parliaments—I am pretty sure that the Scottish Parliament will do this and I hope that the UK Parliament will, too—will ensure that MPs and MSPs and other folk who are in Parliament operate appropriately during the period.

Linda Fabiani: Thank you.

Patrick Harvie (Glasgow) (Green): The bill mentions the Scottish Parliamentary Corporate Body. Does the Government have a view legally as to what the impact of that provision, as it is currently drafted, would be on the conduct of parliamentary business, particularly if Parliament decided to conduct its summer recess on the usual timescale, which covers July and August? Such an approach would mean that there would be two or three weeks of parliamentary business after recess that are during purdah. What impact would there be if we passed the bill as it stands and had a normally timed recess?

Nicola Sturgeon: As Patrick Harvie indicated, paragraph 25 of schedule 4 to the bill specifically includes the corporate body as a body to which—to use the terminology—the purdah restrictions apply. That would mean that the corporate body would not be able to publish anything covered by the restrictions in paragraph 25(1) of schedule 4.

Taken at its widest interpretation, the description of relevant material could preclude the publication of an enormous amount of material that relates to the business of governing Scotland. That is why, as I said in response to Linda Fabiani, we think that the 28-day period is the right balance. To have a longer period would risk getting in the way of the business of normal government.

I will constrain my remarks to some degree, because it is absolutely a matter for Parliament to decide the dates of recess. However, I will be frank: I think that for Parliament to sit in the purdah period would undoubtedly mean that we would sit with enormous constraints on what the Parliament and the Government could do. I am sure that the parliamentary authorities will take due account of that.

Patrick Harvie: I think that discussions are taking place about what to do about summer recess. I am not asking you as Deputy First Minister to say what Parliament should do about its recess; I am asking you what impact the bill would have if Parliament was to make those decisions.

One option is to have the normal recess. That would impact on Parliament's ability to conduct its business in early September, and it would also leave ministers open to the accusation—a lot of this is about perception—that even to answer questions and make statements in the chamber on the issues of the referendum would breach purdah.

If we moved recess forward so that it began later and ended later, there would surely be the prospect—which other Opposition parties, whether pro or anti-independence, should also be concerned about—that we would not have the opportunity before purdah begins to hold ministers to account in the chamber for statements that they made during recess.

Nicola Sturgeon: I sort of agree with both those statements. I am not trying to dodge the question; I just do not want to intrude on to ground that is properly for the Parliament and not the Government—it is important that I keep the distinction. However, there is undoubtedly a way to find a solution to the recess arrangements next year that takes account of both those concerns.

Given the way that the purdah provisions are drafted—and members should bear in mind that they are in line with how things would operate under normal electoral law; we have not drafted them differently—if Parliament was sitting in the purdah period it would be difficult to imagine how a normal First Minister's question time, for example, would proceed in a way that is consistent with the law. It is for Parliament to decide on and come to a reasonable solution, and I am sure that the solution is there to be found.

Patrick Harvie: If the committee were to consider any changes to the schedule on publications and purdah, either in light of decisions that Parliament might make about recess or any other issues, is it your understanding—following
nations with the UK Government—that the UK Government will adopt whatever purdah arrangements the bill imposes on the Scottish Government, or will that need to be renegotiated?

Nicola Sturgeon: Inevitably we are getting into speculative territory here. The Edinburgh agreement included a provision that we would apply the Political Parties, Elections and Referendums Act 2000 approach to purdah and that the UK Government would agree to sign up to that. If we were to have something significantly different, we would need to discuss with colleagues in the UK Government what that meant to the interpretation of the Edinburgh agreement.

We will look as a Government carefully at any amendments that are lodged. Once I see the detail of amendments at stages 2 and 3, I will be more able to give you my view on what I think that they would mean for the Edinburgh agreement.

Patrick Harvie: Thank you.

10:15

The Convener: Annabel Goldie has questions in this area as well.

Annabel Goldie (West Scotland) (Con): On the whole purdah regime, is a broadcast ministerial opinion published material under paragraph 25?

Nicola Sturgeon: Sorry, can you repeat that?

Annabel Goldie: If a minister is giving an interview and happens to say something quite inadvertently that portrays independence in a glowing and rosy light, is that considered to be published material under the bill?

Nicola Sturgeon: Published material does not refer only to written publications; it has a broader application than that. The example that you give could be published material if the person was speaking as a Government minister in the course of Government business.

Annabel Goldie: During that 28-day period.

Nicola Sturgeon: The bill says that:

“publish means make available to the public at large, or any section of the public, in whatever form and by whatever means”—
in the relevant period, which is the 28 days.

That applies to things that ministers say or do as ministers. During an election campaign, when we are in purdah, ministers, as politicians, will be free to campaign for a particular campaign. The bill covers things that we would be doing in our capacity as Government ministers.

Annabel Goldie: As I read the section, it seems that the publication part is linked to the material bit. I can understand an embargo that prevents the Scottish Government from sending out documentation or material—everyone understands that—but I am not quite clear about the example of a Scottish Government minister giving an interview. You would not have material per se, but the minister would be giving a view, which would be broadcast to the nation at large.

Nicola Sturgeon: I imagine that we will be doing many such interviews in the 28-day period as politicians and members of one campaign or another, but we will not do them as Government ministers. For example, a minister, with the full support of the civil service, might go on a ministerial visit to announce something during the 28-day period. There might be no written publication but, if they said something that could be seen to have an impact on the referendum or be associated with the issues in the referendum, they would fall foul of the purdah protocol. If I, as deputy leader of the Scottish National Party, appeared on “Question Time” or a similar programme during the 28-day period, I would not fall foul of purdah because I would not be appearing as a Government minister or using the resources of Government.

It is important to stress that, although the situation is different in the sense that we are dealing with a referendum rather than an election, the same rules apply during elections. During the period of purdah before the 2011 election, I was restricted in what I could do as a Government minister. I was not restricted in my ability to go around the country campaigning for the return of an SNP Government, but I could not use the resources of the civil service to do that—not that the civil service would ever have countenanced that—because it would have fallen foul of the purdah rules. Although we are talking about the issue in the context of a referendum, we and members of previous Governments all have experience of operating within these rules in previous elections. It is not a new concept.

Annabel Goldie: Thank you, Deputy First Minister.

My next question, which is on a separate issue, is perhaps more for Mr Fisher. If, after the referendum, somebody who has the deep pockets to fund a judicial review considers that there has been a breach of the purdah protocol and that it could have influenced the outcome, is judicial review a competent avenue available to them to pursue?

Graham Fisher (Scottish Government): Certainly in relation to a breach of the purdah provisions, judicial review is available as a potential sanction. I know that some questions have been raised around that.
Annabel Goldie: What would the judicial review application be? Would it be that the purdah protocol was breached and that that was terrible and everyone had been very naughty, or would it be that the purdah protocol had been breached and that that was appalling and the referendum result should be set aside? What would be the remedy?

Graham Fisher: That would depend on what remedies were sought at the time of the judicial review being brought. You have heard evidence from some parties, including Professor Mullen, along the lines that a court might be reluctant to set aside the overall result of the referendum, but it would depend on the challenge. There are particular restrictions about some legal challenges in relation to the number of votes counted and the way in which judicial review would apply in that respect, but otherwise the position is broadly as I have described it.

Annabel Goldie: I am just trying to test the worth of the sanction if there is a breach. Is there a meaningful sanction? I guess that the only meaningful sanction after the outcome is public attitude.

Nicola Sturgeon: I do not want to appear to be glib, nor do I want to predict behaviour during the campaign, but I am pretty sure that, if a minister of either Government was to breach the purdah rules in the 28-day period, those on the other side wouldjump up and down to the extent that there would be publicity in the media about it. I am not saying that that is the only restriction. The provision is in law because we want to ensure that there is an appropriate restriction, but the public price of breaching the purdah rules operates as a constraint as well.

I stress that we are not talking about a new concept. We are talking about rules that apply to every Government in every election, so the Government and the civil service are well used to dealing with purdah periods.

Annabel Goldie: Okay. Thank you.

The Convener: Linda Fabiani has a supplementary question.

Linda Fabiani: It is on that point, and it relates to the questions that I asked earlier. Who will be deemed to be regulating the purdah period as it goes on? How will it be regulated other than through the self-regulation that you mentioned? We have talked about sanctions and the potential for judicial review, but that applies only to the Scottish Government because that is where the legislation lies. We come back to the potential for quick legislation—Professor Mullen said that it would be quick, as did the Law Society of Scotland—that puts the UK Government on the same footing as the Scottish Government in those terms.

Nicola Sturgeon: If the committee felt that it wanted to recommend that, I am sure that the UK Government would respond to you on it. Obviously, I am not here to speak for the UK Government, but I understand the point that you are making, which is why were anxious to achieve—and we did achieve—the commitment in the Edinburgh agreement. As I said earlier, I have no reason to believe that there is bad faith. It is clearly open to the committee to recommend that there should be something stronger, but it is not in the Scottish Government’s gift to legislate in a way that covers the UK Government.

Stuart McMillan (West Scotland) (SNP): I remind colleagues that that issue was raised a couple of weeks ago when Blair McDougall from the no campaign was in front of the committee. He stressed more than once the importance of the court of public opinion, particularly on the issue of purdah.

My question is about a letter that we received from Chloe Smith MP, Minister for Political and Constitutional Reform, regarding last year’s agreement. One paragraph in the letter is extremely interesting. It states:

“In this Bill the Scottish Government are able to include a power to make modifications to electoral law for the purposes of the referendum, to replicate or make separate provisions if they consider it necessary.”

Given that a UK Government minister has suggested that, would it be worth while for the bill to be amended so that it incorporates a requirement for Westminster MPs to comply with the purdah period in Scotland?

Nicola Sturgeon: I do not have the Chloe Smith letter in front of me, but I have seen a copy of it. I think that she was referring to our ability within our competence to amend the bill to deal with the issue of the children of service personnel. We do not have the power, either under the Edinburgh agreement or elsewhere, to legislate to subject a UK Government to a purdah period for the purposes of the referendum, so it would not be possible to do that in the bill.

Stuart McMillan: Okay. Thank you.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): The section that deals with restrictions on the publication of promotional material by central Government, local government and so on mentions Scottish ministers, the SPCB and other public authorities. What is promotional material considered to be in that context?

Nicola Sturgeon: Promotional material would include, for example, a brochure sent out by the Government telling people that, if they voted a
certain way, it would make education, health or whatever better in Scotland. The definitions are in paragraph 25(1) of schedule 4, although it talks about things that are published rather than defining promotional material.

The meaning is clear. The Government could not do anything, as the Government, during that purdah period to try to influence the referendum result in any way. Those are rules that apply during elections; they are not new rules.

Patricia Ferguson: I am very well aware of that, and have also fought two elections under those rules as a Government minister. However, I would just say that the business of government goes on during the purdah period. There is a difference between the kind of thing that you cannot do under purdah as a minister and the kind of thing that you continue to do. I wonder whether the drafters used the word “promotional” in that context deliberately to make that differentiation.

Nicola Sturgeon: The wording is standard; it is not a different drafting for the purposes of the bill. Paragraph 25(1) of schedule 4 says that an item will be considered to be promotional material if it:

“(a) provides general information about the referendum,
(b) deals with any of the issues raised by the referendum question,
(c) puts any arguments for or against any outcome, or
(d) is designed to encourage voting at the referendum.”

You know as well as I do that those are normal rules. The distinction lies in the fact that, given the nature of the referendum and of the issue at the heart of the referendum, that definition would be restrictive of much of what Government would do in its day-to-day business.

Tavish Scott (Shetland Islands) (LD): Presumably you would accept that, although those might be normal rules—the adequacy of which we might have some doubts about—the basic principle is that the referendum is not just like a general election; it represents a cataclysmic event in the future of all our lives.

Nicola Sturgeon: Was that you asking me a question?

Tavish Scott: Yes.

Nicola Sturgeon: I think that it is the biggest opportunity that Scotland has had in 300 years, yes.

Tavish Scott: It is rather different from a normal general election.

Nicola Sturgeon: Of course it is different from a general election—

Tavish Scott: Thank you; that is all that I was asking.

Nigel Smith said in his written submission:

“Leaving the Bill as it stands means both governments will be regulated for the first three months of the referendum not by this Bill but ministerial codes and public outcry.”

Do you agree with that evidence?

Nicola Sturgeon: Could you expand a bit? I am not entirely sure what he was referring to.

Tavish Scott: I will read the quote again. Talking about the regulated period, Mr Smith says:

“Leaving the Bill as it stands means both governments will be regulated for the first three months of the referendum not by this Bill but ministerial codes and public outcry.”

Nicola Sturgeon: Governments are regulated during the purdah period.

Tavish Scott: I am terribly sorry—he is describing the full regulated period from May onwards, not the purdah period.

Nicola Sturgeon: The regulated period refers to designated campaigning organisations and permitted participants. It relates to the rules around donations and campaign expenses. It does not specifically regulate the Government. Governments are regulated under the section that we have just spoken about. That is what governs what is colloquially known as the purdah period.

Tavish Scott: I completely accept that. So, you agree that Nigel Smith’s evidence is right.

Nicola Sturgeon: I am sorry, Mr Scott. I am not quite sure that I follow what point you are making.

Tavish Scott: I am not making any points; I am simply reading out the evidence that has been provided to this committee by Nigel Smith. It says:

“Leaving the Bill as it stands means both governments will be regulated for the first three months of the referendum not by this Bill but ministerial codes and public outcry.”

By “both governments”, he means your Government and the UK Government.

Nicola Sturgeon: The restriction on Government is for the 28-day purdah period, which is in line with normal practice.

10:30

Tavish Scott: Okay. Mr Smith also says, in his written evidence to the committee, that

“Despite Ministerial codes of conduct, the government can easily plan its business, lean on public bodies and tax payer funded clients, and use the profile of office with its routine attendance of media to its own advantage in the first three months of any referendum it calls.”

Do you accept that evidence?
Nicola Sturgeon: I can speak only for the Scottish Government, and the Scottish Government would not behave in that way. I cannot speak for the UK Government, but I hope that it would not behave in that way either.

Tavish Scott: Can you clarify what is meant by “public authority” in paragraph 25(2)(c) of schedule 4? The bill refers to “any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).”

What kind of public body would be covered under that description?

Nicola Sturgeon: I can make available to the committee a list of the public bodies that would be covered. I will not read it out, as it stretches to more than two pages. The issue is that we could not cover public bodies that have wholly reserved functions, so the legislation talks about public bodies that have devolved or mixed functions. I will make available to the committee the list of Scottish public authorities that have mixed functions or no reserved functions. As the list covers at least two pages, I probably should not read it into the Official Report.

Tavish Scott: I fully accept that. Thank you. Can you clarify the role that agencies of Government and all the public agencies that the Scottish Government funds will have during the regulated period next year?

Nicola Sturgeon: If a Scottish public authority has mixed functions or no reserved functions, it will be subject to the same rules that are applied to the Government and the Scottish Parliamentary Corporate Body, which we have been talking about.

Tavish Scott: What will those rules be—not for the purdah period, but for the full regulated period?

Nicola Sturgeon: The restrictions on the publication of information or the promotional activity that we have been talking about will apply for the 28-day period—they will not apply in the 16-week regulated period. I stress that that is normal electoral practice.

Tavish Scott: I am grateful for that clear answer. So, there is no restriction on those bodies’ activities in the full regulated period.

Nicola Sturgeon: I am not sure what Tavish Scott is trying to say. I do not know whether he is suggesting that the Scottish Legal Aid Board, the Scottish Information Commissioner, the Scottish Police Services Authority or the Scottish Public Services Ombudsman is going to behave inappropriately during the regulated period so that we would require them to be covered differently from what is normal electoral practice. If that is what he is alleging, perhaps he should be explicit about it.

Tavish Scott: Perhaps you should stop putting words in my mouth. I just asked you a question—that is all that I was doing.

Nicola Sturgeon: I am answering the question.

Tavish Scott: You are not.

Nicola Sturgeon: The purdah period is 28 days. The regulated period applies to the campaign designated organisations—to permitted participants—and it covers things such as donations and expenses. As politicians, we are all well versed in what it covers. The 28-day regulated purdah period looks to put additional restrictions on the Government and public authorities, as is normal electoral practice.

Tavish Scott: So the Government’s view is that in the regulated period—not the purdah period; I accept the Deputy First Minister’s evidence on the purdah period—the normal operations of Government, which cover all the public agencies, will continue. At the moment, that is seen as what will happen during that period in every possible context.

Nicola Sturgeon: Yes, but public authorities behave appropriately at all times. As I said in response to Linda Fabiani, we should not have a purdah period that extends too long, because that would interfere over an extended period with the normal running of Government. However, that does not mean that, outside that 28-day period, public authorities do not have restrictions on how they behave. They are public authorities—at any time, there are restrictions on how they behave. At any time, on any day of the week and in any week of the year, I as a minister cannot use the resources of the civil service to do certain things that are party political. Public authorities do not operate in a political way, and they will not do so during the regulated period any more than they do now. I hope that nobody would question the integrity of the organisations that are on the list.

Tavish Scott: I presume, therefore, that you do not accept the suggestion made by Nigel Smith, who said in his written evidence:

“Both governments should issue White papers and statements then cease to take part in the referendum—as governments—exactly as was done in 1975 EEC referendum.”

I stress the word “Both” in that submission.

Nicola Sturgeon: I hesitate to comment on what happened in the 1975 European Economic Community referendum, since I was not even at primary school then, but I do not agree with that. Governments already operate within constraints. There are things that it is appropriate for
Governments to do and there are things that it is not appropriate for Governments to do at any time, and those rules should apply as normal. The idea that next month, or next January, the UK Government, let alone the Scottish Government, would not be able to participate in the referendum debate, within those due constraints, is taking it too far.

Tavish Scott: I accept your opinion, and it is perfectly fair that you should put that on the record. In the context of that answer, what are the rules and sanctions that might apply to a public body that overstepped the mark during the regulated period next summer? What are the rules that a citizen of Scotland might adopt?

Nicola Sturgeon: In terms of judicial review? I will not read out the whole list, but allow me to read out some of the organisations—

Tavish Scott: I just asked for the rules, not for the list.

Nicola Sturgeon: I will come on to your question, but it is important for those who might read the Official Report of this meeting to know the names of some of the organisations that we are talking about. They include the Additional Support Needs Tribunals for Scotland, the Judicial Appointments Board for Scotland, the Mental Health Tribunal for Scotland, the Mental Welfare Commission for Scotland, the Office of the Scottish Charity Regulator, and the Parole Board for Scotland. Those are the kind of organisations that we are talking about. I would be the first person to say that it is absolutely essential that the rules for the referendum are beyond reproach, but surely nobody is seriously suggesting that organisations such as those would be out there campaigning for either side in the referendum; frankly, that stretches credibility.

The main sanction for public authorities that breach the rules of behaviour would be judicial review. I am pretty sure that there would also be public outrage if organisations such as those on the list were to participate in any way on one side or other of the referendum campaign, just as there would be public outrage if such organisations were to become involved in an election campaign.

Tavish Scott: Thank you.

The Convener: Stewart Maxwell and Annabel Goldie have brief supplementaries.

Stewart Maxwell (West Scotland) (SNP): As we have been taken into the realms of fantasy, I shall carry on in that vein. Is it the case that the Scottish Government has negotiated with the UK Government that the same rules would apply not only for the regulated period but for the purdah period? You mentioned the purdah period and the Edinburgh agreement earlier. I presume that all public bodies that carry out reserved functions would be under exactly the same rules during the regulated period as would public bodies that carry out devolved functions.

Nicola Sturgeon: There are no specific restrictions that apply during the regulated period beyond the normal restrictions that apply to public bodies. On the purdah period, paragraph 29 of the Edinburgh agreement states:

"The Scottish Government will set out details of restricted behaviour for Scottish Ministers and devolved public bodies in the Referendum Bill to be introduced into the Scottish Parliament. These details will be based on the restrictions set out in PPERA. The UK Government has committed to act according to the same PPERA-based rules during the 28 day period."

Stewart Maxwell: In other words, during the regulated period, whether a public body is dealing with reserved, mixed or devolved issues, it would be exactly the same.

Nicola Sturgeon: Exactly the same.

Stewart Maxwell: Thank you.

Annabel Goldie: My question follows on from the line of interrogation that Tavish Scott was pursuing in relation to the public bodies, not just in the purdah period but during the referendum period itself.

I am aware that the referendum is different from a normal Scottish parliamentary or general election in that the field of choice is narrow; people will be asked to make one of two choices. I am more concerned about somebody who is involved with a public body being drawn in inadvertently to a comment or statement. To be fair, anybody who holds party-political views is usually pretty scrupulous about how they conduct themselves if they happen to be members of those public organisations, but does the Scottish Government propose simply to write a general letter of guidance to those public organisations—of which the Deputy First Minister obviously has an exceedingly long list—pointing out what would be inappropriate during that sensitive period?

Nicola Sturgeon: The Government will provide guidance on what public bodies should comply with during that period. Once the bill has been passed, we propose to prepare that guidance, which would happen during any purdah period. The committee will have the opportunity, if it so desires, to scrutinise and make suggestions about that guidance. I am happy to provide a draft of it to the committee at the appropriate time.

The Convener: It would be helpful for the committee to see a copy of the guidance when it is ready to be sent to the various bodies—obviously that will be some time down the road. That may make people feel a bit more assured about what is going on.
James Kelly (Rutherglen) (Lab): Deputy First Minister, you will be aware that we had some discussions in our evidence sessions about permitted participants. Concerns were raised that the role of permitted participant could be used to channel surplus funds from campaign organisations in order, in effect, to top up the limits. Are you confident that the provisions in the bill and the associated regulations are competent enough to close any loopholes with regard to people trying to abuse the permitted participant role?

Nicola Sturgeon: It is for the Electoral Commission to govern all the permitted participant arrangements. We accepted the Electoral Commission’s recommendations on the spending limit for permitted participants that are not one of the designated organisations. As you will appreciate, our original view was that the spending limit for permitted participants should have been much lower than it now is. That may or may not have reduced or obviated the concern that you are talking about. However, we took the view that it was right to follow the Electoral Commission’s recommendations.

As I said, it is for the Electoral Commission to govern the arrangements. Individuals and organisations have to go through a process in order to declare that they are permitted participants. The Electoral Commission has to publish a list of organisations and individuals that have the designation of permitted participant, so there is a degree of public scrutiny around that. I am satisfied that the legislation goes as far as legislation can go to ensure that that system is above board.

On the other side of that debate, we want people to participate in the referendum. The vast majority of people will participate without ever registering as a permitted participant. The Electoral Commission has to publish a list of organisations and individuals that have the designation of permitted participant, so there is a degree of public scrutiny around that. I am satisfied that the legislation goes as far as legislation can go to ensure that that system is above board.

James Kelly: We heard evidence from the Yes Scotland group to the effect that it has quite a loose arrangement—it would work with organisations such as women for independence and business for independence, but those organisations would not formally be part of the Yes Scotland group and they would come under the permitted participants umbrella. Do you have a concern that that could undermine the level playing field that you talked about earlier?

Nicola Sturgeon: Absolutely not. You describe that as “a loose arrangement”; I would describe it as an arrangement that is entirely in line with the legislative framework.

I saw the evidence from the yes campaign and from the no campaign. I apologise if I misquote—I do not have the evidence in front of me—but I think that the no campaign said that it would not have separate groups and that everybody would be part of the designated campaign. To be honest, I do not know whether that would ever actually be the case. If the UK Independence Party, for example, wanted to campaign in the referendum, would it be part of the no campaign’s official organisation or would it be separate?

The rules allow for permitted participants. Rules are set down for how that should work. If any group on either side wants to spend more than the required amount, it has to register as a permitted participant.

James Kelly: Are you considering any amendments in that area? One issue that was raised in evidence was that the trigger for a permitted participant is £10,000. Would you consider reducing that amount? Do you think that it is appropriate that there should be more guidance about the role of permitted participants?

10:45

Nicola Sturgeon: I am not considering amendments on that at the moment, and I will explain why. I should caveat that comment by saying that I will consider suggestions that this committee in particular makes for amendments, so if the committee were to suggest amendments in this area, I would of course give them due consideration. The bill's provisions around the issue are in line with the Electoral Commission’s recommendations. In terms of guidance around permitted participants, that would be for the Electoral Commission and not for the Government.

As I said, it is no secret that the Scottish Government originally wanted spending limits for permitted participants that were much lower than those in the bill. However, many people, including those in other parties, said that the Government must comply with Electoral Commission recommendations. That is what we have done and that is what is reflected in the bill. I am not planning amendments to that at this stage but, as I said, I will always consider suggestions.

James Kelly: Bearing in mind some of the controversy around this area, can you give some assurance that there is not a conflict of interest between your role as cabinet secretary taking the legislation through the Parliament and your role as a member of the Yes Scotland advisory board?
Nicola Sturgeon: Yes, I can give an absolute assurance around that.

The Convener: Patrick Harvie?

Patrick Harvie: I am sorry, convener; I just wanted to put something on the record. With regard to James Kelly’s previous question, the evidence that we heard from the yes Scotland campaign two weeks ago suggested that the other groups with which it works may or may not choose to register as permitted participants, but that it was not for Yes Scotland to make that determination and that it anticipated that some of those organisations may not spend money during the regulated period at the level that would require them to register.

The Convener: We will move on to another area. Rob Gibson is next.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): Thank you, convener, and good morning, Deputy First Minister.

How can we be sure that voters will get the information that they need to make an informed decision in the referendum? What influences should the Electoral Commission and the yes and no campaigns have?

Nicola Sturgeon: I think that there is a very clear distinction there. The Electoral Commission has a responsibility to provide information that will advise people how to register and how to vote, but it will not—nor should it—in any way, shape or form stray into providing information that puts the case for one side of the referendum debate or the other, or even for both sides. It is not the Electoral Commission’s role to get into the issues and the arguments behind the debate. That is very much for the two campaigns, and I am pretty sure that both will be working very hard to ensure that they provide the electorate with the information that people need to make their decision.

Rob Gibson: We have been informed by the Electoral Commission that it has a developed plan on which it will come back to us, but do you think that people should have in their hands at an early stage the information that the Electoral Commission is working up about the process?

Nicola Sturgeon: I think that the Electoral Commission said in evidence to the committee that it will have a public awareness campaign. It would be wrong of me to say too much about what I think the Electoral Commission could or could not, or should or should not, do given that it has an independent role in raising awareness. However, I fully expect it to take appropriate steps at as early a stage as is appropriate to raise awareness. Again, I do not speak for the Electoral Commission, but I am sure that it would be very happy to have further engagement with the committee as those plans progress.

Rob Gibson: We had evidence from Blair McDougall in response to the suggestion in a letter that in a previous referendum the yes case and the no case had been put side by side on neutral material from the Electoral Commission—or whatever its equivalent was in the past. However, the process now, of course, involves the use of freepost. Do you think that those approaches are mutually exclusive?

Nicola Sturgeon: I am not sure exactly what you meant by your question—or rather your quoting of Blair McDougall’s evidence about the Electoral Commission putting the yes and no campaigns side by side. It will not do that.

Rob Gibson: No, indeed. However, the yes and no campaigns could provide material that could be distributed along with the Electoral Commission’s own material. Might that be a possibility?

Nicola Sturgeon: The Electoral Commission would have to discuss that directly with the yes and no campaigns.

On your other point, the legislation provides for a free mailshot from both the campaigns either to every household or to every elector. It is obviously for the campaigns to decide, within the normal rules of propriety around election addresses, what they put in those publications.

Going back to your first point, I repeat that if the yes and no campaigns were of that particular view they would have to discuss the matter with the Electoral Commission.

Rob Gibson: Thank you.

The Convener: Patricia Ferguson will now ask about access issues.

Patricia Ferguson: My question is as much for Patrick Harvie as it is for Nicola Sturgeon. We had evidence from Blair McDougall in response to the suggestion in a letter that in a previous referendum the yes case and the no case had been put side by side on neutral material from the Electoral Commission—or whatever its equivalent was in the past. However, the process now, of course, involves the use of freepost. Do you think that those approaches are mutually exclusive?

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Going back to your first point, I repeat that if the yes and no campaigns were of that particular view they would have to discuss the matter with the Electoral Commission.

Rob Gibson: Thank you.

The Convener: Patricia Ferguson will now ask about access issues.

Patricia Ferguson: My question is as much for clarification as anything else. Some of the organisations with which we discussed the bill in round-table session highlighted issues with regard to partially sighted or blind people or people with literacy problems. We noted that the bill mentions “blindness or other physical disability, or ... inability to read".

Does the reference to "blindness or other physical disability"

cover people who might be partially sighted?

Nicola Sturgeon: It can do. Without referring to the appropriate section, I know that the bill already provides for a large version of the ballot paper to be made available in a way that assists people, or for people in certain circumstances to have assistance in voting. Given the comments that have been made, I am very open to any
suggestions that the committee or other organisations might wish to make for stage 2 amendments to clarify that it would be appropriate for special arrangements to be put in place to allow people with a disability of any description to vote.

Patricia Ferguson: The point is that as things stand in the bill the presiding officer has to require the voter to declare. I suspect that most presiding officers would just take someone’s word but there might be occasions when someone will ask to see a certificate indicating that a person is blind, and people who are partially sighted might not be able to provide that sort of proof. As you suggest, it might be interesting to pursue the matter at stage 2.

It has been suggested that an easy-read formulation could be put together without too much difficulty to allow those with literacy problems to take part in the referendum without having to declare, and I think that such an approach would be of benefit, if it could be managed. Do you have a view on that?

Nicola Sturgeon: I do not have a fixed view on that, because I have not considered it in detail. However, I am happy to do so.

On your first point, you are right to say that presiding officers have discretion in deciding whether someone needs special arrangements. I am more than happy to have a discussion at that level to get a better assessment of whether the existing arrangements, which are replicated in the bill, are sufficient, or whether the issue needs to be defined more. I am genuinely open-minded on the blind and partially sighted issue and on whether people with literacy issues or disabilities other than blindness need special arrangements. I undertake to discuss the matter at Government level. I also undertake to consider any suggestions that the committee might wish to make, based on its own discussions on the matter.

Patricia Ferguson: That is very helpful.

Annabelle Ewing (Mid Scotland and Fife) (SNP): Good morning, Deputy First Minister.

Having read through the correspondence that the committee has received from you and the UK Cabinet Office about 16 and 17-year-old children of soldiers who are on the register by virtue of the service declaration, I note that there is a lack of data in that respect, because the Ministry of Defence does not collect that information. I also note that there have been discussions and that, with regard to the actual numbers involved, your letter points out:

“The likely range is therefore zero to low hundreds of individuals, with the number likely to be towards the lower end of this range.”

Nonetheless, I ask you to undertake to pursue further discussions with the relevant bodies—in particular, the registration officers and officials—to examine the issue in more depth to determine what can be done, taking into account reality and practical constraints. It would be helpful if you could give the committee that undertaking today and undertake to report back, perhaps in early September, on those discussions.

Nicola Sturgeon: I am happy to give that undertaking. In fact, we have already started those discussions. As the note that I sent to the committee makes clear, although we cannot be definite because of the lack of data, we believe that the numbers will be low. On the other hand, I accept that there is an issue of principle, which is why we have undertaken to determine whether there is a legislative solution that we can implement through the bill. That would give us more time, rather than try to do it through the Scottish Independence Referendum (Franchise) Bill.

Annabelle Ewing: Thank you. That answers that question.

The Convener: That takes us to questions on turnout from Stewart Maxwell.

Stewart Maxwell: My question is, I hope, fairly straightforward, Deputy First Minister. We have had some evidence about the issues surrounding turnout and how individual areas will cope with a particularly enlarged turnout. Many people expect that turnout will be greater than it has been for normal elections in recent years.

Will you outline for us any planning that has already been undertaken to deal with a potential increase in turnout?

Nicola Sturgeon: At official level, we are already talking with the Electoral Management Board for Scotland and the chief accounting officer to ensure that, as each area of the country plans for the holding of the referendum, it ensures that it is sufficiently resourced to deal with turnouts that may be higher than in a normal election.

Normal practice is that counting officers and returning officers plan for a turnout in the region of 70 to 80 per cent. I do not know what the turnout in the referendum will be, but it is reasonable for us to hope that it will be even higher than that. A key part of the discussions and planning of those who are responsible for the conduct of the vote on the day will be to ensure that they are adequately resourced to deal with turnouts at the higher end of expectations.

Stewart Maxwell: Do the same discussions and planning apply to how the count will be undertaken?
Nicola Sturgeon: Yes. I know that you did not ask this, but I should say that, at the moment, the planning is based on an overnight count, not a next-day count.

Stewart Maxwell: I am glad to hear it.

Nicola Sturgeon: So am I.

The Convener: Patrick Harvie wants to raise an issue about section 31, which concerns restrictions to legal challenges.

Patrick Harvie: Annabel Goldie touched on this earlier when we talked about whether alleged breaches of purdah might be the basis for a legal challenge.

Why does the time limit that has been set for legal challenges apply only to challenges about the counting of the number of votes cast? Why was it decided that a time limit should apply to challenges on that ground but not to challenges on other grounds? Does a time limit exist elsewhere for other challenges?

Nicola Sturgeon: I will answer part of your question very briefly and then hand over to the lawyer on my left to give a bit more detail.

As I understand it, the provision mirrors those set for the alternative vote referendum; we have taken standard practice there. I will let Graham Fisher expand on that and perhaps add something at the end.

Graham Fisher: The Deputy First Minister has essentially given the answer to the question. The time limit is a detailed restriction in relation to the counting of the votes cast and only applies to challenges brought on that ground. It restricts the period to six weeks. Generally there is no fixed time limit for judicial review; the restriction in the bill adds one in the interests of certainty about that particular, and important, aspect of running the referendum.

Patrick Harvie: If a challenge was brought on the ground that the Electoral Commission had not fulfilled its functions, information was incorrect or the ballot paper was misleading—or on any other ground—would there be no time limit at all?

Graham Fisher: There is no general time limit on judicial review proceedings. Whether any such challenge would be likely to be successful, which would depend on the particular case, is another question. A challenge to the number of ballot papers counted or votes cast will be caught by the rule. Otherwise, it will just fall to the general position, which will depend on the merits of any such challenge. The committee has already heard some evidence about whether such a challenge would be likely to be successful.

Nicola Sturgeon: Again, without giving any commitments, I would be happy for us to consider whether any more definition around that would be appropriate. We would always want to strike a balance between restrictions in the bill and not fettering the normal right of access to judicial review. However, if the committee wants me to give the matter more consideration, I will happily do so. Given that we have replicated something in the bill that applied in a previous referendum, it is reasonable to consider whether the provision is as tightly drawn as it should be.

Patrick Harvie: Thank you.

Stuart McMillan: A couple of weeks ago, we had representatives in from the yes campaign and the no campaign. Both campaigns indicated that they will apply to become the designated organisation for their respective side and that they would like that to happen as soon as possible. That being the case, will you consider bringing forward a timetable for such applications?

Nicola Sturgeon: I hope that I am not saying anything controversial when I say that we pretty much know the designated organisations on both sides. I am sympathetic to their raising the issue of why they have to wait until the start of the regulated period to be formally designated as the lead organisations. I know that the Electoral Commission is quite open-minded on that, too. However, we need to discuss the practicalities, any unintended consequences and any relationship with other pieces of legislation. In principle, though, I am sympathetic. We might bring forward suggestions about that at a later stage in the bill process.

Stuart McMillan: Okay. That is helpful.

While the bill has been going through Parliament, some questions have been raised—certainly outside Parliament—about the costs of the referendum. Are you satisfied that the costs associated with the referendum will be what the Government has indicated, or do you anticipate that there will be an increase?

Nicola Sturgeon: We are satisfied that what we laid out in the financial memorandum encapsulates the costs of running the referendum. In the 2010 draft referendum bill, we estimated the costs at around £10 million. No breakdown of the costs was given at the time. The estimates in the financial memorandum take account of the Electoral Commission’s experience in overseeing the AV referendum, so we are able to be much more accurate about the commission’s likely costs.

One other important change, which flows from our commitment to follow PPERA as far as...
possible, relates to the mailshot. We originally envisaged that both campaigns would get a free mailshot to every household, but PPERRA makes it possible for them to have a free mailshot to every elector. We have included that in the bill, which has an implication for the cost estimate.

As you can see from the financial memorandum, the costs of running the referendum are still under £10 million—I think that it is about £8.6 million. The other £4.7 million, which takes it up to £13.3 million—if my arithmetic is correct—deals with the Electoral Commission’s costs and the free mailshots. I am confident in the figures that we have put forward. The Finance Committee has taken evidence and has said that it does not intend to give any further consideration to the financial memorandum.

Stuart McMillan: That is helpful. Thank you.

Patricia Ferguson: PPERRA gives the Electoral Commission responsibility for accrediting and drawing up a code of practice for individuals or organisations who may be observers to an election in the UK. However, the bill as it stands does not incorporate that code of practice. Does the Government intend to amend the bill to cover that? I think that there will be a great deal of interest internationally in the process of the referendum and it would be useful if the code of practice could be enshrined, in the normal way, in the legislation.

Nicola Sturgeon: It is certainly our intention that the Electoral Commission will have that function, for the reasons that you outline. As part of our discussions on that, we are discussing it with the Electoral Commission. I am happy to consider whether we need to amend the bill to make the position absolutely clear.

Patricia Ferguson: I think that you need to make it clear, so it would be good if you amended the bill.

Nicola Sturgeon: I get your point, but you will have to allow me to consider it. I might absolutely agree with you, but I want to take the time to consider it properly.

The Convener: We received written evidence from the Scottish Council for Voluntary Organisations about the need for a funded community-based information campaign. Have you seen that evidence?

Nicola Sturgeon: I have not seen that particular piece of evidence.

The Convener: You might want to consider it and come back to us.

Nicola Sturgeon: Yes.

Rob Gibson: The Electoral Commission recommends that “the UK and Scottish Governments should clarify what process will follow the referendum in sufficient detail to inform people what will happen if most voters vote ‘Yes’ and what will happen if most voters vote ‘No’.”

What discussions have you had with the UK Government about what will follow the vote?

Nicola Sturgeon: There is on-going discussion between my officials and counterparts in the UK Government about what a statement of that nature might look like. I thought that the Electoral Commission’s recommendation in that regard was sensible. Just as we were right to accept the commission’s recommendations on spending and the wording of the question, there is a duty on both Governments to accept this recommendation. That discussion has not yet concluded, but I am happy to report back to the committee when it has reached a conclusion.

The Convener: In correspondence from Better Together, there was a suggestion that “the two governments are in correspondence on the issue of providing the Commission with agreed wording on the basics of what happens after the referendum” and on promoting understanding of the question.

Nicola Sturgeon: That is the discussion that I have just referred to. I am sorry, but I do not know what the no campaign was referring to in its evidence to the committee. However, the discussion that I am talking about is the one that I have just spoken about in response to Rob Gibson.

The Convener: As there are no more questions, I thank the Deputy First Minister and her officials for attending and for giving us useful evidence for the purposes of our report.

Our next meeting is scheduled for Thursday 20 June, when the committee will review the evidence that has been taken on the Scottish Independence Referendum Bill. We have agreed that that will take place in private. I suggest that, as part of that process, we write to the Electoral Commission for its view on the issue that has been raised today, and by Better Together, about including short statements from the yes and no campaigns in an information leaflet. We might be able to get something back in time to inform our decision making.

I remind members that they may now lodge stage 3 amendments for the Scottish Independence Referendum (Franchise) Bill and that the Parliament has agreed that stage 3 will be held on Thursday 27 June, so the deadline for lodging amendments is 4.30 pm on Friday 21 June.

Linda Fabiani: When will we have the comparative information relating to Westminster and Holyrood rules?
The Convener: That will be circulated before the next meeting.

Linda Fabiani: Good.

The Convener: I now formally close the meeting.

*Meeting closed at 11:08.*
Present:
Gavin Brown         Malcolm Chisholm
Kenneth Gibson (Convener)     Jamie Hepburn
John Mason (Deputy Convener)     Michael McMahon
Jean Urquhart

**Scottish Independence Referendum Bill**: The Committee took evidence on the Financial Memorandum from—

Stephen Sadler, Head of Elections Team, and Louise Unwin, Senior Policy Officer, Scottish Government.

**Scottish Independence Referendum Bill (in private)**: The Committee considered the evidence from the Bill team and agreed to write to the lead committee.
Scottish Independence
Referendum Bill: Financial
Memorandum

09:30

The Convener: Under item 2, we will take evidence from the Scottish Government bill team as part of our scrutiny of the Scottish Independence Referendum Bill's financial memorandum. I welcome to the meeting Steve Sadler and Louise Unwin. Good morning to you. I invite one of you to make a short opening statement.

Stephen Sadler (Scottish Government): The financial memorandum accompanying the Scottish Independence Referendum Bill sets out estimates of the administrative, oversight and other costs arising from the bill's provisions. The costs are separated into four broad categories: the costs of running the referendum; the costs of funding the Electoral Commission to oversee and regulate the referendum campaigns and report on the conduct of the referendum; the publicity costs incurred by the commission in fulfilling its duty to provide information to voters about the referendum; and the costs of allowing the two campaign organisations a free mailshot to every voter or household in Scotland.

The conduct of the poll and the announcement of the result will reflect the arrangements for local and parliamentary elections in Scotland, and they will be consistent with Scotland's electoral management structure. The poll and the count will be managed in the same way as those elections by local returning officers who are designated as counting officers for the referendum, directed by a chief counting officer who will be the convener of the Electoral Management Board for Scotland.

The Electoral Commission will be responsible for a range of regulatory and information tasks consistent with those that it would carry out under a Political Parties, Elections and Referendums Act 2000-based referendum. In its role of regulating the campaign and campaign spending, the commission will report to the Scottish Parliament.

The Edinburgh agreement, which was signed in October last year, allows "the designated campaign organisations to send out one mail-shot free of charge to every elector or household and for the Royal Mail to recover the cost of postage from the ... Scottish Consolidated Fund".

The estimated costs of the provisions in the bill, in line with those arrangements, have been compiled with the assistance of stakeholders, in particular the Electoral Management Board, the Electoral Commission and the Royal Mail. I am grateful to
them for their help. The financial memorandum explains the details behind the totals for running, regulating and reporting on the referendum and providing mailshots to campaign organisations.

We are happy to answer any questions.

**The Convener:** Thank you. As is normally the case, I will start with a few questions; other committee members will then come in.

With regard to the chief counting officer, I notice that the financial memorandum says:

“It is not possible to give precise cost figures at this stage due to the fact that it is not yet known how the CCO will decide to deliver this work, but for the purposes of estimating the cost of the referendum, the CCO’s costs have been estimated to be in the region of around £300,000.”

Can you give us more detail on how that figure was arrived at?

**Stephen Sadler:** The bill provides that the chief counting officer will be the convener of the Electoral Management Board; that is Mary Pitcaithly, who is the chief executive of Falkirk Council. We spoke to Mary and to the secretary of the Electoral Management Board and showed them the draft provisions of the bill as outlined in the consultation document before the bill and the accompanying financial documents were published. We asked them to set out how they felt the role of chief counting officer would be funded, based on those indicative proposals. We received documents from the secretary of the Electoral Management Board, which set out various proposals. The estimate was based on information received from the board.

**The Convener:** The Electoral Management Board’s submission states:

“The Financial Memorandum recognises the need for additional detailed consultation around the terms of the Fees and Charges Order. This is vital.”

What is happening in that regard?

**Stephen Sadler:** The next meeting of the Electoral Management Board is this Friday afternoon. I go along to that as an adviser to the board. The fees and charges order is an agenda item for that meeting. We intend to set out a timetable to develop the proposals for the fees and charges order.

The bill gives Scottish ministers the order-making power, but I have told the Electoral Management Board and other electoral administrators that we will work with them over the summer to develop the contents of the order, based on comparable figures for Scottish Parliament elections. Electoral administrators will identify a range of costs as being necessary for the Government to fund, and we will work to put those in a draft order.

**The Convener:** On the comparison of the costs of the referendum with other elections and referenda, the financial memorandum states:

“The closest comparator to help determine the likely cost of running the referendum is the PVS referendum.”

However, the parliamentary voting system referendum was held on the same day as the Scottish Parliament elections. Is that really a good comparison?

**Stephen Sadler:** The Electoral Commission’s detailed report on the costs associated with that referendum gave us some valuable background information, but, as you say, it was held on the same day as another event. In that report, the Electoral Commission also carried out a calculation, based on the costs that were identified as actually having been incurred in the referendum, to estimate the costs of a stand-alone referendum in Scotland, and that is the figure that we have used in our financial memorandum. We used some of the detail from the alternative vote referendum report, but we also used the Electoral Commission’s extrapolation to say what a stand-alone referendum in Scotland would cost. That is the figure on which we based a lot of our work in the memorandum.

**The Convener:** Last year, the police and crime commissioner elections were held in England and Wales. They were not particularly high profile, the turnout was a fairly dismal 15.1 per cent, and the cost was somewhere in the region of £75 million, or about £14 for every vote cast. Have any lessons been learned from what happened south of the border last year, as well as from the referendum here in Scotland in 2011?

**Stephen Sadler:** We have had some discussions with the Electoral Commission, which advised on the running of those elections, largely about public awareness and publicity. The Electoral Commission would be the first to admit that a referendum on independence is likely to have a substantially higher public profile than the elections for police commissioners, so that is one thing to bear in mind. Working with the commission, we will look to pick up ideas about public awareness, so as to encourage, as best we can, a high turnout.

**The Convener:** Aberdeen City Council’s submission is a good one. It states:

“It cannot be guaranteed that all members of a household who are eligible to vote will see a household circulation, particularly if one member has strong views and chooses to suppress opposing material”,

and that

“provision should be made for an individually addressed communication to be sent to each voter.”
Do you feel that that should be the case? There are significant cost differentials of about £1.3 million.

Stephen Sadler: There are significant cost differentials. What we have said in the financial memorandum, and what the legislation will provide, is that it will be for the designated organisations to choose which of the two methods of sending out material they prefer, whether they go for household or individually addressed communications. Aberdeen City Council’s submission points out what others have also told us—that it may well be cheaper, but that there is a risk of one communication not being passed around the household. The memorandum and the bill provide a choice, which is why there is a range of costs.

The Convener: Would the Scottish Government fully support whichever choice is made?

Stephen Sadler: Indeed, yes.

The Convener: I would be surprised if that were not the case.

Aberdeen City Council’s submission also states:

“Timing is critical: a genuine nationwide sweep would presumably have to be conducted sufficiently early in the day to allow delivery to the other end of the country.”—

it is talking about a sweep of postal votes—

“yet this would effectively only pick up those votes which would be delivered by normal post on polling day and do nothing in respect of those posted later that day or on polling day.”

That emerges as a recurrent theme in many submissions.

What is your view on that? I know that there is an issue about holding the sweep early, but in doing that—if it is held the day before—we do not catch everything. Would it not be better to have it on the polling day, as has been suggested, or later on the day before?

Stephen Sadler: Yes, it would: you are right. In the past couple of days, we have looked at the wording in the financial memorandum. In one paragraph we say that it is the day before and then also on the day of the poll, so I apologise for that. The intention is that the sweep will take place on the morning of polling; that is what has happened in previous elections. The details of that would be for the chief counting officer, once they are in post.

The Convener: Thank you.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I will pick up on the convener’s line of questioning and ask about the options for individual campaigns. The choice of whether electoral communications are addressed individually or per household is no different from current practice in any other election. Is that the case?

Stephen Sadler: That is right; that picks up on one of the main points in the bill. In running and regulating the referendum, we have tried to stay as close as possible to normal election practice.

Jamie Hepburn: That is helpful. Can you give me a general sense of what the reaction of stakeholders and other interested parties has been to the estimates that are set out in the memorandum?

Stephen Sadler: On the whole, the reaction has been supportive. For example, the Electoral Management Board recognised that we have taken on the rough quantum of its estimates. The reaction has been that the memorandum provides a reasonable estimate of the likely cost this far out, given that we have over a year to go before we get to the referendum, and that continuing discussions with us about the detail would be welcomed. We are pleased that most people have welcomed the fact that we held constructive and early discussions and have taken on board their comments.

Jamie Hepburn: You referred to the likelihood that the referendum turnout will be significantly higher than that for the police commissioner elections. I agree with that perspective. Indeed, West Dunbartonshire Council suggested that it expects the turnout to be higher than for any election that is normally held in Scotland, which could introduce requirements for additional polling stations and staff. Has that possibility been factored into your thinking?

Stephen Sadler: In our discussions with the Electoral Management Board and with bodies such as the Society of Local Authority Lawyers and Administrators in Scotland, people have been very helpful in going through the detail of the referendum proposals and the costs in the memorandum. We have spoken to them about the practicalities that are involved. When Gordon Blair gave evidence to the Scottish Independence Referendum Bill Committee earlier this month, he said that returning officers tend to plan for a normal election on the basis of a 70 to 80 per cent turnout, so we have used those figures to produce estimates of costs.

Jamie Hepburn: The thinking is that, in terms of turnout, it will not be that different from planning for a normal election.

Stephen Sadler: I suspect that electoral administrators would say that the working assumption is that the figures will be at the higher end of that scale. That seems to be what academic commentators estimate for the referendum turnout.
Jamie Hepburn: What will happen if a need is identified for additional polling stations, for example? When we are out campaigning, we find that people get used to their polling stations. If people might have to use different polling stations because additional ones have been provided, will that be factored in? Will we ensure that people are aware of the change?

Stephen Sadler: Yes, that would be factored in. The location of polling stations and the allocation of voters to particular polling stations will be for local counting officers to decide. When we discuss the fees and charges order with returning officers and their representatives, we will ensure that the order gives sufficient flexibility to give effect to their operational judgment, if you like, nearer the time of the referendum on the amount of resource that they might need, whether that is for polling station ballot boxes or whatever.

Jamie Hepburn: Is it not so that, although the number of polling stations might increase, the number of polling places is unlikely to change?

Stephen Sadler: Yes, that is so.

Gavin Brown (Lothian) (Con): The Royal Mail’s written submission to the committee states that it will provide its best estimate based on what it knows. However, it also states:

“We were not asked to provide potential costs for:

- Delivery of Poll cards
- Ballot pack mailing”.

Have those costs been factored in elsewhere or will they have to be added to the financial memorandum? If so, is there any idea of what they might be?

09:45

Stephen Sadler: Those costs have been factored into the costs of local counting officers, because counting officers—or returning officers for elections—are responsible for that task. The costs will be in with the returning officers’ costs.

Gavin Brown: The convener asked about the assumption of costs from the United Kingdom 2011 referendum. The Electoral Management Board stated in its submission:

“There has been some concern expressed that such an extrapolation is not appropriate. While it may give a general overall cost it may underestimate in some classes of cost and in some areas and the only appropriate model would be one in which costs are built up from first principles.”

Is it your view that any underestimates will be at the margins and that the overall cost will be broadly similar, or is there a risk of possible big underestimates?

Stephen Sadler: It is our view that the estimates in the financial memorandum will be of a rough order of the final costs; we are not expecting huge swathes either up or down from the estimates. We used the detail of the 2011 referendum costs, but we also used the Electoral Commission’s calculation about what a stand-alone referendum would involve.

The Electoral Management Board said that some concern had been raised about the issue and you have seen evidence from a couple of councils, but I think that the general view of the board, which represents all 32 returning officers, is that we have provided a good estimate.

Gavin Brown: Thank you.

John Mason (Glasgow Shettleston) (SNP): It is interesting that the Electoral Commission took a different angle from the council responses. The Electoral Commission stressed that it expected to be reimbursed only for its marginal expenditure, which would

“include the costs of temporary ... staff”,

but that it did

“not intend to seek reimbursement in respect of those existing staff who are working on the referendum”,

whereas the councils seem to want every penny that is in any way related to running the referendum, even though some of that involves existing staff salaries. Which is right—or are the Electoral Commission and the councils both right?

Stephen Sadler: I work with them both, so I will say that they are both right.

The Electoral Commission has taken the view that it has resource in its Scotland office, which normally provides advice to the Government and others on the running of elections and will continue to do so on the referendum. It has said to me that it will not look to apportion any part of the salaries of existing staff or office costs to the referendum. The commission says that it will need to be reimbursed for the money that it spends on the public awareness campaign and for the specific guidance that is produced for counting officers or whoever. Those are what it calls marginal costs, over and above normal costs.

Our discussions with the returning officers or counting officers will identify the specific actions that they need to take to prepare for and run the referendum. We will put those in the fees and charges order and then expect them to show how much they have spent against those particular headings as and when it comes to reimbursing them.

John Mason: Am I right in saying that in some cases there are some quite well-paid officers who
get paid extra for running any election or referendum?

**Stephen Sadler:** Returning officers receive a fee in recognition of the personal contribution that they make and the personal responsibility that they take for running the referendum.

**John Mason:** That contrasts with the Electoral Management Board, which, as I understand it, has no resources of its own, so whatever its costs are they absolutely have to be covered. Is there therefore more of a risk that if it overspends or anything, the Government would have to carry the can?

**Stephen Sadler:** Sorry, do you mean the costs for the management board itself?

**John Mason:** Yes.

**Stephen Sadler:** The board was set up a couple of years ago, largely as a co-ordinating body. It brings together representatives of returning officers. The Scottish Government provides some relatively minor funding for the running of the board as a co-ordination role—that is where we are at the moment.

Obviously, we realise that the board will need resources in order to carry out its role of supporting the chief counting officer for the referendum. For example, it will need to take on a project manager and a communications officer or whatever, and those posts are factored into the chief counting officer costs. We have had discussions with Mary Pitcaithly, and I hope that she is comfortable with our assurances that we will come to an agreement about what she and the board need to do and that we will provide the funding for that.

**John Mason:** I think that we accept that there will be extra people voting, although, if I understand the situation correctly, the fact that 16 and 17-year-olds are voting will make little difference. Am I correct in thinking that voter turnout will be the more important issue?

**Stephen Sadler:** Yes. The estimate is that between 100,000 and 120,000 younger voters will go on the register. That is a couple of per cent of the overall total.

**John Mason:** Earlier, the idea of having extra polling stations was raised. Sadly, in Glasgow, we have lots of polling stations that are quiet all day, and the poor polling officers just sit there pulling their hair out. Presumably, in that situation, there will be no extra costs, as the turnout could double or treble and the polling stations would still not be busy. Will there be some supervision to determine whether there will be extra costs for every council or whether some of them could operate within the normal costs?

**Stephen Sadler:** Yes. The fees and charges order will produce a menu of costs that returning officers can claim, based on the number of polling places and the amount of printing that they need to do. Once we have agreed the order, we will have to have discussions through the Electoral Management Board with individual returning officers. One of the things that we will consider is experience of turnout in various areas. If, as you say, a set of polling places has had a low turnout historically, we will say that people could manage a significantly higher turnout within their present resources.

**John Mason:** Royal Mail commented that some of its costs were not predictable. I found that a little hard to understand, because the electoral addresses that it delivers are pretty much always the same size and weight. Do you know why it said that the costs were not predictable?

**Stephen Sadler:** In its evidence, Royal Mail said that it would have preferred to provide us with a specific quotation based on definite specifications. The discussions that Louise Unwin, in particular, has had with Royal Mail have centred on the proposals in the bill and what is likely to happen. We have said that we will have more concrete discussions with Royal Mail as the bill goes through Parliament—possibly as soon as the bill is approved at stage 1.

In a traditional financial memorandum, we provide the best possible estimates of the costs around an event. That approach is different from the one that we are taking with Royal Mail, in which we are saying that, if we were to have a contract, we would have certain specifications and that we would arrive at a cost through discussions. When Royal Mail says that it would like some of the costs to be more certain, it is that difference in approach that is at issue rather than anything else.

**John Mason:** Can you explain more about the sweep that Royal Mail carries out? Does that happen because it has dropped pieces of mail behind a cabinet or something and it has to go and look for them? What is it doing that it does not normally do?

**Stephen Sadler:** Polling day will be on a Thursday. Any post that comes in after the post has left that day would normally be delivered on the Friday. However, it is no use delivering postal votes to the returning officer on the Friday. Therefore, as I understand it, sorting offices will carry out a sweep after the final pick-up on Thursday to see what else has come in. I do not think that huge numbers will be involved but, obviously, it is important to get as many votes as possible delivered and counted.

**John Mason:** I am not an expert on the postal service but it seems to me that, if there are
hundreds of thousands of pieces of mail sitting there, it will be hard to pull out the one or two postal votes that might be in the pile.

The Convener: They could use nice coloured envelopes.

Stephen Sadler: I am sure that it will be hard, but I am told that it happens on every election day. Returning officers will talk to their local post offices about doing that on the day of the referendum.

John Mason: Would that include somewhere like Carlisle, where Scottish people might post mail?

Stephen Sadler: To be honest, I am not sure. I assume that it will mostly be in Scottish postal sorting offices, but we would need to find out about that. We can let you know, but I am afraid that I do not know the exact detail.

Jean Urquhart (Highlands and Islands) (Ind): I presume that the cost of printing the ballot papers is wrapped up in the cost of polling station stationery. Is that right?

Stephen Sadler: Yes.

Jean Urquhart: Has consideration been given to printing the ballot paper in Scots and Gaelic as well as English?

Stephen Sadler: The bill provides for the ballot paper to be produced only in English.

Jean Urquhart: Would there not be little extra cost from printing it in two other languages?

Stephen Sadler: The cost might not be significant, but we have had comments from returning officers and the Electoral Commission about other complications that could result. Returning officers and the Electoral Commission will produce explanatory material in Gaelic and other languages for polling stations and polling places, and in advance of the poll.

Jean Urquhart: Do you know what those complications were?

Stephen Sadler: I do not know that offhand.

Jean Urquhart: What were the disadvantages?

Stephen Sadler: The Electoral Commission said that it had tested the ballot paper only in English, so that was one complication. Returning officers said that such a measure would add complications to the counting process. I am afraid that I do not have the material that they gave me on that, but the decision was made partly on the basis of advice from returning officers and others.

The Convener: That appears to have completed the questions from the committee. Apologies—I see that Malcolm Chisholm has a question.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Most of the issues have been covered, but I was particularly struck by the issues to which other members have referred about the financial memorandum’s statement that the closest comparator is the parliamentary voting system referendum. Gavin Brown quoted what I think is a strong critique of that from the Electoral Management Board. To what extent has that comparator been influential? I would have concerns if it was, because that approach seems to have been widely criticised by many local authorities. In fact, it seems to be the most common source of criticism in the responses.

Stephen Sadler: I am not sure that it was widely criticised; it was criticised by a number of people who responded to the committee, although I am not sure how many. The Electoral Management Board, which helped us to compile our estimates in the memorandum, represents all 32 returning officers. Broadly, the board told us that the detail of the PVS information from the Electoral Commission provides useful headings, but we took another step by looking at the Electoral Commission’s prediction of a stand-alone cost. That is the basis of our figures; they are not necessarily based on the joint holding of a referendum on the date of an election.

I emphasise that, as the Electoral Management Board has picked up, we are using that as a decent estimate of the cost now. We are committed to holding discussions on the detail of the fees and charges order to develop specific costs, with local variations if necessary, which some of the people who have responded to the committee have pointed out might be the case. The board has accepted that approach and is happy with the discussions that we have vowed to have.

Malcolm Chisholm: One similarity with the parliamentary voting system referendum is that orders can be placed far in advance, because we do not need to wait for nominations. However, as Aberdeen City Council said, that is all well and good, but the ballot papers will have to be warehoused in secure conditions for weeks or months. The council wonders whether the costs of that have been factored in.

Stephen Sadler: We did not factor in the costs of warehousing ballot papers. We worked on the basis of existing practice. I understand that the Electoral Management Board will consider whether, under the auspices of the chief counting officer, it could order ballot papers centrally and well in advance. The board will consider that, picking up on the view of individual counting officers, and I imagine that it will discuss with us the funds that we provide for that.
The Convener: Aberdeen City Council said that printing ballot papers in advance would
“necessitate the papers being warehoused in secure conditions for a period of weeks or months.”

I take it that, if that were to happen, the ballot papers would be stored centrally and issued to local authorities much closer to the polling date.

Stephen Sadler: I would have thought so. In last year’s local government elections, some of the various electoral documents that were produced were produced in advance, but they were stored centrally and issued more locally shortly before the election.

It is difficult to envisage how this might happen, but I suspect that if a central contract were let for supplying the ballot papers a long time in advance, part of that might well involve the secure storage of the papers until returning officers were ready to take receipt of them.

The Convener: What kind of savings would we be talking about? Would they be of a significant margin?

Stephen Sadler: I doubt that they would be hugely significant. In addition, I have picked up a feeling among returning officers that they are happier using their local printers because they have developed a relationship with them and they know that they can trust them. Not surprisingly, they would be anxious about getting things on time—after all, it is no good getting ballot papers the day after polling day. Many returning officers to whom I have spoken have said that there might be the potential for savings, but they would have to weigh that against their relationship with, and their trust and confidence in, local providers.

The Convener: In its submission, Comhairle nan Eilean Siar said:

“The Outer Hebrides would require specific financial support with the organisation of the Election Count if, for example, there were to be an insistence on the Count being held overnight, which would require use of a helicopter to carry ballot boxes from Uist and Barra to Lewis, the only alternative being two separate Count centres.”

My constituency would be similarly affected, as would others such as Argyll and Bute; those of Shetland Islands and Orkney Islands also come to mind. Has a decision been made on that issue as yet?

Stephen Sadler: Do you mean the issue of overnight counting?

The Convener: Yes.

Stephen Sadler: My understanding is that the intention is to count overnight. That will be a matter for the chief counting officer, once she is in post, but the discussions that we have had with returning officers suggest that, at this early stage, they are planning for an overnight count. To strengthen that, I have had discussions with Mary Pitcaithly about what central support or otherwise might be needed for certain constituencies or areas to ensure that they could cope with that. Depending on local circumstances, helicopters or multiple count centres might be needed. The Electoral Management Board is looking at that, and I expect to have discussions with it over the next few months.

The Convener: Okay. Are there any estimates of how much it might cost to service rural areas?

Stephen Sadler: As part of that process, the board will ask the 32 returning officers for an assessment of whether they would feel comfortable counting overnight and whether, if they were to count overnight, that would require any additional expense over and above what they would spend for a normal election. As I understand it, the board is going through that evidence-gathering process. We will need to have discussions with it about that.

The Convener: When will that be concluded?

Stephen Sadler: I imagine that it will be raised at this Friday’s meeting, but it will not be concluded then. The board in general and the chief counting officer designate are looking to have a project manager in place for the electoral administration side of things at some time over the summer, and I imagine that one of that person’s first tasks will be to look at arrangements for overnight counting.

The Convener: The proposal is to increase postal voting checks to 100 per cent. Is that correct?

Stephen Sadler: Yes.

The Convener: South Lanarkshire Council said that

“the likely introduction of 100% check of Personal Identifiers will ... increase costs”.

What level of additional costs are we talking about across Scotland?

Stephen Sadler: Until now, the legislation has provided for checks of less than 100 per cent, but registration officers have carried out 100 per cent checks whenever that has been possible. The Electoral Commission recommends that they should be doing that, so most registration officers do that already.

The Convener: Do we know what the average is? If we know what the average is now, that will make it possible to look at the level of additional costs that might have to be met.
Stephen Sadler: I do not have those figures with me, but it is my understanding that one of the Electoral Commission’s performance indicators for returning officers is that they should aim for 100 per cent.

The Convener: Okay. Thank you very much.

That appears to be all the questions that the committee has for our witnesses. I thank you both very much for your attendance and your responses to our questions.

10:05

Meeting suspended.
Scottish Independence Referendum Bill – declaration of result

I am writing in pursuance of an issue that arose during the evidence session at this morning’s Committee meeting. The issue concerns provision in the Bill (schedule 3, rule 35) for the declaration of the local results by counting officers, and of the national result by the Chief Counting Officer.

As you will know, the draft Bill published in Your Scotland, Your Referendum (rule 34 in the equivalent schedule) included express provision requiring the national declaration to be made first. The introduced Bill omits that provision, and the Policy Memorandum (para 53) seems to envisage local results being declared first, followed by the national results.

It would be useful if you could explain the Scottish Government’s current policy on this matter – specifically, whether you expect to see local results declared before the national result, or vice versa; or whether this will be left to the discretion of the Chief Counting Officer.

16 May 2013
Scottish Independence Referendum Bill – declaration of result

Thank you for your letter of 16 May 2013 regarding the declaration of referendum results.

The draft Bill included in *Your Scotland, Your Referendum*, proposed that the Chief Counting Officer (CCO) would make a national declaration of the referendum result once all local results had been certified. Local results would only be announced after the national result had been declared. The reason for this approach was to avoid a situation where the national result could be determined before all local results were certified.

However, during the consultation, the Electoral Commission and the Electoral Management Board for Scotland suggested that it may be impractical to try to prevent local totals being disclosed before the national result is announced. Campaigners and others attending the count could have to wait several hours for their local results even if those results had been certified earlier, as other areas may take longer to complete the count (particularly in more remote areas of Scotland where ballot boxes have to be transported to the local count centre from further afield), thus delaying the national declaration.

In addition, they pointed out that counting staff and counting agents will know the local totals, there would be a high chance or this being made public informally, especially given the level of media and public attention there will be on the referendum.

For these reasons, and to ensure greater transparency in the count process, the Scottish Independence Referendum Bill as introduced requires counting officers to declare local results as soon as the CCO has authorised them to do so. When the CCO is in receipt of all certified local results, the CCO will make the formal national declaration. To allow flexibility, the Bill does not require that all local totals must have been declared before the national result is announced. This approach is similar to that taken in the referendum on the Parliamentary Voting System in 2011.

I hope this clarifies our position on the declaration of the referendum results.

20 May 2013
Scottish Independence Referendum Bill – schedule 3, rule 10

I am writing, further to your very helpful oral evidence at the Committee’s meeting on 16 May, to follow up on a point made to the Committee in written evidence.

The point was made in the submission by the Law Society of Scotland, which is available on the Committee’s web-pages. In it, the Society queries the provision in rule 10 of schedule 3, which bars counting officers from appointing as a presiding officer or a clerk anyone “who is or has been involved in campaigning for a particular outcome in the referendum”. The Society questions why this is different from the equivalent rule in the Parliamentary Voting System and Constituencies Act 2011, which refers to a person’s employment by or on behalf of a permitted participant, suggesting the 2011 Act was clearer and capable of more certain interpretation.

It would be useful to have your views on this issue. In particular, I would be interested to know what sorts of activity you consider would (and would not) count as “campaigning” and how recently a person would have to have undertaken such activities for them to constitute campaigning for a particular outcome in the referendum to be held in 2014.

It would be helpful if you could provide a response to this letter, if possible, by Wednesday 5 June so that your response could inform the Committee’s evidence-session with the Deputy First Minister on 13 June.

Bruce Crawford
Convener
28 May 2013
Scottish Independence Referendum Bill – schedule 3, rule 10

I write with reference to your letter of 28 May concerning the above. Your letter raises the difference between the wording of the Referendum Bill with respect to not employing Polling Staff who have been involved in the campaign for a particular outcome and that of the Parliamentary Voting System and Constituencies Act 2011 regarding the same matter. You asked for my views on this issue and also specifically on the sort of activities that I might consider as campaigning.

The Electoral Management Board for Scotland (EMB) had a regular meeting on Friday 31 May and I was able to raise this issue there for discussion. The points I make in this letter are informed by the views of the Returning Officers, Electoral Registration Officers and expert advisers represented on the EMB. For clarity, it is worth reiterating the two rules:

Referendum Bill – The counting officer may not appoint any person who is or has been involved in campaigning for a particular outcome in the referendum.

PVSC Act 2011 – the officer may not employ a person who has been employed by or on behalf of a permitted participant in or about the referendum.

The intention behind both of these rules is clearly the same, that is to preserve the integrity and, importantly, the appearance of the integrity of polling at the referendum by preventing individuals who are obviously identified with a particular campaign from officiating at a polling station. The integrity of the poll is paramount and those officers who preside over the polling stations must be and be seen to be objective and independent.

The wording in the PVSC Act mirrors that of the usual electoral legislation. For example the Scottish Local Government Elections Order 2011 states in this regard that the Returning Officer:

“… shall not appoint any person who has been employed by or on behalf of a candidate in or about the election.”

While the restriction there is again focussed on those who have been employed by a candidate, in practice Returning Officers usually seek to ensure that polling staff more generally have not been identified with a particular campaign. When appointing Polling Staff at elections, in accepting the appointment the staff are usually required to sign a form which confirms that they are “not identified in any way with any candidates at this election and have taken no part in the advocacy of such candidates and the parties for which they may be standing” or words to such effect. This recognises that while an individual might not have been directly employed they might still have been identified with a candidate and as such the impression might be given that the integrity of the poll was at question.
The wording of the Referendum Bill can be seen to take a similar broad approach excluding those in *campaigning* for a particular outcome in the referendum. In appointing Polling Staff for the Referendum I would anticipate that Counting Officers will require staff again to sign a letter of acceptance of the post with a similar assertion that they have not been involved in campaigning for a particular outcome. This “self-certification” places the responsibility on the individual to be satisfied that they can honestly make such an assertion. They would themselves need to be content that they can accept an appointment on this basis. Decisions around the sorts of activity which may count as campaigning are then to be taken by the individual using their common sense. As I have noted however, this is no different from the situation in an election where the approach is similarly broad.

As to the specifics around the wording of the rule in the Referendum Bill and the intention behind it I would have to direct you to the lawyers in the Scottish Government who drafted it. The EMB represents those who will have to implement the rules and I do not see a major concern with the implementation of this rule. I would anticipate that staff would again need to affirm that they have not been involved in active campaigning, the definition of which would be left to the individual, and if it is found that they have been then their employment at the poll would be forfeit. Ultimately it is a matter of trust and common sense.

Mary Pitcaithly  
Convener, Electoral Management Board for Scotland  
10 June 2013
Thank you again for attending the Committee’s meeting this morning to give evidence on the above Bill. At the end of the evidence-session, I indicated that there were a few specific questions that we had not had time to ask. The purpose of this letter is therefore to seek your response in writing to the questions set out overleaf.

It would be helpful if you could provide a response to this letter, if possible, by Wednesday 5 June so that your response could inform the Committee’s evidence-session with the Deputy First Minister on 13 June. If this is not practicable, I would be grateful if you could contact the Clerk at the address above to discuss timescales in more detail.

Bruce Crawford
Convener
30 May 2013
1. Do you agree with No to AV that the proposed deadline for appointing referendum agents (s.16 of the Bill) is too early?

(Source: Paragraphs 3.1-3.5 of the written submission by No to AV (Matthew Elliott and William Norton), posted on the Committee’s web-page:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/62794.aspx)

2. Would you prefer to see the offences and rules which will be covered by the civil penalties regime set out in the Bill (as suggested by No to AV), rather than in a later statutory instrument?

(Source: Paragraphs 11.1-11.5 of the written submission by No to AV – see link above)

3. What is your view on the lack of grants to designated organisations?

(Oral evidence from William Norton, Willie Sullivan and Professor Wyn Jones on 9 May is relevant to this question – see Official Report:


4. What is your view on whether the Electoral Commission should have a statutory role (as currently provided by s.21 of the Bill) in promoting understanding of the question? Will it be able to find a way of doing so that both sides can accept as impartial and fair?

(The oral evidence on 9 May also includes discussion of this issue – see link above.)
Thank you for the opportunity to give evidence to your committee on 30 May 2013.

The Yes Scotland response to the further questions your committee had no time to ask during the evidence session is as follows:

1. Do you agree with No to AV that the proposed deadline for appointing referendum agents (s.16 of the Bill) is too early?

   We support the existing provisions in the Bill with referendum agents being appointed on the twenty fifth working day before the poll.

   This referendum is very different from the AV Referendum in terms of legislative timetabling. The Parliamentary Voting System and Constituencies Bill did not receive Royal Assent until 16 February 2011. The last day for appointing referendum agents was 7 April 2011 – i.e. 50 days after the legislation came into force.

   The timetable for the Scottish Independence Referendum has the Bill being passed around 14 November 2013 with the last day for appointing referendum agents being on 14 August 2014\(^1\) - i.e. a full 273 days after the Bill is passed.

   From the point of view of campaign organisations preparing for involvement in this referendum, we do not see that there is any real need for 286 days as opposed to 273 days for the responsible person to select and appoint referendum agents – although we clearly appreciate that there would have been a difference between 50 days and 37 days (the number of days available if the timetable for the appointment of referendum agents at the AV Referendum was the same as at the Scottish Independence Referendum).

\(^1\) We calculate the twenty fifth working day before the poll as falling on Thursday 14 August 2014, rather than on the previous day, as calculated in the No to AV submission. The Summer Bank Holiday in Scotland falls on the first Monday in August (Paragraph 2 of Schedule 1 to the Banking and Financial Dealings Act 1971) – but in England, Wales and Northern Ireland it falls on the last Monday in August (Paragraphs 1 and 3 of the Schedule). The Summer Bank Holiday in Scotland does not affect the referendum timetable in any way. If the Bank Holidays which applies elsewhere in the UK are used, the No to AV submission would have been correct because Monday 25 August 2014 would then be treated as a \textit{dies non} and not counted under Section 16(4)(c).
There is also a difference in scale. At the AV Referendum there were 440 voting areas. At the Scottish Independence Referendum, counting will take place on the basis of the 32 local authority areas in Scotland. All that a campaign organisation needs to be able to do is to write letters to the 32 counting officers. They do not need to wait until the start of the referendum period before writing out, as the ability to appoint comes into force on the day after Royal Assent.¹ Unlike the situation in certain statutory elections, there is no requirement that a referendum agent has an office in the local authority area, or close to it.³ The responsible person can appoint themselves as referendum agent if they so choose.⁴

Generally, it will be of benefit to election administrators to know the identity of referendum agents as soon as possible in the process so that they have a local contact to discuss such matters as the arrangements for the opening of postal ballot packs in the area, local polling arrangements and the count – rather than having to deal with the central organisations of the campaigners, which will be exceptionally busy places at the time. It will also be of benefit to the central organisations not to have to deal with 32 counting officers in relation to the more local details of the campaign. Our view is essentially that earlier is better than later.

From an Electoral Commission viewpoint, there may be some benefit in having an indication of which of the permitted participants are likely to be active on the ground in particular areas. The provision of local contact information at an earlier stage may also assist them in their regulatory role should concerns be raised about the activities of campaigners.

There are therefore good reasons to retain the Bill drafting. We do not think that every departure from the AV Referendum framework requires to be justified, but there are also good reasons in this instance for a different approach as well.

2. Would you prefer to see the offences and rules which will be covered by the civil penalties regime set out in the Bill (as suggested by No to AV), rather than in a later statutory instrument?

(Source: Paragraphs 11.1-11.5 of the written submission by No to AV – see link above)

Paragraph 11.2 of the submission from No to AV correctly identifies that the legislative source of Schedule 6 to the Bill is Schedule 19C to PPERA – as inserted by Section 3 and Schedule 2 to the Political Parties and Elections Act 2009 (c. 12).

However, the submission proceeds on the basis that these amendments to PPERA are not yet in force. In fact, they were brought into force on 1 December 2010 under

² Section 33 of the Bill
³ See Section 69(2) of the Representation of the People Act 1983.
⁴ Section 16(1) of the Bill.
Article 3(c) and (d) of the Political Parties and Elections Act 2009 (Commencement No. 5 and Saving Provisions) Order 2010 SI 2866.

To accompany the commencement order, the Minister for Political and Constitutional Reform also made the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 SI 2860.\(^5\) Schedule 2 to this order sets out Prescribed Offences, Restrictions and Requirements in relation to the civil sanctions regime. The Electoral Commission have previously consulted on its civil sanction powers and we are content that the resultant order and the associated enforcement policy effectively applies mutatis mutandis to the referendum.\(^6\)

The position of No to AV is that there is at present time uncertainty over which offences and campaign rules are likely to be covered by the civil sanction provisions. The comment presumably flows from their erroneous starting point that Schedule 19C to PPERA is not yet in force. Given the close proximity between PPERA and the Bill, it is not difficult to look at the schedule to the civil sanctions order and anticipate which provisions in the Bill are likely to be covered by the civil sanctioning power – whether that is to be set out in a later amendment to the Bill or in a later Scottish Statutory Instrument.

We do not have a particularly strong view on whether the provisions in the order should essentially be incorporated into the Bill, or if the section should be left as it is with further details being set out in a supplementary order. The end result would be the same.

3. **What is your view on the lack of grants to designated organisations?**

   (Oral evidence from William Norton, Willie Sullivan and Professor Wyn Jones on 9 May is relevant to this question – see [Official Report](http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8140&mode=pdf)

This Bill is about a specific referendum where, unusually, it is already clear who the designated organisations will be. We do not seek a grant.

The PPERA model of public funding, and the conditions currently attached by the Electoral Commission to PPERA grants to designated organisations, are based on office capacity building rather than general financing of campaign materials. Both Yes Scotland and the No Campaign have offices established in Glasgow and there is

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\(^5\) This is the same instrument as referred to by the Scottish Government in its response to correspondence from the Subordinate Legislation Committee – see annex to its 29th Report, 2013 (Session 4) on the Bill.

therefore no need to adopt the grant funding provisions which are currently part of the PPERA referendum model.

There is no need for public funding for this referendum and absolutely no public appetite for it.

4. What is your view on whether the Electoral Commission should have a statutory role (as currently provided by s.21 of the Bill) in promoting understanding of the question? Will it be able to find a way of doing so that both sides can accept as impartial and fair?

(The oral evidence on 9 May also includes discussion of this issue – see link above.)

The submission by No to AV isolates one aspect of Section 21 as a duty on the Electoral Commission to promote understanding of the referendum question.

Section 21 bears to be dissected somewhat more. The duty on the Electoral Commission is simply to take such steps as they consider appropriate to promote public awareness and understanding of three matters: the referendum, the referendum question and voting in the referendum.

If the Electoral Commission does not consider a possible step in promoting understanding of the referendum question to be appropriate, there is no duty under the Bill to take it. A clear example of an inappropriate step to take in promoting understanding of the question would be a step which compromised its political neutrality.

We consider that it is essentially a matter for the Electoral Commission to take a view on whether it is content with Section 21 as it is framed. If the Electoral Commission is satisfied with the phrasing, then we do not have any difficulty with it.

Blair Jenkins
Chief Executive, Yes Scotland
5 June 2013
We have no strong views on points 1 and 2 but are grateful for the opportunity to respond on questions 3 and 4

3. Grants to Designated Organisations

It seems that the issue of grants to designated organisations is most important when either the issue in the referendum is not emotive enough for campaigns to successfully raise funds or when, as happened in the recent Welsh Referendum on additional powers, there is doubt over whether a campaign to argue the case for one side of the referendum will exist.

Clearly neither of these seems to be the case with the referendum on leaving the UK. This is evidenced by the substantial sums already raised by the two umbrella campaigns.

4. Promoting Understanding of the Question

The issue of what the question means is clearly controversial. Already the Electoral Commission’s recommendation that the UK and Scottish Governments agree a simple form of words on what will happen in the event of a Yes or No vote has proved controversial, with some confusing this recommendation with calls for pre-negotiation (in contradiction, it should be noted, with clarifications given by the Electoral Commission).

It seems inevitable that attempts to impartially explain political aspects of the referendum question would be extremely difficult (rather than providing basic technical information or educating people on how to participate in the referendum). We understand that the two governments are in correspondence on the issue of providing the Commission with agreed wording on the basics of what happens after the referendum.

The political questions around what the question means are, it seems to us, necessarily a matter of contest between the two campaigns. In some systems the inherent difficulties of ensuring impartiality in wording such material is side-stepped by instead simply allowing both designated organisations to present their case side-by-side in a leaflet. In our own system it seems that this function is already carried out, albeit not in the same document, by the granting of freepost material to every household.

Blair McDougall
Campaign Director, Better Together
10 June 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

LETTER FROM COMMITTEE CONVENER TO THE ELECTORAL COMMISSION

Scottish Independence Referendum Bill – duty of Commission to provide information

As you know, the Referendum Bill includes provision (in section 21) requiring the Commission to “promote public awareness and understanding in Scotland about … the referendum question”. Some witnesses have questioned whether the Commission can fulfil this obligation in a way that maintains its impartiality, and I know that you gave a response to this during your oral evidence to the Committee on 23 May (cols 430-1).

Following its meeting on 30 May, at which the Committee took oral evidence from Yes Scotland and Better Together, I wrote to those organisations with some follow-up questions, including a question on this point. The replies were circulated for today’s meeting as paper 2 – which is available from the following link: http://www.scottish.parliament.uk/S4_ReferendumScotlandBillCommittee/Agenda_and_papers_13_June.pdf.)

You will note at the end of the Better Together letter reference to the practice, apparently used in other countries, of allowing the lead campaigners on each side to provide text expressing their position, and for these to be published side-by-side in a leaflet to the public. Written evidence by Nigel Smith also refers to examples of this practice – see his submission: http://www.scottish.parliament.uk/S4_ReferendumScotlandBillCommittee/Ref_14_Nigel_Smith.pdf.

I wonder whether the Commission has considered adopting such an approach in relation to the information it will be sending out to voters in the run-up to the 2014 referendum?

It would be most helpful if a reply to this letter could be received by lunchtime on Monday (17 June) or, if this is not practicable, by a similar time on the following Monday (24 June).

Bruce Crawford
Convener
13 June 2013
Scottish Independence Referendum Bill – duty of Commission to provide information

Thank you for your letter of 13 June regarding the Commission’s duty to provide information for voters under section 21 of the Scottish Independence Referendum Bill.

As you have noted, some Committee witnesses suggested that it would be impossible for us to fulfill any duty to provide public information on the referendum question without compromising our impartiality. However, Section 21 of the Bill requires us to undertake such steps as we consider appropriate to promote public awareness and understanding in Scotland about the referendum, the question and voting in the referendum.

As we noted in our oral evidence to the Committee, we will not seek to explain to voters what independence means. We are very aware from our own experience and that of other electoral commissions, of the issues surrounding the provision of impartial information on the consequences of a yes or no vote particularly where, as in this instance, the poll’s result will not mean the commencement or otherwise of an already enacted piece of legislation. Our intended focus will be on providing public information aimed at ensuring that all eligible electors are registered and know how to cast their vote.

Our question assessment process did identify that there was a strong desire from the electorate for more factual information relating to the issues which surround the referendum and about what would happen, in terms of process, after the referendum. We recommended that the UK and Scottish Governments should clarify for voters what process will follow the referendum, for either outcome, so that people have that information before they vote. We are aware that the Scottish and UK Governments are currently considering this issue, although we are not part of these discussions. If they can agree a joint position, we would expect to include it in a leaflet about the referendum that we are planning to send to all households in Scotland, as part of our public awareness campaign.

Your letter also draws attention to examples from other referendums where statements from campaigners on each side of the debate are published side by side and asks if this is an approach we would adopt. We are currently considering the merits of doing this at the referendum. Our priority is that voters have access to all the information they need to be able to participate in the referendum and we will consider the specific context of the Scottish referendum, including the views of campaigners and impact on voters, before reaching a decision.

You may be aware that as we were unable to designate lead campaigners at the 2011 Wales referendum, no campaigners were eligible for certain benefits which included free campaign mailings and referendum broadcasts. As a result, we
decided to offer all registered campaigners the opportunity to place a 200-word statement outlining their key arguments on our website. In reaching this decision, we took into account the impact that the lack of free mailings or referendum broadcasts would have on campaigners’ ability to reach voters with their arguments. We also considered the evidence we gathered during our question assessment process, which identified very low levels of public awareness about the referendum and its subject matter.

I trust this response is of assistance to the Committee. We will keep you updated as we develop our plans but we would also welcome any views from you on the subject. If you would find it helpful to meet to discuss this or any other matters then please get in touch.

John McCormick
Electoral Commissioner
21 June 2013
Scottish Independence Referendum Bill

Thank you again for attending the Committee’s meeting this morning to give evidence on this Bill.

While a lot of useful ground was covered, I am conscious that today’s evidence did not address all of the specific, and in some cases technical, points raised by previous witnesses. It seemed to me appropriate, therefore, to invite you to address these in writing, and I attach overleaf a list of what seem to me the most significant outstanding points.

As you will know from the Committee’s published timetable, we will be considering a first draft Stage 1 report at our meeting on 27 June. I would therefore be grateful if you could provide a response to this letter by lunchtime on Monday 24 June, so it can be included in the papers circulated for that meeting.

Bruce Crawford
Convener
13 June 2013
Annexe: Additional points raised by previous witnesses

Should the official mark appear on the front of the ballot paper rather than on the back (Schedule 1)?
   (Raised by the Electoral Management Board and the Electoral Reform Society)

Why does the Bill not make provision, in relation to time-periods, for days of thanksgiving or mourning being disregarded (alongside days of public holiday)?
   (Raised by the Electoral Management Board and the Law Society of Scotland)

Should there be provision (Schedule 3, Rule 14) allowing referendum agents to apply for a recount in a local area?
   (Raised by the Electoral Commission)

Should the provision giving presiding officers powers to regulate those attending polling stations (Schedule 3, Rule 15) give priority to voters and polling agents?
   (Raised by the Electoral Commission)

Should counting officers have the power to exclude referendum agents from the count centre (Schedule 3, Rule 29)?
   (Raised by the Electoral Commission)

Should the Electoral Commission be required to publish donation reports promptly so that voters can see (before the poll) who is funding permitted participants?
   (Raised by the Electoral Reform Society and Navraj Singh Ghaleigh)

What is the Scottish Government’s response to arguments that the case for a bilingual Gaelic/English ballot paper are not based on whether Gaelic speakers can understand a form printed in English, but are about according equal respect to the Gaelic language, and the precedent set by elections in Wales?
   (Raised by Bord na Gaidhlig and a number of individuals)

Should new rules for absent voting that are to be put in place for the 2014 European Parliament elections not also be applied to the referendum?
   (Raised by the Electoral Commission)
SCOTTISH INDEPENDENCE REFERENDUM BILL

LETTER FROM NICOLA STURGEON, DEPUTY FIRST MINISTER, TO THE COMMITTEE CONVENER

Thank you for your letter of 13 June 2013 setting out additional technical issues raised during the Committee’s previous evidence sessions, which were not covered in the course of my evidence session.

Annex A to this letter sets out the Scottish Government’s response to each of these queries.

I also attach, at Annex B, a list of public bodies and offices subject to the pre-referendum period restrictions in paragraph 25 of schedule 4 to the Bill, as provided for at paragraphs 25(2)(a) and (c). Paragraph 25(2)(b) applies the provisions to the Scottish Parliamentary Corporate Body. Please note that this list may be subject to change, for example, as a result of new legislation between now and the referendum.

Nicola Sturgeon
22 June 2013
RESPONSES TO ADDITIONAL POINTS RAISED BY PREVIOUS WITNESSES

Should the official mark appear on the front of the ballot paper rather than on the back (Schedule 1)?
(Raised by the Electoral Management Board and the Electoral Reform Society)

The original intention behind the official mark appearing on the back of the ballot paper was to ensure that after marking their ballot paper, voters could demonstrate to polling staff that their ballot paper is genuine without revealing how they have voted.

However, Returning Officers, who will be Counting Officers for the referendum, have subsequently expressed a preference for the official mark to appear on the front of the ballot paper, which expedites the counting process and for which there is precedent. We are therefore considering this for a possible Stage 2 Government amendment. The Scottish Government is in the process of discussing with Returning Officers the practicalities of requiring or enabling the official mark to appear on the front of the ballot paper.

Why does the Bill not make provision, in relation to time-periods, for days of thanksgiving or mourning being disregarded (alongside days of public holiday)?
(Raised by the Electoral Management Board and the Law Society of Scotland)

This followed the precedent of the 1997 referendums in Scotland and Wales. The Scottish Government will discuss this issue further with the EMB and the Society of Local Authority Lawyers and Administrators (SOLAR) Elections Working Group.

Should there be provision (Schedule 3, Rule 14) allowing referendum agents to apply for a recount in a local area?
(Raised by the Electoral Commission)

The Scottish Government will seek views from Returning Officers on this proposal. The provisions in the Bill as drafted allow the Counting Officer to recount if he or she thinks it appropriate, which could be at the request of a referendum or counting agent. Should referendum agents be permitted to apply for a recount, the final decision on whether a recount should be undertaken would still be for the Counting Officer to make, so there would be little practical difference. In addition, agents will be in attendance to ensure that the poll and count are run correctly, so any concerns should be raised during these processes, which should minimise the need for a recount.

Should the provision giving presiding officers powers to regulate those attending polling stations (Schedule 3, Rule 15) give priority to voters and polling agents?
(Raised by the Electoral Commission)
Schedule 3, rule 17 gives the Presiding Officer the power and duty to keep order at the polling station. Following discussions with those who will be running the poll, the Scottish Government is considering whether further provision is necessary here, or whether any provision or guidance could be left to the Chief Counting Officer.

**Should counting officers have the power to exclude referendum agents from the count centre (Schedule 3, Rule 29)?**
(Raised by the Electoral Commission)

Persons entitled to attend the count can be excluded under Schedule 3, rule 29(6) by the counting officer if (and only if) the counting officer considers that the counting of the votes would be impeded by their presence. It is important that referendum agents are able to scrutinise the count process, but the priority should be that the count itself is unimpeded. The Scottish Government will discuss this issue further with Returning Officers.

**Should the Electoral Commission be required to publish donation reports promptly so that voters can see (before the poll) who is funding permitted participants?**
(Raised by the Electoral Reform Society and Navraj Singh Ghaleigh)

It is important that the referendum campaigns are run in a demonstrably fair and transparent manner and for this reason the Bill provides for pre-poll reporting of donations and loans to ensure that voters have information about how the campaigns have been funded, prior to the vote. We agree that the Electoral Commission should be required to publish these reports promptly and officials have had detailed discussions with the Electoral Commission about these arrangements, towards proposing a Stage 2 amendment.

**What is the Scottish Government’s response to arguments that the case for a bilingual Gaelic/English ballot paper are not based on whether Gaelic speakers can understand a form printed in English, but are about according equal respect to the Gaelic language, and the precedent set by elections in Wales?**
(Raised by Bord na Gaidhlig and a number of individuals)

The Scottish Government recognises that the issue is not about Gaelic speakers' understanding of English and remains committed to promoting the use of Gaelic.

The priority for the referendum is that all those who are eligible to vote in the referendum should be able to do so. It is important that this historic vote is seen to be run fairly and this means running it in a manner that is familiar to voters and to those organising the local polls. It is for this reason that the Scottish Independence Referendum Bill replicates the standard arrangements in place at elections and referendums in Scotland and the UK. This approach was supported by respondents to *Your Scotland, Your Referendum*, the public consultation undertaken last year which received over 26,000 responses.

Therefore, the ballot paper will be provided in English only, but counting officers may choose to display a translation of the ballot paper in other languages at polling stations if they consider this appropriate. Public information provided by the Electoral
Commission will be published in Gaelic and English and voter information will also be available in other languages on request. This is standard practice for all elections.

**Should new rules for absent voting that are to be put in place for the 2014 European Parliament elections not also be applied to the referendum?**

(Raised by the Electoral Commission)

The Scottish Government is considering the changes to UK electoral registration and administration legislation to determine if and how these should be incorporated into the conduct rules for the referendum.
SCOTTISH ADMINISTRATION AND PUBLIC AUTHORITIES

Scottish Administration

This includes the Scottish Ministers (i.e. the Scottish Government and executive agencies listed below), and other office-holders in the Scottish Administration, also listed below.

Executive Agencies
Accountant in Bankruptcy
Disclosure Scotland
Education Scotland
Historic Scotland
Scottish Prison Service
Scottish Public Pensions Agency
Student Awards Agency for Scotland
Transport Scotland

Non Ministerial Departments (NMDs)
National Records of Scotland
Office of the Scottish Charity Regulator
Registers of Scotland
Scottish Court Service
Scottish Housing Regulator

Other office holders in the Scottish Administration
Accountant of Court
Assistant Inspector of Fire and Rescue Authorities
Chief Dental Officer of the Scottish Administration
Chief Medical Officer of the Scottish Administration
Depute, Assistant or other Clerk in the Justiciary Office of the High Court of Justiciary
Drinking Water Quality Regulator for Scotland
Her Majesty's Chief Inspector of Constabulary
Her Majesty's Chief Inspector of Fire and Rescue Authorities
Her Majesty's Chief Inspector of Prisons for Scotland
Her Majesty's Inspector of Anatomy for Scotland
Her Majesty's Inspector of Constabulary
Her Majesty's Inspector of Fire and Rescue Authorities
Her Majesty's Inspector of Schools
Macer in the Court of Session and Macer in the High Court of Justiciary
Principal Clerk of Justiciary
Principal Clerk of Session and other Clerks or Officers of the Court of Session
Procurator fiscal and procurator fiscal depute
Queen's Printer for Scotland
Registrar of Independent Schools
Rent Officer
Sheriff Clerk
Sheriff Clerk Depute
Social Work Inspector
The Queen’s and Lord Treasurer’s Remembrancer

**Scottish public authorities with mixed or no reserved functions**

**Public Corporations**
- Caledonian Maritime Assets Ltd
- David MacBrayne Ltd
- Highlands and Islands Airports Ltd
- Scottish Canals
- Scottish Futures Trust
- Scottish Water

**Executive NDPBs**
- Accounts Commission for Scotland
- Architecture and Design Scotland
- Bord na Gaidhlig
- Cairngorms National Park Authority
- Care Inspectorate
- Creative Scotland
- Crofting Commission
- Highlands and Islands Enterprise
- Loch Lomond and The Trossachs National Park Authority
- National Galleries of Scotland
- National Library of Scotland
- National Museums of Scotland
- Police Investigations and Review Commissioner
- Quality Meat Scotland
- Risk Management Authority
- Royal Botanic Garden, Edinburgh
- Royal Commission on the Ancient and Historical Monuments of Scotland
- Scottish Agricultural Wages Board
- Scottish Children’s Reporter Administration
- Scottish Criminal Cases Review Commission
- Scottish Enterprise
- Scottish Environment Protection Agency
- Scottish Funding Council
- Scottish Legal Aid Board
- Scottish Legal Complaints Commission
- Scottish Natural Heritage
- Scottish Qualifications Authority
- Scottish Social Services Council
- Skills Development Scotland
- sportscotland
- VisitScotland
- Water Industry Commission for Scotland

**Advisory NDPBs**
- Judicial Appointments Board for Scotland
Local Government Boundary Commission for Scotland
Mobility and Access Committee for Scotland
Public Transport Users Committee for Scotland
Scottish Advisory Committee on Distinction Awards
Scottish Law Commission
Scottish Local Authorities Remuneration Committee

Tribunals
Additional Support Needs Tribunals for Scotland
Children's Panels
Lands Tribunal for Scotland
Mental Health Tribunal for Scotland
Parole Board for Scotland
Private Rented Housing Panel
Scottish Charity Appeals Panel

Health Bodies
Healthcare Improvement Scotland
Mental Welfare Commission for Scotland
NHS24
NHS Boards
NHS Education for Scotland
NHS Health Scotland Board
NHS National Services Scotland
National Waiting Times Centre Board
Scottish Ambulance Service Board
State Hospital Board for Scotland

Parliamentary Commissioners and Ombudsmen
Commission for Ethical Standards in Public Life in Scotland
Scotland's Commissioner for Children and Young People
Scottish Human Rights Commission
Scottish Information Commissioner
Scottish Public Services Ombudsman
Standards Commission for Scotland

Other Significant Bodies
Audit Scotland
Court of Lord Lyon
Drinking Water Quality Regulator
HM Chief Inspector of Constabulary in Scotland
HM Chief Inspector of Prisons in Scotland
HM Chief Inspector of Prosecution in Scotland
James Hutton Institute
Justices of the Peace Advisory Committee
Moredun Research Institute
Office of the Queens Printer for Scotland
Scottish Agricultural College
Scottish Roadworks Commissioner
The Scottish Police Authority
The Scottish Fire and Rescue Service
Visiting Committees for Scottish Penal Establishments
THE SCOTTISH INDEPENDENCE REFERENDUM BILL

SCOTTISH GOVERNMENT RESPONSE TO THE COMMITTEE’S STAGE 1 REPORT

This letter responds to the Referendum (Scotland) Bill Committee’s Stage 1 report on the Scottish Independence Referendum Bill, which was published on 26 August 2013.

I would like to thank the Committee for its detailed and positive consideration of the Bill so far, and for its support of the Bill’s general principles. The attached annex sets out the Scottish Government’s initial response to those findings directed towards it. We will continue to consider any issues raised in the report and by stakeholders, and will bring forward any necessary amendments as soon as possible.

I look forward to Thursday’s debate, and to continuing to work with the Committee and stakeholders as the Bill progresses through its remaining Parliamentary stages.

Nicola Sturgeon
Deputy First Minister
8 September 2013
### Committee Conclusion

#### Schedule 1 (form of ballot paper)

**Official Mark**

48. The Committee notes the concerns expressed about the placement of the official mark, and invites the Scottish Government to clarify whether it will be lodging an amendment to address it.

**Scottish Government Response**

The Scottish Government intends to bring forward an amendment to provide for the official mark to be placed on the front of the ballot paper.

#### Section 2 (franchise)

60. The Committee recognises that the Deputy First Minister has undertaken to see whether there is a practical way of including within the franchise for the referendum any 16 and 17-year olds who will be living outside Scotland with parents serving in the armed forces in September 2014, and we look forward to her further updates on progress on this issue.

**Scottish Government Response**

The Scottish Government is currently consulting with the Electoral Commission and Electoral Registration Officers on specific proposals seeking to enable such young people to register to vote in the referendum. We will report back to the Committee on this issue as soon as possible.

#### Section 3 and Schedule 2 (provision about voting, etc)

**Absent voters – new provision in UK legislation**

65. The Committee notes the new approach to absent voting arrangements in UK election law, and that the Scottish Government is considering whether to incorporate these changes in the referendum legislation. The Committee welcomes this, and asks to be updated as soon as the Scottish Government has reached a conclusion on this issue.

**Scottish Government Response**

The Scottish Government intends to bring forward a number of amendments to the Bill in relation to the arrangements for absent voters, and will advise the Committee further before the deadline for stage 2 amendments.

**Deadlines for applications for proxy and postal votes**
69. The Committee notes that the Deputy First Minister is currently in discussion with the Electoral Commission on the deadline for proxy and postal votes. On the basis of the evidence, we would be inclined to support a later deadline for proxy voting, in line with normal practice, unless the Scottish Government can explain – before Stage 2 – why the approach taken in the Bill is preferable.

**Section 4-8 (Chief Counting Officer, counting officers, and their functions)**

74. The Committee notes the specific points raised in relation to sections 4-7 by witnesses (as outlined in paragraphs 68-70), and invites the Scottish Government to respond, indicating whether any amendments to these provisions are likely to be proposed. We would also welcome early sight of a draft order under section 8, so we can be satisfied that counting officers will be properly reimbursed.

The criteria for removing the CCO and COs are set out in sections 4 and 5 respectively and are different to ensure and strengthen the independence of the CCO from the Scottish Ministers. The Bill therefore sets out a purposely narrower range of circumstances in which the Scottish Ministers can remove the CCO.

The Scottish Government does not intend to amend section 6 of the Bill. Section 6(9) provides for local authorities to provide, or ensure the provision of, ‘such property, staff and services as may be required by the counting officer for the carrying out of the counting officer’s functions’. This achieves the same end as the equivalent PPERA provision.

The obligation placed on counting officers to certify the number of rejected ballot papers is an obligation that has not applied at other polls, but it has been included in the Bill at the request of counting officers themselves.

In terms of whether counting officers should have a power or duty to promote voter participation, the Scottish Government is content that the Bill as drafted does not prevent counting officers from promoting participation. The Electoral Commission will have a statutory responsibility to undertake public awareness campaigns ahead of the referendum. This will cover registration.
and voting.

We expect that the Commission will involve the Chief Counting Officer, Counting Officers and Electoral Registration Officers in this work. Counting Officer activity to encourage participation is specifically excluded from controls in the Bill on publications during the 28 day pre-referendum period.

In terms of section 8, the Scottish Government will write to the Committee about the Fees and Charges Order before Stage 3.

<table>
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<tr>
<th>Section 9 and Schedule 3 (conduct rules)</th>
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<tr>
<td><strong>Attendance at the count (rule 29)</strong></td>
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<td>103. The Committee notes the concerns of the Electoral Management Board about counting officers being required to publish notice of the count and the effect this may have on the general management of the count. We therefore invite the Scottish Government to explain why it has apparently departed from precedent on this point, and to give further consideration to the practical effect of this provision. On attendance of referendum agents at the count, the Committee invites the Scottish Government to discuss further with electoral administrators whether counting officers can be given sufficient powers to prevent any disruption to the counting process without having to resort to excluding referendum agents altogether. The Committee welcomes the indication that electoral administrators are planning on the basis that counting will take place overnight and that any operational issues that might make this difficult in certain areas are being identified and solutions developed.</td>
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<td>In response to the views of the Electoral Management Board, the Scottish Government intends to bring forward an amendment to remove the reference to publishing notice of the count and to replace it with a requirement to give notice to referendum agents for the area and the counting agents appointed to attend the count of the time and place at which the counting officer will begin to count the votes. On attendance at the count, the Scottish Government believes that counting officers have the necessary powers to prevent any disruption to the counting process. Schedule 3 Rule 29 currently only prevents the exclusion of the Chief Counting Officer or their staff, and the Electoral Commission, from the counting process, given their important roles in ensuring that the integrity of the count. The Scottish Government does not consider that it would be appropriate to include referendum agents in the list of those who cannot be excluded under any circumstances.</td>
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### Section 10 and Schedule 4 (campaign rules)

#### Application for Designation (paragraph 6)

126. The Committee also agrees that it is appropriate, particularly given the long lead-in time, for lead campaigners to be designated by the time the 16-week referendum period begins. We invite the Scottish Government to consider how to amend the Bill accordingly, and in particular to consider carefully, in view of the evidence we have received, how far in advance of that period the deadline for applications should be set.

#### Restrictions on publication of promotional material (“purdah”) (paragraph 25)

189. We accept the Deputy First Minister’s view that there is no reason to doubt the good faith of the UK Government’s commitment to observe purdah restrictions equivalent to those imposed on the Scottish Government in the Bill. Nevertheless, there is an asymmetry, and we invite the UK Government to indicate whether it would be prepared to put the purdah restrictions to which it is committed on a statutory footing. We would request that the Scottish and UK Governments each issue guidance to those public bodies for which it is responsible on the limits applicable to them during the 28-day period.

#### Control of donations (Schedule 4, Part 5)

199. The Committee is generally satisfied with the rules on donations. However, we would invite the Scottish Government to consider further whether a lower threshold for reporting donations would be merited, and whether there should be greater public

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Following discussions with the Electoral Commission, the Scottish Government intends to lodge an amendment at Stage 2 to permit lead campaigners to be designated before the 16-week period.

In line with standard election practice, the Scottish Government will issue guidance to its staff and to those in public bodies for which it is responsible before the 28-day pre-referendum (“purdah”) period. A copy of this guidance will be sent to the Committee for information.

The Scottish Government considers that the proposals set out in the Bill strike an appropriate balance between ensuring greater transparency and avoiding unnecessary bureaucracy. For the first time in a referendum, the Bill requires reporting of donations.
access to information about donations during the referendum campaign, in the interests of transparency. We would also welcome further clarification on how, in practice, permitted participants are to check donors’ eligibility by reference to electoral registers other than the one register to which they are to be guaranteed access.

and loans during the referendum period (Schedule 4, paragraphs 41 and 57 respectively) to ensure transparency. Following discussions with the Electoral Commission, the Scottish Government intends to bring forward amendments to the Bill to further enhance this transparency. The Government proposes to extend the provisions on pre-poll reporting so the first pre-poll report contains details of relevant donations and loans received before the start of the referendum period. The Government also intends to bring forward an amendment to place a duty on the Electoral Commission to make pre-poll donation and loan reports available for public inspection as soon as reasonably possible.

In terms of how permitted participants can check the permissibility of donations over £500, the Bill provides that to be permitted to donate more than £500, an individual must be on an electoral register operating in the UK. Under the terms of the Bill, those on the Register of Young Voters will not be permissible donors.

Under the Bill, all permitted participants will be able to request a copy of the local government register, which will contain the details of the vast majority of voters in the referendum.

Permitted participants will therefore be able to check if a donor is on the local government register. They will also be able to check the Westminster Parliamentary and European Parliamentary registers operating in Scotland, or any of the registers operating in the rest of the UK, as any member of the public can arrange to view the full, published versions of those registers. In addition, Electoral Registration Officers can be
<table>
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<th>Section 11 and schedule 6 (civil sanctions)</th>
<th>asked to provide a letter to an individual, confirming that they are on an electoral register.</th>
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<td>205. The Committee considers the civil sanctions regime to be an important part of the regulatory regime established under the Bill. We would therefore welcome early sight of the supplementary order that is to establish its scope, or confirmation that it will be closely based on the equivalent order made under PPERA.</td>
<td>The Scottish Government intends to lodge amendments to set out the civil sanctions regime in the Bill itself, rather than by supplementary order. We can confirm the intention to closely base the amendments on the equivalent order under PPERA.</td>
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<tr>
<td>Sections 17 – 20 (observers)</td>
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<td>216. On the question of whether there should be a statutory requirement for a code of practice for observers, the Committee welcomes the Electoral Commission’s recommendation, notes that it is under discussion and encourages the Scottish Government to seriously consider amending the Bill.</td>
<td>The Scottish Government is content that the Bill as drafted does not prevent the Commission from preparing and publishing a code of practice for observers. However, we are currently discussing with the Electoral Commission whether the Bill should make this more explicit.</td>
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<tr>
<td>Section 21 (information for voters)</td>
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<td>233. The Committee acknowledges the Electoral Commission’s recommendation about providing voters with general information about the process that would be followed post-referendum, either in the event of a Yes vote or a No vote. We are encouraged to hear that the Scottish Government and the UK Government are discussing these matters, and would welcome further information about the nature of those discussions, and regular updates on progress.</td>
<td>Senior officials at the Scottish Government, Cabinet Office and Scotland Office have met and held constructive discussions towards the agreement of a joint statement to respond to the recommendation set out in the Electoral Commission’s report in January 2013 regarding informing the public about what would happen after the referendum. Those discussions are ongoing.</td>
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### Section 32 and schedule 8 (interpretation – meaning of ‘referendum period’)

266. The Committee recognises that for most of the regulated period, public bodies will not be formally restricted by the Bill’s provisions. We accept, however, that there are conventions in place about how such bodies behave. The Committee would wish to have early sight of the Scottish Government’s proposed guidance to those public bodies for which it is responsible – and any equivalent guidance that the UK Government plans to issue to those bodies dealing with reserved matters.

In line with standard elections practice, the Scottish Government will issue guidance to its staff and to those in public bodies for which it is responsible before the 28-day pre-referendum period. A copy of this guidance will be sent to the Committee for information.

### Electoral timetable and index of conduct rules

283. The Committee sees merit in the suggestion that a timetable and index be included in the Bill to provide clarity for electoral administrators. On the issue of disregarding days of public thanksgiving or public mourning, the Committee notes that the Scottish Government is considering this further and asks it to clarify its position as soon as possible.

The Scottish Government intends to bring forward amendments to the Bill with regard to disregarding days of public thanksgiving or mourning, and has been discussing the detail of this with electoral administrators.

### Delegated Powers

321. Finally, we note the recommendation of the Delegated Powers and Law Reform Committee on the schedule 6 powers and invite the Scottish Government to indicate whether it is prepared to amend the Bill accordingly.

As noted, the Scottish Government intends to bring forward amendments to set out the civil sanctions regime in the Bill itself, rather than by supplementary order, and to do so in line with the Committee’s recommendation. That will obviate the need for these delegated powers.
Scottish Independence Referendum Bill: The Deputy First Minister (Government Strategy and the Constitution) and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon) moved S4M-07610—That the Parliament agrees to the general principles of the Scottish Independence Referendum Bill.

After debate, the motion was agreed to (DT).

Scottish Independence Referendum Bill: Financial Resolution: The Deputy First Minister (Government Strategy and the Constitution) and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon) moved S4M-07569—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Scottish Independence Referendum Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
The Deputy Presiding Officer (John Scott): Good afternoon, everyone. The first item of business this afternoon is a debate on the general principles of the Scottish Independence Referendum Bill. The debate represents the next big step in the legislative process towards the referendum on independence on 18 September 2014. It follows Parliament’s approval of the Scottish Independence Referendum (Franchise) Act 2013, which came into force on 8 August. The Scottish Independence Referendum Bill sets out the arrangements to give the people of Scotland the opportunity to decide our constitutional future—to decide whether Scotland should be an independent country—and to consider what kind of nation we want to be.

I am delighted that, as a result of the passing of the Scottish Independence Referendum (Franchise) Act 2013, we can now say with certainty that the opportunity to decide the future of our country will be extended to 16 and 17-year-olds.

I begin by thanking all those who have played a role in the careful development of the bill to date. In particular, my thanks go to the convener and members of the Referendum (Scotland) Bill Committee for their thorough scrutiny of the bill, and to all those who gave evidence during that consideration. I welcome the committee’s comprehensive stage 1 report and, of course, its support for the general principles of the bill.

Before we turn to the detailed proposals that are contained in the bill, I want to say something about the extensive consultation and engagement that have led us to this point. Members will recall that in January last year, we published a consultation paper, “Your Scotland, Your Referendum”, which sought views from the Scottish people on how the referendum should be run and regulated. More than 26,000 people responded, expressing broad support for the Government’s proposals.

The legislation that we will debate today arose out of that hugely successful public consultation, which, of course, was followed by negotiations between the Scottish Government and the United Kingdom Government during the summer last year. Those discussions culminated in the Edinburgh agreement, which cleared the way for a referendum that will be designed and delivered here in Scotland. The Edinburgh agreement confirmed that the independence referendum should be legislated for by the Scottish Parliament, and delivering legislation to enfranchise young voters was the first step in that process.

At the outset of my remarks, I remind Parliament why the Scottish Government is legislating for a referendum on independence: to give the Scottish people the chance to complete the powers of the Scottish Parliament, to make sure that decisions about the economy and welfare as well as health and education are taken not by Governments in Westminster that we often do not vote for, but by people who care most about Scotland’s future—those of us who live and work here in Scotland. We all know—even those who are on the other side of the debate concede this—that Scotland can be a successful independent country. We can more than afford to be independent. Our task for the next 12 months is to persuade people in Scotland that we should be an independent country.

The bill contains the Government’s detailed proposals for running and regulating the referendum in a way that will command the confidence of Parliament, the people of Scotland and those who will take part in the referendum campaign. I am grateful for the advice that was provided by the electoral professionals who will be responsible for conducting and overseeing the referendum next year. They have shared their expertise and experience to help us to ensure that the arrangements are fit for purpose and that they reflect national and international best practice. I am sure that Parliament will be pleased to note that, in their evidence to the committee, the Electoral Management Board for Scotland and the Electoral Commission expressed confidence in the legislation. Indeed, they told the committee that they valued the consultation by and engagement with the Government as the bill has developed. We will continue to work closely with those stakeholders as they prepare for the referendum.

The bill specifically sets out the date of the referendum—18 September 2014—the wording of the question, the rules and spending limits for campaign funding, and the detailed rules for the conduct of the referendum, including the poll, the count and, importantly, the declaration of the result. The referendum will be conducted and regulated to the highest international standards,
with the referendum campaigns being run in a demonstrably fair and transparent manner.

The bill provides that the convener of the Electoral Management Board for Scotland, which was widely praised for its role in the Scottish local government elections last year, will be the chief counting officer for the referendum. The chief counting officer will be responsible for appointing local counting officers and managing the overall delivery of the referendum, and they will declare the national result once the ballots have been counted.

Responsibility for overseeing the referendum lies with the Electoral Commission, of course. The Electoral Commission will also monitor compliance with the campaign regulations and will have responsibility for informing the public about the referendum. It will report to Parliament directly on the conduct and administration of the referendum.

In line with best practice, the Scottish Government asked the Electoral Commission to test our proposed referendum question. As members are aware, the commission found the question to be clear, but suggested an improvement to the wording. We accepted the commission’s recommendation, so next year voters will be asked the straightforward question “Should Scotland be an independent country?”

The Scottish Government also accepted in full the Electoral Commission’s modified recommendations on the spending limits that will apply to different types of campaigners during the 16-week referendum period. The commission’s recommendations differed significantly from its previous proposals, and they will ensure a level playing field. I believe that they will encourage participation in the debate within sensible spending parameters, which is, of course, extremely important.

Although the details of the campaign regulations are based on the legislative regime for UK referendums and elections, we have also taken the commission’s advice on a number of areas in which the existing framework can and should be improved. In particular, we have made changes in relation to the designation of lead campaigns, the pre-poll reporting of donations and loans, and the rules for campaigners who are working to a common plan. Those improvements have been informed in part by lessons learned during the 2011 referendum on the UK parliamentary voting system.

I turn to the Referendum (Scotland) Bill Committee’s stage 1 report. I am pleased that, following what the committee’s report describes as “a wide-ranging and robust scrutiny process”, the committee has been able to support the general principles of the bill. As with any large and complex piece of legislation, the committee has, of course, identified a number of areas in which it would welcome clarification. I will not comment on all those issues—I responded to many of them in my letter to the committee’s convener earlier this week—but I will now consider some of the specific queries and recommendations that the committee raised.

The committee heard evidence from a number of witnesses who suggested improvements to some of the technical aspects of the voting provisions. Those include suggestions on revised arrangements for absent voting, the position of the official mark on the ballot paper and the deadline for proxy vote applications. I can confirm that we will lodge Government amendments to the bill at stage 2 to address those points.

On the conduct rules, the committee sought reassurance that provisions for visually impaired voters will be covered in the guidance for counting officers. That is clearly an operational matter, but I agree that it is vital that voters with specific needs receive appropriate assistance, and I believe that the bill makes provision to allow for that. I have no doubt that the chief counting officer will ensure that there is clear and comprehensive guidance on all aspects of the conduct of the poll at a local level.

The Scottish Government is working with counting officers to agree detailed funding arrangements that will ensure that those who are responsible for delivering the poll are properly resourced. I will write to the committee ahead of stage 3 about the fees and charges information that will underpin the resource allocations for each counting officer.

On the campaign regulations, the Electoral Commission suggested that it would be beneficial to bring forward the timetable for the designation of lead campaign organisations so that a decision is made ahead of the referendum period. We have given that serious consideration—I indicated to the committee during its stage 1 consideration that I would do that. We believe that the suggested approach will give certainty to campaigners about the benefits that are available to them and enable them to make better use of those benefits across the whole referendum period, and I confirm that the Government will lodge a specific amendment at stage 2 of the bill process to provide for that.

We also intend to amend the campaign rules to extend the scope of pre-poll reporting of donations in line with the Electoral Commission’s recommendation. I am sure that all members agree that transparency on the funding of the campaigns is absolutely vital if we are to have—as we will have—a referendum that operates to the
highest international standards. Therefore, in line with that recommendation of the Electoral Commission, we will require permitted participants to report donations and loans that are received before the start of the referendum period and that are intended to be used in that period towards referendum expenses. That will, I believe, further increase transparency in the way in which the campaigns are funded and therefore further increase the confidence that not just the Parliament but the Scottish people in general have in the conduct of the referendum.

Finally, the committee sought clarification on how permitted participants might check donors’ eligibility by reference to electoral registers other than the Scottish local government register. There are a number of ways in which they can do that, which I set out in my letter to the convener. Campaigners will have access to all the information that they need to ensure that their donations are permissible.

Those are some of the points that were raised in the committee’s stage 1 report. As I said, a range of other issues have been raised. I responded to the committee in my letter earlier this week, but I am sure that we will discuss many of those matters as we proceed to stage 2.

To conclude, our overarching objective for the bill is to ensure that the legislation that we are taking through the Parliament will provide for a referendum that is run to the highest standards of transparency, fairness and propriety. I again put on record my thanks to everyone who was involved in advising on and scrutinising the bill for their efforts. I am confident that the bill will achieve the ambition that all of us—regardless of which side of the campaign we are on—have for the conduct of the referendum.

Earlier, I reminded Parliament of why the Scottish Government is legislating for an independence referendum, and that is the point that I want to end on. I believe that, over the past 14 years of the Parliament, we have proved that decisions are best taken here in Scotland. When we take decisions here in our Parliament, which is accountable to the Scottish people, we get good decisions that deliver things such as free education, free prescriptions and dignity for our older people. When we leave decisions in the hands of Westminster Governments that we do not elect, we get austerely and cuts to welfare that impact on the poorest and most vulnerable in our society. The compelling case for independence is to bring home the powers that will allow us here in Scotland to deliver the kind of country that we want to be and the kind of country of which we can all be proud.

Therefore, with great pleasure, I move,

That the Parliament agrees to the general principles of the Scottish Independence Referendum Bill.

The Deputy Presiding Officer: I call Bruce Crawford to speak on behalf of the Referendum (Scotland) Bill Committee.

14:42

Bruce Crawford (Stirling) (SNP): On behalf of the Referendum (Scotland) Bill Committee, I begin my contribution to this important debate by recognising that there was no doubt from the outset that committee members appreciated the importance and significance of the role that they had been asked to undertake. We were all acutely aware of our primary responsibilities as parliamentarians on the committee to ensure that any proposed legislation that was put before us for scrutiny can command the confidence of not only the Parliament but, perhaps more important, the people of Scotland.

I was therefore very glad that the committee, following its deliberations, was able to unanimously agree that the Scottish Independence Referendum Bill provides an appropriate foundation for next year’s referendum, albeit that we have some specific requirements for clarification or amendment. Although committee members might differ on the preferred outcome of the referendum, there was a high degree of consensus that it should be conducted to the highest standard possible. To that end, the committee was pleased that the Electoral Commission told us that the bill is

“a strong piece of legislation”

that will deliver a referendum

“that truly puts the voter first”.—[Official Report, Referendum (Scotland) Bill Committee, 23 May 2013; c 421.]

Turning to the process of the committee’s deliberations, I begin by sincerely thanking my fellow committee members for their positive and robust approach to the job of scrutinising the bill. In particular, I thank my deputy convener, James Kelly, for his helpful and sage words at just the right time and when I required them—thanks, James. I believe that, as a group, we followed through on our recognition of the importance and significance of our role by appropriately questioning witnesses who appeared before us and examining the written evidence that was submitted to us.

On that note, I thank the witnesses, whose helpful contributions made our task so much easier, as well as the people who took time to provide written submissions.
Of course, we also heard from the Deputy First Minister and officials. We appreciated the Government’s positive approach to its responsibilities and its timeous responses to our requests for information. The Deputy First Minister today described a number of areas in which the Government intends to lodge amendments—indeed, those were set out in a letter to the committee earlier this week.

I thank our two advisers, Iain Grant and Professor Stephen Tierney, for their helpful advice and input throughout the scrutiny process. It is also appropriate to thank our parliamentary staff, including Scottish Parliament information centre staff and the media and legal teams who helped us. In particular, I thank the clerking team, which was led by Andrew Mylne. The team’s hard work and diligent and considered approach enabled us to meet our aims and objectives ahead of schedule, in a highly professional manner.

On the specifics of our report, the committee unanimously recommended that the general principles of the bill be agreed to. However, the committee was not unanimous on all our very detailed recommendations. In the time that is available today, I cannot do justice to the breadth of the subject areas that we examined and reported on, so I will concentrate on the most significant aspects of our deliberations.

On campaign spending limits, the committee was clear that any approach must meet the test that was set out in the Edinburgh agreement that the rules must be

“fair and provide a level playing field.”

Committee members also recognised the importance of protecting individuals’ right of free speech and of encouraging as wide as possible participation in the debate. In that regard, the committee concluded that the Electoral Commission’s recommendations, which are reflected in the bill,

“achieve as good an overall outcome as is likely to be possible.”

We also took the view that

“a combination of public scrutiny and the oversight of the Electoral Commission should be capable of preventing spending power alone, on either side, unfairly affecting the outcome.”

That is important.

On purdah, the committee accepted the Deputy First Minister’s view that there is no reason to doubt the good faith of the UK Government’s commitment, in the Edinburgh agreement, to observe purdah restrictions that are equivalent to those that are imposed on the Scottish Government in the bill.

Nevertheless, a majority of the committee thought that there is a need to go further, to ensure that the expected level playing field is delivered—in reality and in perception. That is why the committee invited the UK Government to indicate whether it would be prepared to put the purdah restrictions to which it says that it is committed on a statutory footing, as will happen here in Scotland.

On purdah’s implications for the Parliament, the bill provides for the purdah period to commence on 21 August 2014. The committee noted that the Parliament has now agreed recess dates that include periods from 28 June to 3 August 2014 inclusive and from 23 August to 21 September 2014 inclusive. As is obvious, there will be a two-day overlap of the purdah period with parliamentary business.

The committee agreed to draw the issue to the attention of the parliamentary authorities but did not feel compelled to make specific recommendations in that regard. It is, of course, well within the parliamentary authorities’ powers to deal with the issue if they think that it is appropriate to do so.

I hope that the parliamentary authorities at Westminster will want to ensure that, in the spirit of the Edinburgh agreement, that Parliament’s activities do not break the purdah rules. This year, Westminster was in recess from 18 July to 2 September and will be in recess from 13 September to 8 October. There is therefore potentially an issue for both Parliaments to consider and take action on, if they see fit.

Patrick Harvie (Glasgow) (Green): The committee’s convener is right to say that we did not reach a view on what should be done about the two-day mismatch. Is he open to the possibility of considering the text of the bill and its reference to the Scottish Parliamentary Corporate Body, with a view to including a line to say that nothing in that text should be seen to impinge on parliamentary business?

Bruce Crawford: I hope that the parliamentary authorities at Westminster will want to ensure that, in the spirit of the Edinburgh agreement, that Parliament’s activities do not break the purdah rules. This year, Westminster was in recess from 18 July to 2 September and will be in recess from 13 September to 8 October. There is therefore potentially an issue for both Parliaments to consider and take action on, if they see fit.

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providing voters with general information about the post-referendum process that would be followed in the event of either a yes vote or a no vote. Certainly, in my experience of talking to people about the outcome of the referendum, that is indeed information that voters would welcome.

The committee was therefore encouraged to hear that the Scottish Government and the UK Government are discussing those matters. As members might expect, we would welcome further information about the nature of those discussions and regular updates on progress.

On the declaration of results, the committee endorsed the approach taken in the bill, which allows local results to be made available before the national result and gives discretion on exact timings to the chief counting officer. Nevertheless, we would expect the chief counting officer, in practice, to authorise counting officers to announce local results without any unnecessary delay. As is made clear in our report, we would welcome further clarification from the Electoral Management Board for Scotland as to how those decisions are likely to be made in practice. It is worth pointing out at this stage that all committee members had strong views on that matter and there was a strong expectation that voters would be entitled to know the outcome of the referendum at the earliest possible date.

As we know, long after this bill has received royal assent, the debate on the constitutional future of Scotland will continue apace. It is now about the nature of how that debate is conducted. I know that if, as parliamentarians, we can put in place legislation that can command the confidence of the people in Scotland, so too we are more than capable of conducting a debate over the next 12 months that is respectful of one another’s deeply held views and devoid of rancour or abuse.

Of course, it will be a hard-argued and passionate debate—that is how it should be. However, when it is all over, we will still have a job to do for Scotland whatever the result, so let us conduct the debate in the spirit that the people of Scotland expect and deserve.

If we can make it a debate that is about hope, aspiration and taking the people of Scotland forward, people from all parts of Scottish life will want to take part. That is the type of debate that the people of Scotland deserve because it sits well with the democratic and civic traditions of our people.

In the meantime, before we get into that debate, I recommend that the Parliament agrees to the general principles of the Scottish Independence Referendum Bill.

14:53

Drew Smith (Glasgow) (Lab): I, too, thank all those who have been involved in the preparation of the stage 1 report that is before us, as outlined by the Deputy First Minister and including the individuals who were mentioned by the convener.

Last week, the Scottish Government’s legislative programme was announced. Given the centrality of the referendum to Parliament’s business in the remainder of 2013-14, it is no surprise that stage 1 consideration of the Scottish Independence Referendum Bill has come before us so quickly; nor is it a surprise that the bill is so fulsomely supported by members of the governing party. The rest of the Scottish Government may be on pause, but the long road to the referendum provides few resting places.

Indeed, Labour supports the need to get fair ground rules for the referendum established now. We welcome the people having their say on Scotland’s future, either outside the UK or as part of a continuing partnership with the people of England, Wales and Northern Ireland. We, too, will support the bill at stage 1 because, as Bruce Crawford says, we agree that despite our differing views on the answer, this question should be put and settled next year.

The referendum campaign has already been described as the longest political campaign that Scotland has seen—and hopefully will ever see. For any who are already weary, it is worth remembering that Labour’s referendum, which created this Scottish Parliament, took just two months to organise and devolution occurred within just two years.

However, this referendum is different from the referendum of 1997. We are clear that the end of the UK is not, as the Deputy First Minister suggested, a development of power sharing within the UK; it is an entirely different idea. Members will no doubt expand on that difference during the debate. Perhaps they will reflect the new-found enthusiasm of the First Minister, who spent the summer expounding on his love of all things British: the Queen, the pound, a shared welfare system, and a defence partnership are just some of the ever-growing number of British unions that the SNP now wants to save from itself.

The purpose of the Scottish Independence Referendum Bill is to establish the ground rules for how the debate will be conducted next year. Both the yes and no camps have made it clear that we hope for a clear and decisive result—but we can only hope that the people deliver such a result. If the result is close, it is even more important that we achieve consensus now about the rules to be followed.
The referendum bill is rooted in rights and responsibilities that are enshrined elsewhere in electoral law and, as others have said, in our previous experience of referendums in this country. However, this contest is different from all previous votes. Questions over expense returns, proper accounting and the duty to behave with respect towards our opponents cannot be left to be adjudicated upon afterwards. Unlike in other elections, electoral courts, the enforcement of electoral law and the ultimate sanction against rule breaking—rerunning a contest—cannot be options in this debate. The safeguards must be built into the contest in advance. Guidance or, if needed, enforcement of the rules must take place before polling day, not after it.

The Referendum (Scotland) Bill Committee’s stage 1 report raises a number of issues that will need to be considered further at stage 2 because, by stage 3, we will need to be satisfied that we have given the Electoral Commission the tools to do the job that Scotland needs it to do.

On the requirements of purdah, the committee correctly highlights the difficulty that has been created by the Scottish Government’s desire for Parliament to sit next August, during the purdah period. That is a problem, first, because of the significance of the decision and, secondly, because of the danger of the Government completing its transformation into a campaign. I am sure that it is not the intention of anyone in the Government to hold a First Minister’s question time on that Thursday in purdah, in which the leader of the Government is barred from providing substantive answers, nor is it intended that his words might not be publishable under restrictions affecting the production of an Official Report, which would be a potential outcome if the Scottish Parliamentary Corporate Body was included in the bill.

Mark McDonald (North East Scotland) (SNP): Correct me if I am wrong, but I seem to recall the member and his colleagues voting for a situation in which the Parliament would have sat for almost the entirety of purdah, not just the beginning of purdah. Can he clarify his position on that?

Drew Smith: The Government also chose the date of the referendum. The key point is that we have a bill before us, and we now have to scrutinise the rules that it creates to ensure that they work.

The upcoming by-election in the Dunfermline constituency represents a prompt test for the Scottish Government to respect the rules that apply to Government activity during elections in spirit as well as to the letter.

Nicola Sturgeon: We always respect the rules.

Drew Smith: There should be no problem at all, then. Perhaps the Deputy First Minister will indicate later in the debate whether she thinks that it would be appropriate for the white paper on independence to be published during the campaign.

The bill proposes that lead campaigns will be formally designated only during the 16-week regulated period. We support the Electoral Commission’s view that that should happen as soon as possible. We know that Yes Scotland and Better Together will be the lead campaign organisations, so there is no need to delay, and we welcome the Deputy First Minister’s commitment to amendment on that issue.

The bill does not deal with the franchise for the referendum, but the Deputy First Minister raised that matter. The outstanding issue on which Parliament still needs an answer is whether 16 and 17-year-olds living abroad with forces families will have the same voting rights as their parents or possibly their cousins living here. Our view is that no number of votes should ever be considered negligible, and that a solution for those young people must be found.

Spending limits are a fraught issue in any election, and all elections cost money, but it is important that the rules apply equally and have an impact that is fair for both sides. A decision of this importance should not be hampered by artificially low limits, any more than we would wish there to be unrestricted spending.

However, we have real concerns, which were expressed in evidence to the committee, about the interaction of lead campaigns and local or affiliated groups and the possibility of moving money or other resources between them to get round the limits. For lead campaigns, the limit is relatively low, whereas for other groups it seems fairly high. The transparency of relationships between lead campaigns and other permitted participants must be improved if we are to have groups that are linked to a lead campaign but which have apparently not been declared to be formally part of it. Everyone welcomes initiatives by both campaigns to engage with particular groups of voters, whether they be businesses, trade unions, women, or minority or lesbian, gay, bisexual and transgender groups. However, it is crucial that their funding and relationship to the lead campaign is clear and beyond further questioning all the way to referendum day.

Margo MacDonald (Lothian) (Ind): Does the member imagine that there will be a propensity for one side rather than the other to seek to stretch the rules and perhaps get round them?

Drew Smith: That is not what I am suggesting. The point of ground rules is that they apply equally
to both sides; that is why we must get them right. The Parliament should consider whether an overall spending limit that included the lead campaign and permitted participants on either side of the contest would be a better way to prevent the possibility of gaming and allow for flexibility and an inclusive contest.

As I said, the bill is about establishing the ground rules for the debate, but there is also a duty for participants to behave in a way that recognises that trust is earned and not provided for in an act of Parliament. We want a debate in which both sides can be robust in putting their position and scrutinising the alternative. The public demand is for information that can help them establish the questions that they have and evaluate the answers that they are given. People know that each side is trying to persuade them of its case, and they will come to their own judgments about what information and arguments to value and which to discard, provided that the ground rules of debate, which they expect, are respected.

Unfortunately, this summer the ground rules have not always been respected to the extent that we would wish. We have seen payment for a supposedly independent article that was placed in a newspaper without qualification. Many of us will have spent the summer knocking on doors and putting our case for what we each believe, but few of us will have done that while dressed up as the other side. The spectacle of elected Scottish National Party representatives as well as other members and supporters unfurling their Labour for independence banners represented a farce that demeaned the debate over the summer. [ Interruption.]

The Deputy Presiding Officer: Order. Mr Swinney.

Drew Smith: Without acknowledgement that those tactics let them down, there will continue to be questions.

Mark McDonald: Will the member give way?

Drew Smith: No, thank you. I need to make progress.

Why was the press conference of the Labour for independence group paid for by the yes campaign? If yes supporters cannot bring themselves to accept that that was a mistake, perhaps they can at least suggest to Blair Jenkins that their money might be better spent on putting their own case.

The test for the bill is whether it represents a fair set of ground rules for a debate that is on-going and which will only get more intense. So far, the polls continue to support our belief that most Scots continue to believe in Britain and a partnership with our neighbours, rather than leaving the country that we have built together. However, we are not complacent about the final result or the job that we have to do in the year ahead.

Despite the First Minister’s summer tour to the Isle of Man and elsewhere, we understand that the best way to keep the pound, safeguard our pensions and have a say in our mortgage interest rates is not just to be part of an economic, monetary, social and political union but to be represented in it. We agree that the defence of our shores is a burden that is best borne together, but we will also campaign against the remaining aspects of separation that the SNP still supports, such as tax competition, which will lead to nothing but a race to the bottom, damaging not just Scots but all the people of Britain.

Kevin Stewart (Aberdeen Central) (SNP): Will the member give way?

Drew Smith: No, thank you.

We have come a long way from the issues of process and the wording of the question, which dominated the early debate. The bill is an important milestone, but the decision itself is too important to be left open to further challenge. Whether or not we like the result on 18 September next year, it will be our job to come together afterwards. That will happen only if we have ground rules that are agreed in the bill and which are both fair and respected by all.

15:03

Annabel Goldie (West Scotland) (Con): Next year will be a momentous one when, arguably, the most important decision ever to confront Scottish voters will require to be taken. The debate is already passionate, voters are getting engaged with the issue and emotions are running high. However, I echo Bruce Crawford’s view that the debate must be conducted with clarity, courtesy and a degree of dignity and must not become an unedifying barney or stairheid rammie. Whatever we may think, the public have no great impression of politicians as it is, so an uninformed shouting match will merely cement that negative perception. The public deserve better.

If the debate is vital, no less so is the process to ensure that there is a mechanism for the referendum in which voters can have confidence. That may be a lot less sparky and may be redundant to some of the drabness that can attach to process, but process matters. We have already dealt with phase 1 of the process in the Scottish Independence Referendum (Franchise) Act 2013 and we are now dealing with phase 2: the Scottish Independence Referendum Bill.
As a member of the scrutinising committee, I pay tribute to Bruce Crawford for his canny and wise chairmanship. I do not say this lightly, but I enjoy serving on the committee. I thank Andrew Mylne and the clerking team for really breaking sweat to support the committee through a demanding timetable. I thank, too, our advisers and SPICe for excellent input, which I found extremely helpful. All that endeavour has culminated in the stage 1 report that is before the Parliament today.

With that absence of logic in which I rejoice, I will start at the end of the report by quoting paragraph 322, which states:

“The Committee is confident that its Stage 1 inquiry has enabled this important Bill to be subjected to a wide-ranging and robust scrutiny process. Inevitably, as with any large and complex piece of legislation, there are some aspects of the Bill that require adjustment, and other points on which clarification is needed. Overall, however, the Committee is confident that this Bill should provide a suitable framework for next year’s referendum.”

I think that that adequately encapsulates the position and my party will support the bill this evening.

Let me tease out one or two issues that I think require adjustment or comment. An issue on which there is probably complete consensus is when we get the result. I had some anxiety over that, as it was not clear from the bill if or when a local result could be announced. It was less than clear when the chief counting officer would announce the overall result. The public expectation is clear, as is that of the Electoral Commission, that once the chief counting officer is satisfied with the local count, the local counting officer will be authorised to declare it locally. I hope that the Deputy First Minister will confirm today that that position is now beyond doubt. I am also satisfied that it is clear that there is an expectation that the national result will be announced as soon as is practicable.

To me, the main area of sensitivity all concerned the period before 18 September next year, governed by the regulated period of 16 weeks and the purdah period of 28 days. That has implications for campaigning groups, their activity and their expenditure, but it also has implications for Governments and their quangos.

My impression is that the principal campaigning groups are content with those periods and understand their impact on their activities. However, I have to say that emotions ranging from mild suspicion to rampant paranoia surrounded what Governments and their quangos might get up to during these sensitive periods. I think that a purdah period for Government of 28 days is reasonable.

While the Scottish Government is content to have its conduct for that period regulated in the bill, I do not consider it either necessary or reasonable for this long-standing protocol to be legislated for at Westminster. There has been no need of that in the past. As she has confirmed today, the Deputy First Minister has expressed herself content with the terms of the Edinburgh agreement and such a legislative obligation on Westminster seems to me to be excessive. For that reason, along with Tavish Scott, Patricia Ferguson and James Kelly, I dissented from that proposal in the report.

However, I think that taxpayers would take a very dim view of any quango or public authority appearing to support either side of the debate, whether within the purdah period, the regulated period or any other period between now and next September. It seems to me to be both unnecessary and inappropriate for quangos to express any such views. The Deputy First Minister, while being characteristically robust when questioned on these matters, did not seem entirely unsympathetic to concerns that Tavish Scott and I expressed. She strongly rejected any suggestion that such bodies would behave inappropriately by stating:

“Public authorities do not operate in a political way, and they will not do so during the regulated period any more than they do now.”

She went on to say that to suggest that such bodies would be

“out there campaigning for either side in the referendum ... stretches credibility.”—[Official Report, Referendum (Scotland) Bill Committee, 13 June 2013; c 564-5.]

However, the Deputy First Minister provided what to me is a welcome acknowledgement of the concerns expressed by confirming that the Scottish Government would issue guidance to relevant public bodies and she has offered to provide a draft of such guidance to the committee. I hope that that draft will be available in early course, but I also hope that it is broader than covering just the 28-day purdah period. It should reflect the Deputy First Minister’s confidence that such bodies will not behave inappropriately.

As has already been indicated, this Parliament will have to resolve the issue of the two days of the purdah period during which the Parliament will now operate. I think that that is described as a casus omissus, which is a Latin euphemism for something else, but it is certainly not clever and it needs to be addressed.

The bill delivers a workable mechanism for 18 September 2014, when I confidently expect Scotland to reject overwhelmingly separation from the rest of the United Kingdom.

The Deputy Presiding Officer: We move to the open debate. We have a modest amount of time
available this afternoon, which will allow for interventions.

15:09

Annabelle Ewing (Mid Scotland and Fife) (SNP): I am delighted to be called to speak in this stage 1 debate on the Scottish Independence Referendum Bill. That very phrase, which is set out on the front page of the Referendum (Scotland) Bill Committee’s stage 1 report, trips off the tongue very nicely indeed.

I, too, have the privilege of serving on the committee and want at the outset to record my thanks to the clerks, who worked incredibly hard to ensure that the committee progressed its work in a timely and productive manner. I also state for the record that notwithstanding the very significant differences in people’s outlook on this debate, the committee’s deliberations have in the main been carried out constructively and respectfully. I believe that that augurs very well for the progress of the referendum campaign itself, which the people of Scotland want to be conducted in a fair and reasonable way. They want a positive campaign that is focused on issues of importance, not characterised by endless negativity and sneering.

The first thing to note about the bill is that it has been made in Scotland for Scotland. That is important, because it ensures that our Parliament here in Edinburgh is responsible for deciding on our referendum’s legislative framework and that the elected representatives of the people of Scotland will establish the rules for the referendum on Scotland’s future. What could be more democratic than that? Is it not better for the referendum rules to be decided by the Scottish Parliament, which is trusted by the vast majority of the people of Scotland, instead of their being imposed by a Westminster Government that we did not vote for and which is not trusted by the vast majority of the people of Scotland?

Another key element of the bill is the extent to which the key provisions have been accepted as providing a fair and robust framework for the independence referendum that, as we have heard, meets the highest international standards and in which the people of Scotland can have confidence. For example, Michael Clancy of the Law Society of Scotland, who in his work here is known not to be overly fawning about legislation in general, told the committee:

“this is actually quite a well-drafted bill. Indeed, as you will see from our submission, we had very little difficulty with the drafting.”—[Official Report, Referendum (Scotland) Bill Committee, 9 May 2013; c 346.]

That is considerable praise indeed. We have also just heard the committee convener quote from John McCormick, electoral commissioner for Scotland, who also said that the bill was

“a strong piece of legislation”—[Official Report, Referendum (Scotland) Bill Committee, 23 May 2013; c 421.]

As its stage 1 report makes clear, the committee has been able to agree on a lot of things, including—crucially—its general principles. The report raises a number of technical points with a view to clarifying certain issues, and I very much welcome the Deputy First Minister’s confirmation that the Scottish Government is preparing to look at those issues and to bring forward amendments at stage 2.

Of course, as the convener also pointed out, we have no say on the purdah restrictions that will be applicable to the Westminster Government. There is per the Edinburgh agreement a gentleman’s agreement in place, which is why the committee noted in paragraph 189 of its report an asymmetry in this respect between the Scottish Government, which is subject to the purdah restrictions on a statutory basis, and the Westminster Government, which is not. In its recommendations, therefore, the committee has invited the Westminster Government to reconsider its position with a view to putting on a statutory footing the purdah provisions to which it, too, should be subject.

With regard to the question that will be posed in the referendum, notwithstanding all the fuss from some of the no lobby before the bill was introduced, the Electoral Commission’s recommendation on the wording of the question—

“Should Scotland be an independent country?”

—has in fact been accepted across the board. I believe that that sums up the general view of the bill’s status in Scotland at large; it is regarded as straightforward and clear and as establishing the proper framework to facilitate the people of Scotland’s decision about which of the two futures for Scotland they want.

I know what future I will be advocating to the people of Scotland—including, crucially, our 16 and 17-year-olds—in the referendum vote. I will advocate a prosperous and fair Scotland, in which decisions about our country are taken by the people who care most about it: those who live and work here. It is clear to me, and to an increasing number of voters, that to ensure such a future for our country and its people the answer to the question

“Should Scotland be an independent country?”

that will be posed on 18 September 2014 must be yes.
James Kelly (Rutherglen) (Lab): I welcome the opportunity to take part in the debate, and I thank my former fellow committee members and the clerks, as well as all those who gave evidence, which contributed to the substantial stage 1 report that is now before Parliament for its consideration.

First, we must consider why the bill is so important. It is clear that the referendum, which takes place in a little more than a year’s time, involves a massive decision for the Scottish people, whichever side of the argument they are on. It is important that the rules for the campaign, and for the poll and the count, are bottomed out and are completely accurate, and that we—those on both sides of the argument and the public outside—have confidence in them.

In that respect, the legislation is important because it sets out the platform of rules for the campaign ahead. I think we would all agree that we want an open and honest debate with fair and transparent rules, and the stage 1 debate is the first step on the road.

When the bill was first mooted, it was felt that there might be a lot of controversy in committee and in the chamber. I know that we have had some differences of opinion, but, to go back to the start of this year, I remind members that there were big divisions, largely on campaign spending limits and the actual question. However, once the Electoral Commission had produced its report, all sides accepted the limits and the question. That took a certain amount of heat out of the deliberations in the chamber and in committee, which is to be welcomed.

The public did not want us to get too embroiled in the process. These issues are massive for Scotland, and people want to see what the implications are for their towns and communities. I welcome the consensus that has arrived with regard to spending limits and the question.

For both the two lead campaigns and the party-political campaigns, accountancy in campaign expenditure will be important. I welcome the limit of £1.5 million on spending by each of the lead campaigns.

Margo MacDonald: Regarding the general principle of spending limits having to be agreed and adhered to, on the assumption that somebody breaks the spending limit, what is the sanction against that person?

James Kelly: I assure Margo MacDonald that the Electoral Commission has clear sanctions if people break the rules on spending—for example, by not declaring it.

It is important that both the lead organisations—Better Together and Yes Scotland—have a proper accounting structure. However, given the evidence that we heard in committee, I am concerned that some of Yes Scotland’s organisations—for example, Business for Scotland—operate, in accountancy terms, outwith the remit of the yes Scotland campaign. It would be better for both campaigns if such organisations were tightly controlled within the organisations’ remits, so that expenditure is open and transparent.

Patrick Harvie: I ask James Kelly to be a wee bit careful in his choice of language. He referred to “Yes Scotland’s organisations”. If he is talking about separate organisations that are accounted for separately under the campaign rules that all sides have agreed, perhaps he should not describe them as belonging to another organisation.

James Kelly: It is clear that Business for Scotland and women for independence are organisations that work closely with Yes Scotland.

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James Kelly: It is clear that Business for Scotland and women for independence are organisations that work closely with Yes Scotland.
The Westminster and Edinburgh Governments agreed on the principle of consulting the Scottish people on the independence proposition. The Scottish Independence Referendum (Franchise) Act 2013 and the stage 1 report on the Scottish Independence Referendum Bill were agreed to after detailed scrutiny, as has been said. All committee members signed up to the report; we agreed on the conclusions about the principles, with a few votes of dissent on certain paragraphs. We can be proud of that model of democratic scrutiny. It is made in Scotland and it is fair and above reproach.

That said, a major concern of members has been to include as many people as possible in the process of understanding the issues that are at stake and in being able to vote. That is why we spent time looking for ways to ensure that the disabled and people with limited eyesight can vote and why we considered whether prisoners should be able to vote.

I sought answers to many questions about the Electoral Commission’s role and how it intends to provide informative material to potential voters, all the way from registration—as agreed in the franchise act—and engagement to voting, which are in the bill.

We are talking about democracy in action. The committee’s report stands international scrutiny and is above reproach.

We agreed on the need for the Electoral Commission to produce clear and impartial sets of information. That should leave matters of substance for the yes and no campaigns to explain to voters. I have seen the materials that the commission produced in various languages for previous elections, which included translations of the ballot paper for voters who do not speak English.

Submissions to the Referendum (Scotland) Bill Committee and the Public Petitions Committee sought the inclusion of Gaelic on the ballot paper. As a committee, we did not consider that a persuasive case had been made for a bilingual ballot paper. One of the great virtues of the ballot paper is that it is simple and clear. No Gaelic speaker is monolingual, unlike some ethnic minority speakers for whom special help will be required and will be available.

Nevertheless, I believe that the agreed concept of equal respect for Gaelic as one of Scotland’s national languages, as set out in the Gaelic Language (Scotland) Act 2005, needs to be addressed in future. No attempt was made by the petitioners to have bilingual ballot papers in the 2007 and 2011 Scottish elections, the 2010 UK election or the alternative vote referendum, and I suggest that the petitioners’ contention that the Scottish independence referendum is an event of national importance applies equally to those previous elections. Therefore, I believe that the future testing of such a bilingual text is a matter for this Parliament to address but not, I am sorry to say, in the context of the bill.

Equal respect for our native languages will probably come into perspective with the publication of the 2011 census figures, which is due later this month. I suggest that the Public Petitions Committee should deliberate on the best way forward for future votes after the referendum. Indeed, I believe that an annual debate should be held in the Parliament to discuss the progress of our indigenous languages in the life of the nation both in this and future parliamentary sessions. I hope that the Government will respond to that proposal whole-heartedly. For the referendum vote, I hope that all returning officers will make a Gaelic translation of the ballot paper available and on display at every polling station.

On awareness raising, the issues that are involved in the referendum need to be presented as fully as possible to encourage the maximum turnout. Therefore, on the issue of informing voters, I am delighted that the processes to take place after the vote are currently being agreed and discussed. We are told that senior officials from the Scottish Government, the Cabinet Office and the Scotland Office have met to hold discussions on agreeing a joint statement in response to the recommendation in the Electoral Commission’s January 2013 report that the public should be informed about what would happen after the referendum. Such information is essential to set the issue in the context of the move forward that we, on this side of the chamber, hope will take place.

Indeed, issues of prisoner voting, bilingual ballot papers and much else are subjects that an independent Parliament would be able to give proper scrutiny of and give full weight to in due course. I support the stage 1 report on the bill, which paves the way for a fair and internationally accepted referendum through consent and democratic agreement. The return of the full powers to an independent Scottish Parliament would be the best and fairest way forward for our country.

15:28

Richard Baker (North East Scotland) (Lab): It is clear that we are agreed on one thing and that is the importance of the bill. The arrangements for the oversight of the referendum are significant politically, so it is important that we get the legislation right. Given the process issues that have been raised by members from across the chamber, it will be crucial that the committee and
ministers work through the bill diligently to ensure that all those issues are correctly addressed.

A legitimate concern is that more can be done to ensure that there is a reasonable equality of arms in terms of spend during the short campaign, particularly in relation to permitted participants and how those are defined. It is also right to ask questions about the operational purdah, particularly with reference to the parliamentary days that will occur during the campaign. We also need to ensure that the Electoral Commission has the powers to address any breach of the campaign rules prior to the referendum.

I am hopeful that the committee will look carefully at those issues. On the two occasions that I attended committee meetings, the committee certainly considered the business in hand—in that instance, the issue of the registration of 16 and 17-year-olds under what is now the Scottish Independence Referendum (Franchise) Act 2013—in a thoughtful and efficient manner. Those issues are important because it is vital that both sides of the debate and, indeed, all those taking part in the referendum can be confident that the process will be efficient and fair and that all will know, whatever the result, that it was reached in the right way.

I welcome the bill’s objective to provide for a “fair, open and truly democratic process, conducted and regulated to the highest international standards.”

A key part of fulfilling that principle must be the proper parliamentary scrutiny of the Scottish Government’s proposition. We need to hear more about that from ministers as well.

The remit of the committee, as it examined the legislation before us, has thus far focused on those important process issues, but I am concerned that the Parliament also has a proper opportunity to debate the substantial issues that will arise from the publication of the Scottish Government’s white paper, whenever that finally happens. If the publication date is to be delayed, as we hear it may be, it becomes all the more important to have a clear process in place so that whatever propositions are put forward for Scotland post-separation or post-vote can be properly scrutinised. We are told that the white paper will have all the answers, so Parliament must engage in work that will shine a light on whether questions have been answered or whether further questions need to be asked.

Although consideration of the Scottish Independence Referendum Bill is the first job of the committee, it is vital that it, alongside that work, considers what further role it may have in scrutinising the proposals that the Scottish Government will put before the people as a result of the passage of the bill, which we on this side of the chamber will support.

I am aware that, under its current work programme, the committee may well have ceased its work before the publication of the white paper. It is possible that the Government’s intention is to publish the document after stage 3 consideration of the bill. Therefore, if the committee cannot lead in that scrutiny, we must consider what role Parliament will have. That cannot just be a few plenary debates. It is clear that civil servants have devoted significant time to the white paper. For example, four civil servants are working on the infrastructure programme and seven are working on the proposed defence policy.

The white paper is a major piece of Government work and members must have the opportunity to consider it carefully. This cannot be an issue in which the governing party restricts parliamentary scrutiny in any way—I certainly hope that it will not do that. In my North East Scotland region, there is a great desire that, alongside the fair referendum process that we hope the legislation will achieve, the questions on major issues such as currency, personal and business taxation, monetary policy and a range of other policy areas that many believe they have not received answers to from those proposing the break-up of the United Kingdom are answered. The Law Society of Scotland has also highlighted key principles that must inform the debate, including legal certainty and administrative continuity.

In order to achieve that, the Parliament must not only legislate properly on the referendum process but look carefully into the substantial matters of debate that will take place in the process set out in the bill and then hold the Executive to account on the arguments that it makes on those matters.

We all have our views about how that debate will be resolved. I am confident that the people of Scotland will reach the conclusion that, in constitutional terms, we have the best of both worlds, with this Parliament here to ensure that we have a strong Scotland in a strong UK. I believe that the people in my region will reach that conclusion for our part of Scotland and our local economy. Whatever our divergent views on the important question that we have to answer, we should all welcome full scrutiny of the proposals that we have waited years for the Government to provide. In endorsing the general principles of the bill, I hope that ministers will tell us how they will enable Parliament to carry out that important scrutiny work.

15:33

Linda Fabiani (East Kilbride) (SNP): I am pleased to support the general principles of the
Scottish Independence Referendum Bill, just as I was pleased to serve on the Referendum (Scotland) Bill Committee and contribute to the report that informs the debate. Coming to the chamber at stage 1 follows a great deal of effort by members on all sides of the independence question to ensure that all Scots have an open, fair and democratic opportunity to decide our constitutional future.

I endorse Rob Gibson’s words and restate the Parliament’s unanimous commitment to Gaelic and its status as a national language. I call on all agencies to ensure that Gaelic remains at the heart of our referendum.

The process of designing the referendum has been inclusive, extensive and exhaustive. It gives the lie to the Westminster fantasy that this Parliament cannot be trusted with such a significant issue. That view apparently extends across Westminster from Lord Forsyth’s attempts to scupper the Scotland Act 1998 (Modification of Schedule 5) Order 2013 to Anas Sarwar MP’s contention that the Scottish Parliament is not democratic.

The Parliament has already addressed the critical matter of the referendum franchise and this bill takes us further. It covers the practicalities of meeting the main objective of the bill, which is to provide for a referendum following “a fair, open and truly democratic process which is conducted ... to the highest international standards.”

The important role of the Electoral Commission in that has, of course, been recognised.

There are important roles for many, of course, not least the press and the broadcast media. The referendum challenges powerful interests throughout the UK and internationally and, in the years ahead, Scots are entitled to rely on the media to ensure that views expressed by, or on behalf of, such interests are exposed to scrutiny.

Funding should always be exposed to scrutiny. It is always an issue and the committee discussed it at length. James Kelly referred to it earlier and got himself in a little bit of a muddle. The bill recognises the need for campaigns to have the resources to get their messages across but attempts to guard against the referendum becoming a plaything of the powerful and wealthy. There may well be opportunities for mischief-making by those with more money than principles or sense, and wealthy individuals based outside Scotland have already taken a highly prominent role in the debate. We should be beyond 18th century ethics in that stuff in the 21st century. A no vote secured by imported funds would leave a bitter legacy from which a continuing union might never recover. At the end of the referendum, Scotland must not be seen as having been bought and sold in any way.

Margo MacDonald: I was deeply engrossed in what Linda Fabiani was saying. What if we get a yes vote and somebody else has paid the money? I would not be for giving it up. [Laughter.]

The Deputy Presiding Officer (Elaine Smith): Order.

Linda Fabiani: It is interesting to note that the yes campaign has already said that it will only take donations from Scotland.

As we work our way to 18 September 2014, attention will increasingly turn to the real choice that faces people in Scotland. The pro-union parties tell us that Scotland’s constitutional settlement is not fixed and that, if we vote no, Scotland will get significant new powers. It sounds familiar—shades of 1979.

I have already called many times on pro-union parties to ensure that the settlement against which Scots will test independence is clear and locked in but, instead, they focus on a negative campaign that is designed to misinform and undermine Scottish self-confidence. It is in that context that we must judge the promise of a UK Government magnanimous in victory and committed to fulfilling Scots’ desire for more control over their own affairs.

Reality will be very different. Interest in a Scotland deemed to have voted itself out of existence will be extremely low on the agenda of all UK parties. I cannot envisage Scottish leaders turning up at party conferences to receive grateful thanks for saving the union getting any merit or ground at all if they argue that there is a new, as yet unspecified bill to pay for that.

Fearing the UK Independence Party, no Westminster party—none—will tell voters in England that a top priority is to give Scotland more financial and economic powers. David Cameron has already backed a UK-wide constitutional commission. The Lib Dems’ rediscovery of a federal future for the UK is largely irrelevant, but the Campbell commission at least makes it clear that further devolution would lead to the demise of the Barnett formula, costing Scotland billions of pounds every year.

Ed Miliband has not made his position clear either, but we know that it would be guided by his need to win seats throughout England. With 15 per cent of English voters in favour of regional Government and one in five in favour of a Parliament for England, any kind of devo, whatever we want to call it, would hit the buffers of UK electoral arithmetic.

At the heart of it, we should remember that the people who promise further powers are those who
voted against welfare powers for Scotland when we discussed that under the Scotland Bill.

That all weakens the argument for voting no. However, the record of the Scottish Parliament strengthens the case that it is better for all of us if decisions about Scotland’s future are made by the people who care most about Scotland—that is, the people who live and work here. That is why a clear and decisive yes is the only future for Scotland and why we must have a yes vote in September next year.

15:40

Tavish Scott (Shetland Islands) (LD): The referendum is going to happen next year—2014—and people across the nation will decide whether we should remain part of the UK or separate from it, so the referendum must be conducted properly. On that, at least, Parliament can surely agree.

I thank the convener of the Referendum (Scotland) Bill Committee, Bruce Crawford, for the way in which he handled the stage 1 proceedings. He knew fine that he had an in-built SNP majority on the committee and that he could have got through what he wanted. Instead—to his great credit—he conducted those proceedings properly and all members of the committee at least got their voices heard. Mr Crawford was quite correct to say that there was broad agreement on how to proceed. That was important, and it reflects a decent effort by Parliament to make the referendum work in the way in which all of us want it to.

I welcome the tenor, at least, of the Deputy First Minister’s remarks. I know that she had to chuck a bit of red meat to the back benches at the end of her speech but, broadly speaking, I entirely take the points that she made, particularly her point about the inclusion of 16 and 17-year-olds in the Scottish Independence Referendum (Franchise) Bill.

I also accept the very fair point that Rob Gibson made about Gaelic. I can tell him that many of us would speak in the debate that he suggested in our own dialects, if we were given time to do that.

However, I cannot accept Linda Fabiani’s point about the pro-union parties offering more powers only if people vote no. That is exactly the same line that we got from the Government’s front bench in Shetland just the other week, when it said that if people voted for independence, the islands could have some more powers. That argument seems to suit your front bench very well indeed, Ms Fabiani.

The Deputy Presiding Officer: Through the chair, please.

Linda Fabiani rose—

John Swinney rose—

Tavish Scott: I will happily give way to Mr Swinney when I have finished my point. The people who care most about Shetland are the people who live and work there. I hope that he will accept that.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): I am all for a positive dialogue with the people of Shetland, but I remind Tavish Scott of the historical precedent of a no campaign saying to the people of Scotland, “Vote no and we will deliver you a better settlement.” Those were the words of the late Lord Home in 1979. We got 18 years of paralysis and an awful Tory Government. Tavish Scott’s colleagues are propping up just such a Government in the House of Commons today.

Tavish Scott: We have also got devolution in the Scottish Parliament. Given that Mr Swinney is a member of the front bench, I hope that he welcomes that.

I want to pick up on what Bruce Crawford, Annabelle Ewing and others said about the tone of the debate. I am all for a robust debate. Mr Swinney and I could very cheerfully debate these matters extremely robustly, but I fully agree with the point that members have made about the broad tone of the debate. I accept that one of my limitations is that I may sometimes slightly lose it when I make an argument that I believe in, but—good gosh—we must ensure that the discussion that we hold over the next year is held properly, because there is nothing more fundamental than the future of one’s country. I hope that members of both front benches—those who are in the better together campaign and those who are in the yes campaign—will say, “No more,” to the disgraceful cyberchatter that we are all subjected to. There is no place for that in this debate, and I hope that Nicola Sturgeon will take the opportunity of her winding-up speech to reflect on the need to end all that bile.

Nicola Sturgeon: We all get abuse on Twitter.

Tavish Scott: I could not agree more—we have all been subjected to it, as I have made absolutely clear. I hope that Nicola Sturgeon will reflect on that, just as I hope that Alistair Darling and others will do.

I also hope that politicians will recognise that not everyone is engrossed in the referendum campaign. Just the other day, David Grevemberg—the admirable chief executive of Glasgow 2014—said that we could do without any politics in the Commonwealth games next year. Sir Jonathan Mills, who is the head of the Edinburgh international festival, said the same about the arts in today’s papers. I hope that there is a lesson
there for politicians not to use such events in a way in which—

The Minister for Commonwealth Games and Sport (Shona Robison): The member will, of course, be aware that the Deputy Prime Minister is visiting Glasgow to look at the facilities for the Commonwealth games next week. I hope that the member is not making any assertions in relation to Nick Clegg’s intentions in that regard.

Tavish Scott: I do not understand that remark. Ms Robison might want to reflect on David Grevemberg’s piece that was published today. I hope that she agrees with it, because I certainly do, and I do not understand her observation.

Shona Robison: Would the member like clarification?

The Deputy Presiding Officer: Order, please.

Tavish Scott: I want to briefly touch on section 32 and schedule 8 and the definition of “referendum period”. During the debate, I have picked up on the fact that there are some serious lessons that must be learned. I welcome the Deputy First Minister’s response to the committee in the letter that I got today, which says that, in line with standard election practice, the Government will issue guidance to its staff and to those in public bodies for which it is responsible for the 28-day pre-referendum period. We will receive that guidance shortly, as Annabel Goldie said earlier. I hope that that guidance will cover the whole of the regulated period and I wonder whether the Deputy First Minister would be so good as to advise us on that in her closing remarks.

That is important not least because, at paragraph 263 of the stage 1 report, Nigel Smith is quoted as saying:

“both governments will be regulated for the first three months of the referendum not by this Bill but ministerial codes and public outcry. And for the last month, by a referendum Commission with few tools in the Bill ... This is no regulation of government at all.”

That is a direct quote from Mr Smith. I hope that Governments here and in Westminster will reflect on that, because it will be important for the conduct of the campaign.

15:46

Stuart McMillan (West Scotland) (SNP): It will come as no surprise to members to hear that I welcome the bill and hope that the people of Scotland will vote yes next year to take Scotland forward.

Before then, we have a number of processes to go through. The bill is, of course, part of that work. I associate myself with the comments of the convener about the assistance of the clerks, the advisers and all those who have given evidence to the committee. All that assistance has been tremendously helpful.

I thank my colleagues on the committee and I commend the convener for his handling of the committee and what is clearly an emotive issue, as we have already heard today. I am sure that his handling of the committee helped it to get to the point of recommending to the Parliament that the general principles of the bill be agreed to, which is recommended in paragraph 323 of the stage 1 report.

Taking a co-operative approach from the outset with the signing of the Edinburgh agreement, right up to where we are now, is a positive sign. It has ensured that the Scottish Independence Referendum Bill will be made in Scotland, for the electorate of Scotland to decide on Scotland’s future.

As for every bill that goes through Parliament, we received a tremendous amount of evidence. One key comment was from the Electoral Commission, which stated:

“this is a strong piece of legislation”—
as shown in paragraph 36 of the stage 1 report.

Issues of visual impairment and disability and other equalities issues are mentioned in paragraphs 302 to 306 of the report. Those issues were raised to ensure that everyone who is eligible to vote can vote. I genuinely believe that that is vital for democracy.

Whatever the outcome of the referendum, the process and the scrutiny thus far have been thorough and robust. I do not see how any side of the debate could use them as a mechanism for challenging the outcome if it goes against their particular wishes. We still have a few steps to take, but I have no reason to think that the level of scrutiny will differ from what has been brought to bear thus far.

Today is yet another historic day in Scotland’s journey. In little more than 12 months, we will have a better understanding of where that journey will take us. There will be robust debate, campaign literature, adverts, billboard posters and television and radio broadcasts aplenty, not to mention the social media campaigning that Tavish Scott obviously loves so much. It is right and proper to have such a robust debate. We all have our respective positions and we will take an active part in the campaigns up and down the country.

We have to work to inspire people to vote and to consider what they want Scotland to be like after the referendum. We must inspire the electorate to think of Scotland and what will happen if the vote is yes and if it is no. We have to inform the
electorate what Scotland can look like after the referendum.

I know that, in an independent Scotland, we can provide many and more opportunities for the people of Scotland, and that the Parliament needs to have the full economic powers to deal effectively with economic conditions and whatever comes its way in the future. I also know that the Parliament should be charting its own course to make decisions for the people of Scotland. It should not be concerned about developing rearguard action policies to deal with decisions from Westminster.

The Scottish Independence Referendum Bill allows that opportunity to happen. By the time it passes through the legislative process, no one will be able to say that the creation of the referendum has not been fair. Indeed, as the policy memorandum says, the bill’s main objective is to ensure that the referendum next year is

“a fair, open and truly democratic process which is conducted ... to the highest international standards.”

I welcome the Deputy First Minister’s comments earlier and in the letter that we received regarding amendments at stage 2. In particular, there will be amendments to address the designation of the campaign groups, which paragraph 126 of the committee’s report deals with, and the issue of absent voters, which paragraph 65 of the report deals with. Those two amendments will be very helpful.

Bruce Crawford spoke with his typical eloquence about how the debate should take place. Other colleagues have also talked about that. I could not agree more that there must be the utmost respect in it. When the nation wakes up on 19 September next year—obviously, some of us will not sleep as we will no doubt be up all night, but the vast majority of the nation will go to bed—Scotland will still be here, whatever the outcome. The SNP will still be in power at the national level and the make-up of the local authorities will not change. Scotland will still continue, but in what shape?

Earlier, I used the word “inspire”. We on this side of the debate and on this side of the arguments have a positive vision for the people of Scotland, and we have inspired and will continue to inspire more people to decide how they want to live in an independent Scotland post the referendum. I am not sure how the no campaign can be inspirational about the bedroom tax, welfare reform, nuclear weapons on the Clyde, illegal wars and many more issues. We have the inspirational vision; the no side has a devastating vision.

When the vote takes place next year on the simple question, “Should Scotland be an independent country?”, there really can be only one answer: yes.

15:52

Anne McTaggart (Glasgow) (Lab): I welcome the opportunity to contribute to this stage 1 debate on the Scottish Independence Referendum Bill.

First, I wish to highlight that how the referendum is seen in the eyes of the general public is paramount in the whole process of conducting it. I am pleased that the bill’s objective is to provide a truly democratic process. Bearing that in mind, the Parliament’s aim in scrutinising the bill is to ensure transparency and fairness. As a consequence, the referendum process must meet the two essential criteria of integrity and inclusiveness.

The process must be conducted with integrity. By that, I mean that all the elements of the process, such as the campaigns and debates—no matter where they are held, whether in the Parliament or at the community level—must be transparent and informative. The process must also be inclusive and reach out to all individuals, groups and organisations across Scotland. If the referendum process does not meet those two essential criteria, it will not have the credibility that it requires in trying to achieve its aim of involving all sectors of Scottish society.

Scotland is about to embark on a journey that will last just over 12 months. That journey will be of vital importance to every child, young person and adult in this country.

The key elements that are essential to ensure a fair, just and credible referendum process are transparency, fairness in current spending limits, and the Electoral Commission having the requisite powers to monitor and take action against any breach of the rules. I cannot overestimate the importance of the role that those elements will play in ensuring that the referendum process is conducted with integrity and inclusiveness.

It is vital that the rules in the Political Parties, Elections and Referendums Act 2000 are strictly adhered to. Fairness and transparency are of the utmost importance in the process, and a level playing field must operate for all parties that are involved in the debate. It is essential that the rules that are set out in the bill are followed, and I fully trust that the Electoral Commission will ensure that.

I reiterate my commitment to allowing 16 and 17-year-olds to vote not only in the referendum but at subsequent elections. I firmly believe that that will encourage teenagers to become active citizens who value democracy, if they are not already, and I hope that the measure will reinvigorate our politics. I remind the Government
that it has a duty to govern for all the people of Scotland over the next 12 plus months and not to become preoccupied with the campaign.

The referendum is Scotland’s referendum. It is not the SNP’s or the yes campaign’s referendum but everyone in Scotland’s referendum. I look forward to the debate.

15:56

Stewart Maxwell (West Scotland) (SNP): I join other members of the Referendum (Scotland) Bill Committee in thanking the clerks, witnesses and advisers and parliamentary colleagues for their efforts in ensuring that we have reached this stage. We are in good fettle, not only in relation to the drafting of the bill but in relation to the stage 1 report, and I thank all those who were involved in producing it.

I am delighted that we have reached this stage of the process. The bill is a robust one that I believe will deliver a referendum on independence that is beyond reproach, which I am sure is what we all want.

I welcome the Government’s positive response to the committee’s stage 1 report, but before I jump into some of the detail of the main issues on which the committee took evidence, it is worth pausing to reflect on another step forward in Scotland’s democratic revival.

Some years ago, the European football championships were held in England, and I am sure that many members remember with great fondness the accompanying song with the words “Football’s coming home”. The passing of the bill will mean that people will have the chance to bring democracy home to Scotland. I know that anti-independence parties will say that the Scottish Parliament proves that democracy is already here but, of course, devolution proves that some democracy for Scotland is here—but only some.

It has been a long journey from a Scotland with virtually no say over its affairs to one that is on the brink of deciding whether to rejoin the family of nations. Of course, some parties and people have always opposed Scotland gaining democratic control over its affairs and have predicted disaster at every turn. The Conservatives have fought against Scottish democracy every step of the way, but they are not alone. Many senior members of the Labour Party have also been implacable opponents.

Neil Findlay (Lothian) (Lab): Can the member tell us how the proposal for a currency union would increase democratic control?

Stewart Maxwell: I am delighted that Mr Findlay has popped into the debate so late on, although I know that he has missed all that has happened until now.

Neil Findlay: I wish I had missed your speech.

The Deputy Presiding Officer: Order.

Stewart Maxwell: Democratic accountability means that the people of Scotland will get the Government that they vote for every single time and not just some of the time, which is what Mr Findlay supports. Indeed, we know that Labour’s leader voted against devolution in 1979 but then changed her mind because, apparently, Scotland needed some protection—but just some—from the worst excesses of Thatcherism and the Tory policies that Scotland’s people did not vote for.

Drew Smith: Will the member give way?

Stewart Maxwell: No, I will not.

It is unfortunate that not all of us in the Parliament believe that Scotland should get the Government that it votes for all the time and instead are working night and day to ensure that Scotland gets the Government that it votes for some of the time. I do not think that that is acceptable or democratic.

I turn to some of the details in the bill. Many members have already spoken about the purdah period. I welcome the Scottish Government’s clear response on the issue in relation to itself and the public bodies for which it has responsibility. However, a question remains about asymmetry in the arrangements, whereby the Scottish Government is governed by legislation while the Westminster Government has no such strictures placed on it.

I acknowledge what has been said about the Edinburgh agreement, and I have heard the Westminster Government’s assurances. However, if the Westminster Government is as determined to abide by the purdah restrictions as the Scottish Government is, why does it not legislate in the same way as we are doing so that the issue is beyond doubt?

As far as I am aware, we have yet to receive an assurance from the Westminster Government that it will issue guidance on purdah to the public bodies over which it has responsibility. Given the reassurance that the Scottish Government has given, I hope that it will provide such an assurance without delay.

The purdah overlap with parliamentary business, which members mentioned, affects the Westminster Government and the Scottish Government, but if both Governments abide by the rules there should be no problem.

The committee agreed on the desirability of lead campaigners being designated before the 16-week period begins. I am pleased that the Deputy First
Minister has accepted our recommendation and will lodge an amendment on the matter at stage 2.

Members who are not on the committee might not be aware that in the Wales referendum of 2011 a lead campaign on one side could not be designated if the lead campaign on the other side did not apply for designation. That was used as a tactic for blocking designation in Wales, so I welcome the fact that the bill does not allow that to happen in our referendum.

On spending limits, I think that all members acknowledge the necessity of clear and robust rules, which can give the public confidence in the transparency of the process. We also acknowledge the need for freedom, to allow a diverse range of individuals and opinions to be seen and heard in the campaign. The bill has got the balance just about right.

An important issue is the declaration of results. I welcome the approach in that regard. I think that members are unanimous in support of the earliest possible declaration of not only the national result but the local results. It is in everyone’s interests—particularly those of the people of Scotland—to find out the result as soon as it is available. I hope that there will be no delays in the process.

I will vote yes at decision time, because the bill is robust and will enable Scotland to decide on its future. I will vote yes in 2014 because the people who are best placed to take decisions about Scotland’s future are the people who live here and because it is time to bring democracy home to Scotland.

**The Deputy Presiding Officer:** I remind members that we are discussing the detail of the referendum bill—[Interruption.] That reminder was for all members.

**16:02**

**Patrick Harvie (Glasgow) (Green):** I am pleased that we have dispensed with the ritual of declaring an interest in a bill, because if we had not done so we would be here all day, given that almost every member is in a political party or wearing one badge or the other.

Presiding Officer, you will be pleased to hear that my speech is about the bill and not about why I have chosen one badge rather than the other.

**Neil Findlay:** Will the member give way?

**Patrick Harvie:** I ask the member to let me get under way a wee bit, please.

Like Bruce Crawford, I thank everyone who contributed to the process—witnesses, advisers, officials and all members, including the outgoing committee members. I welcome the new members who will join the committee for stage 2.

When we consider that the bill is technically complex and that this is a debate in which feelings run high on both sides and which in many ways is part of an unprecedented political dynamic, I think that a committee report with just three notes of dissent—on points of detail and not on the basic principles of the bill—is not bad going. We have managed to achieve more consensus than people might have expected us to do on such a high-profile issue.

There are two areas in relation to which I want to explore remaining doubts and uncertainty: campaign rules and purdah. In my exchange with James Kelly about organisations that work together, I did not intend to generate more heat than light. I agree with James Kelly that there are areas that we need to explore further. That is not necessarily a criticism of the bill; these are issues that the Electoral Commission will have to resolve and give clear guidance on.

Referendum expenses that are incurred as part of a common plan—when individuals or organisations, who will not necessarily meet the threshold for declaring expenses or registration as a permitted participant, are working together—will have to be declared as common expenses in both sets of declarations. We will end up with the appearance of twice as much money having been spent.

Therefore, the same amount of money being spent only once would have to be declared in both organisations’ expenses. For example, the radical independence campaign might be dishing out leaflets for a Jimmy Reid Foundation public meeting. Does that mean that everything spent on arranging that public meeting would have to be declared by both organisations? We could be in a situation in which individuals and small organisations that do not expect to meet that threshold do so accidentally without realising that they have to declare it as such.

The Electoral Commission, in producing the guidance, needs to strike a proper balance between allowing small organisations and individuals to campaign in the referendum as they see fit and taking account of James Kelly’s proper concerns about organisations perhaps cooperating too closely and being, in effect, a single organisation. I do not expect that to happen, but the rules have to strike a proper balance.

It is less relevant in the case that James Kelly mentioned because the provision in the bill that deals with referendum expenses states:

“this paragraph does not treat any expenses incurred by or on behalf of a permitted participant that is a designated organisation as having been incurred also by or on behalf of any other individual or body.”
Therefore, for Yes Scotland and Better Together, the rule about common plans does not apply in the same way. My concern is about small organisations and individuals.

There is very often too much power in money in our politics. A very wealthy person gets a vote. A very wealthy person can go out and pound the streets like everybody else or take part in public debate like everybody else. Very often in our politics in this country, big money talks a wee bit too loudly and we need campaign rules that prevent that from becoming problematic.

On the purdah issue, I had initial concerns about the idea of Parliament having its normal recess dates but meeting in the run-up to the referendum. I think that the Government's proposed solution was a reasonable one. I regret that it was not acceptable to both sides; I think that it should have been.

Late on in our stage 1 process, we discovered that mismatch between the dates and I think that that issue still needs to be resolved. Removing the SPCB from the bill is one way of doing so. Other caveats in the bill might be possible to achieve that resolution. We really must expect that, in the last days before we break and go out to campaign, anything will be turned into a proxy for the independence campaign. In our Business Bulletin today we have subordinate legislation on everything from photocopying fees to fish labelling. I doubt that any member would find it difficult to turn any such legislation into a fight about independence in the last week before the referendum if they chose to do so. We therefore need to ensure that nothing is constrained.

I would like to reflect on a debate that I took part in last week in Glasgow, which was organised by the Equality Network and looked at LGBT equality in the context of the referendum. There were three speakers on one side, three on the other and a very neutral chair. It was a very well-organised meeting. It was passionate, it was really well informed, and it was a lively, sparky debate from the audience as well as the panellists. However, every single one of them managed to conduct that debate in a spirit not just of respect but of good humour and friendship.

That spirit is what we need to aim for. It is not always easy, and sometimes the first instinct of a politician or an activist is to sink to the lowest level of the people who are attacking them. We all need to resist that if we are going to have the debate that Scotland deserves. Come what may, once the people have decided and chosen whether they like the yes Scotland badges or the better together badges best, we are all going to have to move on and implement the will of the people in whatever way they have chosen. We should be able to do that in the same spirit of respect, good humour and friendship.

16:09

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I do not think that anyone could object to the objectives of the bill because for all of us, regardless of our views on separation, the provision of a “fair, open and truly democratic process which is conducted and regulated to the highest international standards” must be our aim, and Scotland deserves no less.

The committee, with some exceptions on individual points, was broadly content to recommend the bill at stage 1. We also flagged up a number of areas where we thought that clarification was needed or a change to the current proposals was required.

In the Deputy First Minister’s 8 September letter to the committee, she accepted that she needs to lodge a number of amendments at stage 2—that is to be welcomed.

In the time that is allowed, I will not be able to cover all the issues that concern me, so I will limit myself to just a few.

During debate on both the Scottish Independence Referendum Bill and the Scottish Independence Referendum (Franchise) Bill, the issue of whether the 16 and 17-year-old children of armed forces personnel based overseas would be able to vote was raised. I understand that that is likely to be an issue for a relatively small number of young people, but it is important that we make every effort to ensure that they can. I welcome the fact that Ms Sturgeon is now having discussions with the Electoral Commission and the electoral registration officers on the issue. It is an issue that I will continue to watch with interest.

On the issue of the deadline for proxy voting, if we are as serious as we say we are about ensuring that as many people as possible can exercise their franchise, the Deputy First Minister must think again about the deadline for proxy votes. As the bill stands, the deadline for postal and proxy votes will be the same: 5 pm on the 11th working day before the poll, not—as is usual—5 pm on the sixth day before the election. The committee was not clear why that change was being made, but we very much hope that the Deputy First Minister will change it when she lodges amendments at stage 2.

In the committee’s reading of the draft stage 1 report, we identified that the dates when the Parliament will be in recess and those when purdah applies were, as we have heard, not exactly synchronised, with a two-day period when the Parliament can in theory sit, but when purdah
rules would be in force. As purdah applies to the Parliament as well as to the Government, that seems to be problematic.

Mark McDonald: Perhaps the member can clarify the point that her colleague Drew Smith could not as to why Labour members voted for the Parliament to sit for almost the entirety of purdah rather than merely the first two days.

Patricia Ferguson: I was going to go on to say that the committee took that matter very seriously. The Deputy First Minister advised the committee that, were Parliament to sit during purdah, it "would undoubtedly mean that we would sit with enormous constraints on what the Parliament and the Government could do ... it would be difficult to imagine how a normal First Minister's question time, for example, would proceed in a way that is consistent with the law."—[Official Report, Referendum (Scotland) Bill Committee, 13 June 2013; c 556.]

If the Government takes the issue of purdah and the Parliament being in session that seriously, that surely raises the question of how the error occurred. Given that the Government's business manager sits on the Parliamentary Bureau and is therefore the only person with an overlapping responsibility, should he not have noticed that particular problem?

Putting that aside, the more important point is how that will be fixed and whether it will be fixed? Whether it is the Government or the Parliament that wants to alter the dates does not really matter. Regardless of views on whether or not the Parliament should sit, if we are to have what is proposed—and the Parliament has voted for it—the two dates must coincide. It is crazy not to make them do so.

On the issue of purdah more generally, I have been intrigued by the comments that SNP members have made throughout the discussion. The whole matter arises because the Scottish Government signed what has been called a gentlemen's agreement—the historic Edinburgh agreement—with colleagues at Westminster. By doing so, the Scottish Government accepted the UK Government's assertion that it would abide by the purdah principles. When she came to committee, the Deputy First Minister reiterated that that was her view. However, the Scottish Government has decided to legislate to ensure that it has to abide by those principles. That is a matter for the Scottish Government: if it wishes to do that, that is entirely up to it. It is a bit strange, however, that SNP members cannot accept the good will and good faith that the Deputy First Minister seems to have accepted by signing that agreement and by her words in committee.

Linda Fabiani: Will the member take an intervention?

Patricia Ferguson: Not at this moment.

In the course of our discussions, I have been reassured that every effort will be made to ensure that disabled, blind and partially sighted voters will be able to participate. There had been some fears that partially sighted people might have some difficulty. Although they can be provided with a large-print version of the ballot paper for explanation purposes, they would be required to cast their vote on a ballot paper that did not have large print. I am grateful to the Deputy First Minister for agreeing to consider further whether any clarification is needed as to how the rules relating to disabled people would apply.

As one of the members who has recently left the Referendum (Scotland) Bill Committee, I thank SPICE and the committee clerks for their efficiency and support over the past year. They have had to work to a very tight timescale for this bill and its predecessor. I also record my thanks to all the witnesses and advisers, who provided us with some very interesting viewpoints and whose contributions were so important to the committee's consideration of both bills. I genuinely wish all my colleagues on the committee well as they take the work forward. I congratulate Bruce Crawford, the convener, on keeping us to schedule and on his good humour throughout.

To reassure Ms Fabiani, I will make one final point. There is one party operating in the Westminster Parliament that has demonstrated that it can put the priorities of Scotland ahead of those of anywhere else, and that is Scottish Labour and the Labour Party in the UK. [Interuption.]

The Deputy Presiding Officer: You must conclude, please.

Patricia Ferguson: In case Ms Fabiani has any doubts about that—[Interuption.]

The Deputy Presiding Officer: Order. The member is concluding.

Patricia Ferguson: I draw Ms Fabiani's attention to the fact that we prioritised a referendum and the delivery of a Scottish Parliament in 1997, having inherited myriad problems—

The Deputy Presiding Officer: Ms Ferguson, you must finish.

Patricia Ferguson: —from 19 years of Tory rule. That was a demonstration of good faith, and one that I hope Ms Fabiani will accept.

16:16

Gil Paterson (Clydebank and Milngavie) (SNP): The Parliament should record its thanks to the Referendum (Scotland) Bill Committee for how
it has gone about its business and for the recommendations that it has provided us with, which are plans that will allow public understanding of the bill. No matter what side of the independence argument committee members are on, their work has shown the highest levels of legislative and democratic standards.

It is a credit to both sides of the argument that the bill has been shaped and informed in Scotland for the people of Scotland and that differences have been set aside for the benefit of the Scottish commonweal. That is a lesson of how those with shared interests can come together and present to the Parliament measures that bring credit to the Parliament. It is something that we should keep fresh in our minds, no matter what the result of the referendum, because the day after the result each of us will need to be prepared to engage for the wellbeing of our people. The example of our colleagues on the committee and that of members in this debate, for the best part, shows us the way.

I was never in any doubt from the way in which the committee worked that the outcome of the work would be in any way different from what has been presented to us. I was confident that the made in Scotland stamp on the bill meant that it had received the highest standard of scrutiny. Of course, the ability to do that for all matters that affect Scotland and its people is something that I dearly wish to see. I am also confident that if the members of the Referendum (Scotland) Bill Committee were requested to sit on a committee that was charged with dealing with a bill on Scottish defence or Scottish social security, they would be more than up to the task and that the made in Scotland stamp would be applied with the same level of confidence.

It is safe to say that the Scottish public have a higher regard for the Scottish Parliaments’ ability to look after Scotland’s interests than that of the Westminster Parliament to do so. Poll results suggest that there is a massive difference between the levels of trust with regard to the Westminster Parliament and the Scottish Parliament: 60 per cent of our people trust the Scottish Parliament to make important decisions that affect them, compared with only 16 per cent who trust Westminster to look after Scotland’s interests. We should therefore trust ourselves more and celebrate the fact that the majority of our people have faith in us to do the right things for them.

Being a tail-end Charlie in the debate, I have deliberately steered away from the bill’s content, which has been more than adequately covered. However, it is worth repeating the words of the Electoral Commission, which stated:

“this is a strong piece of legislation that ... will provide us with the necessary foundation and the time to deliver a referendum that ... puts the voter first and puts the voter at the centre of the planning.”—[Official Report, Referendum (Scotland) Bill Committee, 23 May 2013; c 421.]

That is a fairly comprehensive statement to make. It should be remembered that the Electoral Commission comes under the jurisdiction of Westminster, which makes the statement even stronger.

One area that needs further clarification is the issue of purdah. The bill spells out rules for the Scottish Government on purdah. When it passes into law, those rules will be imposed on it. It is inconceivable that the Westminster Government would be other than limited to purdah to the exact same extent as the Scottish Westminster Government. I would expect all members of the Parliament, without exception, to agree that democratic standards be observed UK-wide with regard to purdah.

I am pleased that, across the political divide within the committee, that view was held with regard to the call to both the Scottish Government and the UK Government to issue guidance to the public bodies for which they are responsible with regard to the application of purdah. It is fairly certain that it is a case of rights under democracy; the two Governments should be equal.

I pay tribute to the committee, which has produced a great piece of work. That should be recorded in the Parliament in this very important debate.

16:21

Jean Urquhart (Highlands and Islands) (Ind): I, too, am delighted to speak in favour of the general principles of the bill. We should take encouragement from the fact that the Electoral Commission has expressed such confidence in the robustness of it. I commend the work of the committee, which has clearly spent many hours scrutinising the legislation that will provide the basis for the referendum on Scottish independence.

I support the committee’s decision to support the Political Parties, Elections and Referendums Act 2000 as a framework for the referendum. Although the act might not be perfect, it is a useful starting point and helps set the referendum up to mirror past Scottish and UK referendum arrangements and procedures. That includes the provision to give the Electoral Commission the role of independently setting campaign spending limits for the 16-week period before the referendum.

I also welcome the long lead-in time for the referendum legislation, allowing ample time for evidence to be presented and gathered and for detailed scrutiny to take place. In addition, I welcome the principle that dates of birth are not to
be shown on the polling list in order to protect young people’s details.

The bill must put the voter first. I think that Willie Sullivan of the Electoral Reform Society in Scotland said that we must ensure that in this referendum we get to as many people as possible.

As policy makers, we must make conscious efforts to do our utmost to ensure that people are as engaged as possible with the independence referendum, which includes the 16 and 17-year-olds who will be able to vote for the first time in their lives.

All in all, the bill is a solid piece of legislation and I welcome it. However, there is one issue that needs more attention, which Rob Gibson and Tavish Scott have already mentioned: the use of Gaelic on the ballot paper. The committee concluded:

“we don’t consider that a pervasive case has been made for a bilingual ballot paper”.

Others have made the case, but I would add that we have 60,000 people speaking Gaelic in Scotland. This Parliament and previous Administrations have given Gaelic its real status in the country. It would be normal practice to have a bilingual ballot paper, as happens in Wales and other countries around Europe.

Angus MacDonald (Falkirk East) (SNP): Does Jean Urquhart agree that, given that Gaelic is an official language, there will be greater opportunity to deliver the stated aims of the national Gaelic plan following a yes vote next year?

Jean Urquhart: Yes. It is easy to support Angus MacDonald on that.

If the bill is to be truly inclusive, there should be further consideration of Gaelic speakers in Scotland and the fact that Gaelic is an official language of our country.

Scottish independence is something that I have long supported, and the Edinburgh agreement was a critical watershed in that it has given the people of Scotland the opportunity to make a life-changing decision to take power into their own hands. By voting yes in September 2014, people in Scotland will not only reject remote and unaccountable rule from Westminster but give themselves a chance to build a progressive new Scotland. The consensual nature of the Edinburgh agreement particularly struck me, and it bodes well for future relations between the UK and Scottish Governments should there be a yes vote.

The progressive vision of Scotland includes a possible constitution written by the people. Those who live in Scotland will, for the first time, have the opportunity actively to determine how Scotland is governed, based on the principles that they decide upon. That is an exciting prospect and it will be a vast improvement on the arrangement at the UK level, where no such constitution exists.

I know that we are talking about the bill and the bill process, but it is too exciting a moment in history to ignore the possibility of Scotland being an independent state. Scotland can be a more equal society where tax is redistributed in a fair and progressive way. That is critical as we need economic policy that prevents the gap between rich and poor from increasing, as it has done over the past 30 years. It is not acceptable that the wealthiest households in Britain are 273 times richer than the poorest, and according to Oxfam’s “Our Economy” report, that gap is likely to widen. How can that be possible? We can do something about the inequality if we vote yes in 2014. I am sure that that is true.

The success of the bill and the desired outcomes will be evidenced by the turnout at the polling stations. There are many firsts here, including the first vote for many thousands of young people and the first vote for everyone in Scotland to vote on the future constitutional status of their country. I refute the often-quoted statement that this is the first time for the people of Scotland since 1707, or in 300 years. It is not; it is the first time ever. They never had the chance 300 years ago.

I hope that all those who are actively promoting participation in the referendum will do all that they can to ensure that all who can vote do so. It is our job to ensure that that is the case, and, as Stuart McMillan said in his speech, we must inspire them to vote.

The Scottish Independence Referendum Bill gives those living in Scotland the opportunity to vote yes and thus create a new, better future for themselves, their families and their country based on equality, fairness and peace. I am delighted to support it for that reason.

16:28

Margo MacDonald (Lothian) (Ind): I, too, congratulate Andrew Mylne and the drafting team. I have become quite close to them while my proposed bill has been going through, so I know the amount of dedication that exists in the team. Sometimes, we overlook it.

There is a fair and clear bill before us. I cannot understand why Mrs Butler—[ Interruption. ]—why Ms Ferguson said that we should not have a change in the timing for proxy voting. Does it matter? I wonder why it matters.

Patricia Ferguson: Mrs Sillars might be happy to know this. [Laughter.] I say to Margo MacDonald on that point that if she had ever met
Mrs Butler, she would know that there was only one Mrs Butler. [Laughter.] God rest her.

The point that was made to us in evidence is that, when the Icelandic volcano erupted, people were unexpectedly prevented from coming home from holiday, for example. For them to have had a proxy vote, it was necessary for the time frame for that to be as close as possible to the date of the election. What is proposed is that the date would be further from the election, so the opportunity for people to have a proxy vote would be diminished. That is why I think the issue is important.

Margo MacDonald: I thank Ms Ferguson for her reply, but I still do not understand her reasoning, to be honest.

I think that 16 and 17-year-olds who are living abroad with their parents should, of course, have the vote if their cousins who are living here and happen to be still at Redford barracks have a vote. That is not worth arguing over.

People are worried about purdah. I am not much bothered about it because if the Governments want to say something, they will say it, in or out of purdah. Do we really think that folk only listen to what we say because we say it in here? I do not think so. It does not really matter all that much, so I suggest that the people who are handling the bill should not get too upset about it.

I also say is that it is excellent that an attempt has been made to introduce a fair and equitable bill. We have heard, as usual, that a level playing field would be the order of the day. However, I asked about the sanction because if parties break the rules in a general election, candidates might be disqualified and parties might be fined, but if someone breaks the rules in a one-off referendum, what is to be done about it afterwards?

Nicola Sturgeon: Margo MacDonald raises an important point, but she might be reassured to know that the bill gives investigatory and enforcement powers, based on PPERA, to the Electoral Commission, which can be used where there is a breach of statutory spending limits. Such a breach could also be a criminal offence, so clearly there are sanctions.

Margo MacDonald: I thank the Deputy First Minister for taking the issue seriously because I am quite serious about it. I believe that there is a different temper entirely to a one-off referendum where everything that people have—heart, soul and body—is committed one way or the other, and they are not going to be bothered too much if someone breaks a rule that was man-made to try to ensure that the process runs smoothly.

Do not imagine that we can control money; all sorts of money is fed into campaigns. If either side wants it, money can be fed in in kind, in all sorts of ways. I have been there and I have seen it happen. In the Europe referendum campaign in 1975, the people who wanted to get into Europe had 10 times the budget of the people who did not want to get into Europe; the establishment was for Europe, so that is where the money was and nobody bothered to question it.

The same thing happened in the last referendum in Scotland. The establishment was not really on the side of a yes vote at all—even though it was the then Government’s policy—so all sorts of things were done to ensure that its side of the argument was boosted. Foreign contributions came in the value of what was said by foreign visitors, if they were distinguished enough or well-known enough here. Those comments were donations in kind. They were not counted in the campaign’s financial statements but—by God—they added to its value. We have to bear that in mind when we are talking about a referendum, rather than a general election.

The last thing I will say is that the security services that protect the integrity of the British state will not stop doing what they do because of anything that is written in a bill, no matter how good the bill is. We are battling against that. The people in the better together campaign know that they have that going for them, but I hope that they eschew it. We are all Scots, and the security services do not exist to protect the Labour Party in Scotland, but to protect the British state in Scotland. I hope that we can all agree on that.

The Deputy Presiding Officer: We move to closing speeches. I remind everyone that members who spoke in the debate should be present for the closing speeches.

16:34

Alex Johnstone (North East Scotland) (Con): I am not, and never have been, a member of the Referendum (Scotland) Bill Committee. However, I am the member who moved on to the Equal Opportunities Committee so that Annabel Goldie—who has just entered the chamber—could become a member of the Referendum (Scotland) Bill Committee. My posting to the Equal Opportunities Committee has been an education, and remains so. I thank my fellow committee members for their forbearance.

The nature of the debate has been twofold. Some members have spoken at length about the bill; others have seen it as an opportunity to begin the campaign a year in advance. Both types of speech have contributed to the good nature of the debate. I am as bad as anyone. I was dragged into politics at a very early age, back in 1974, when it looked as though the SNP was going to get its way at that time. My motivation to speak up in
favour of the union drew me into this argument when I was very young—in fact, by next summer I will have been participating in the campaign for a full 40 years. The sooner it is over, the better.

The debate has been enlightening in some respects. We have a common agreement around the chamber that the bill that is before us is the bill to achieve the objective that we want, although reservations have been voiced, including complaints that have been made about purdah arrangements. Surely we can deal with a two-day overlap, as men and women together, through the systems of the Parliament, thereby perhaps avoiding some of the difficulties to which it could give rise.

Spending limits have also been raised by a number of contributors to the debate. It is important that spending limits be set and adhered to, and there will be plenty of opportunity during stages 2 and 3 to ensure that any concerns that still exist are addressed. I am reassured by the fact that the Scottish Government’s response to the stage 1 report already contains a significant number of proposals for changes to be made to fine tune that element of the bill.

Some members chose to make the debate the start of the campaign—not least the Deputy First Minister, who was determined that separation could be a means by which to avoid many of the difficult decisions that many western democracies face at the moment. During the campaign we may see that difficult decisions cannot be avoided, and one or two others will become relevant as the process continues.

There were some light-hearted moments during the debate. Tavish Scott and Shona Robison appeared to get themselves involved in a debate over how we might bring the Commonwealth games into the campaign. I was reminded of seeing on television that scene from the Olympic games in which a number of leading politicians, including Boris Johnson and Ed Miliband, could be seen dancing during the opening ceremony. There, at the back of the box, was a certain Shona Robison. If there is anything positive to be said about that, it is that she was at least the best dancer in that box.

As we move towards the referendum, it is important that we have a basis on which we can progress, and I believe that the bill, in its current form, provides that basis. As a consequence we, with others around the chamber, will support the bill at stage 1 tonight.

I will close by talking a bit about Bruce Crawford’s conduct at the Referendum (Scotland) Bill Committee. It has been said by many members, including my colleague Annabel Goldie, that he has done a sterling job in ensuring that the committee has been conducted properly and fairly and that it has produced a report that is fair to all those who contributed. I would have expected nothing less of Bruce Crawford. It is no surprise that he has been able to achieve that.

Bruce Crawford talked about the nature of the campaign; I would like to close by saying a little about that subject. We are all Scots and we are all passionate about Scotland’s past, its present and its future. As a result of the bill, in a little over a year’s time we will have made a decision, and some of us will be extremely disappointed. Therefore, it is essential that we have legislation in place that allows us to conduct the campaign with courtesy and decency and in circumstances that allow us to express our passion. When this is over, we will all be in Scotland together and we will have to make it work, whatever the outcome. I am grateful that the bill provides a sound basis on which to have a fair campaign; I only hope that we are all able to work together to make that so.

16:40

Lewis Macdonald (North East Scotland) (Lab): Most of us will never cast a more important vote than the one that we will cast next September. A vote that Scotland should be an independent country, which would be a decision to leave the United Kingdom, would be final and irreversible; a vote to reject that option would be equally momentous, although perhaps not in quite the way that Linda Fabiani vividly imagined.

Members from across the chamber have said many times that all sides must be able to accept the referendum result, whatever it is. The referendum on devolution in 1997 demonstrated the settled will of the Scottish people, and it may be that the 2014 referendum will do the same. I hope that members on all sides of the chamber will be able to accept the result, whatever it may be.

Margo MacDonald: Will Lewis Macdonald give way?

John Mason (Glasgow Shettleston) (SNP): Will the member give way?

Lewis Macdonald: I would be delighted to give way to Margo MacDonald.

Margo MacDonald: Can Mr Macdonald explain why he thinks that people who believe heart and soul in a change, such as the nationalists do, will stop campaigning for that change? What is the difference between that and socialists in the Labour Party who are still campaigning for socialism?

Lewis Macdonald: I would not expect Margo Macdonald or anyone else to stop campaigning for what they believe in, but the proposition that
voting no will be Scotland voting itself out of existence is one of the most extraordinary things that I have ever heard in this Parliament.

Our job for now is to ensure that the rules of engagement are agreed in advance, that no shadow of doubt lingers over the fairness of the process and that there is no opportunity for anyone to bend the rules in ways that might affect the final outcome. That is why members of the committee must continue to be vigilant and rigorous in scrutinising the bill to ensure that there is no uncertainty about whether the result truly represents the will of the Scottish people.

The question about what to ask has been settled. The question about whom to ask has largely been settled, too. Although we might have great sympathy with Scots outwith Scotland who will not be able to vote next year—including, for example, most of the Scotland football team—we are agreed that there must be a clear and consistent basis on which people do or do not have the right to vote. Using the Scottish Parliament and local government franchise is the best way to achieve that clarity.

However, as Patricia Ferguson said, one franchise issue that is still not settled is that of 16 and 17-year-old children of members of UK armed forces personnel who are serving abroad. Those young people should have the same right to vote as others of the same age. The worst outcome of extending the franchise to 16 and 17-year-olds would be to give the vote to some and not to others. Therefore, we welcome the fact that ministers are consulting on the matter. I ask the Deputy First Minister to indicate whether she expects that we will know the outcome of that consultation before stage 2.

Bruce Crawford: I happen to agree with much of what Lewis Macdonald has said about ensuring that the vote is extended to as many 16 and 17-year-olds as possible. Does he agree with me that, in that discussion and in the effort to try to achieve that outcome, the Ministry of Defence has a key role to play?

Lewis Macdonald: I certainly agree with Bruce Crawford that all those with an interest or concern in the matter should work together to get the outcome that we have described.

As we have heard, the main focus of the bill is not so much on what to ask, when to ask or whom to ask—in the main, those issues have been settled—but on how to ask and, in particular, on the rules governing the actions of the Government and of participants in the referendum campaign. There are a number of questions that arise about purdah, including which organisations will be covered. Although it is clear that ministers are following the general approach of the Political Parties, Elections and Referendums Act 2000, it would be helpful if Nicola Sturgeon could clarify whether there are any public bodies that will not be subject to purdah under the bill, but would be subject to purdah under that act, and if so, which ones and why.

The Government’s plans for Parliament to meet during purdah are also an issue. As we have heard, Thursday 21 August 2014, which is at the beginning of purdah, is scheduled to be a sitting day, and Friday 22 August is similarly covered.

Mark McDonald: Will Lewis Macdonald give way?

Lewis Macdonald: No, thank you.

It is not clear whether that is simply an error on the Government’s part or whether ministers intended the overlap to arise. As Nicola Sturgeon said in committee, it is hard to imagine a question time on the last sitting day before polling day in which ministers would not seek to influence the outcome, yet apparently Parliament would be unable to publish their words. It was concerning to hear SNP members respond so negatively to that issue being raised. The question is simply whether the issue can be sorted out at stage 2—whether it happens at the initiative of the Government or Parliament is of little importance.

There is also the question of what will happen if the purdah rules are breached. The run-up to a parliamentary by-election is not the occasion to rehearse the on-going issue of the application of purdah, even though that remains an important and topical question. Suffice it to say that a regulated period is effective only if it is effectively enforced. I suspect that how to secure that is a matter to which we will return at stage 2.

Even more important than the purdah issue is who is allowed to spend what to influence the outcome. We know that the designated lead campaigners will be Better Together and Yes Scotland. We look forward to seeing the Government’s amendments to include those designations. Perhaps the Deputy First Minister will say what date she has mind for the coming into force of the designations.

The bill sets limits for spending by political parties and other permitted participants. What the bill does not do is ensure transparency about the relationship between spending by designated lead campaigners and other permitted participants—an issue that was raised by James Kelly and Patrick Harvie. We do not want a situation in which a lead campaigner could be tempted to delegate its spending to other permitted participants on the basis that that spending would not count against its permitted spending limit. It is interesting to note how sensitive that issue has been for some members in the debate. That reinforces the
proposition that the matter needs to be addressed at stage 2. Permitted participants will register as participants on one or the other side of the vote. Perhaps their spending should be subject to an overall limit on permitted campaign spending by each side.

Ministers have so far resisted the committee’s sensible proposal to reduce the threshold for reporting donations from the current level of £7,500. Clearly, a large number of small donations can be worth as much as a small number of large donations, so I encourage ministers to think again about the threshold before stage 2.

I also draw ministers’ attention to the provision that the identity of donors of less than £500 need not be disclosed and simply ask whether ministers have considered whether that might create a loophole that would allow donations from outwith the UK that are not otherwise permitted in the process. Margo MacDonald said that there are those who will seek ways around the rules, so it is essential that we take whatever measures may be necessary to prevent that.

As Richard Baker mentioned, we await the Government’s white paper on the subject matter of the referendum. Parliamentary scrutiny of the document will be essential if the propositions that are in it are to be tested properly before people cast their votes. I hope that Nicola Sturgeon will tell us how that parliamentary scrutiny will be done.

It is a noble aspiration to aim for a “fair, open and truly democratic process, conducted and regulated to the highest international standards.” Scotland will fall short of that aspiration if anyone seeks to find ways to evade the spirit of the limits that are agreed by Parliament or, indeed, if members continue to declare that a result that they do not like is somehow a denial of democracy. This Parliament and the bill cannot force people to behave in the right spirit, as Bruce Crawford said they should, or in the spirit of the law. However, clear legal requirements and protections can be put in place, and those can be backed up with effective enforcement measures. That is what we must seek to do today.

16:49

Nicola Sturgeon: I thank all the members who have participated in the debate—it has been lively, constructive and, generally, consensual. I hope that that augurs well for the main event over the next 12 months.

It struck me that I should have started my opening speech by congratulating Drew Smith on his new appointment. I am not sure whether this is his maiden speech in his new post, but I welcome him to that position.

We are, of course, discussing the contents and detail of the Scottish Independence Referendum Bill, not the arguments for and against independence. For that reason, I will not comment too much on the obvious touchiness that Drew Smith displayed in his opening remarks given the growing number of Labour supporters and voters who are now backing a yes vote in the referendum.

I suspect that that trend will continue in the months to come because Labour supporters and voters know, as I do, that a no vote means keeping power over matters such as welfare in the hands of Westminster even if that means keeping them in the hands of the Tories. That is not so much support for pooling resources as acquiescence in the cruel and callous pulling away of resources from the most vulnerable in our society, all at a time when billions of pounds are being invested in weapons of mass destruction on the River Clyde.

Most Labour supporters, when they consider the matter in those terms, will see the advantage of a yes vote and independence for our country.

Drew Smith: Is the Deputy First Minister’s definition of a Labour supporter mutually exclusive of SNP councillors?

Nicola Sturgeon: Yes. I know the Labour supporters who are backing yes, and it is a growing band of people, let me tell members, as Drew Smith himself knows.

Neil Findlay: Will Nicola Sturgeon give way?

Nicola Sturgeon: Not at the moment. I may take an intervention later. I am not sure that Mr Findlay was here for much of the debate, so perhaps he could be in future.

Patrick Harvie was right when he said that it was a real tribute to the committee that it has produced a report with so much consensus in it on an issue as contentious as the independence referendum. I absolutely agree with that comment.

At the risk of making Bruce Crawford blush again—he is more prone to blushing than any man I have ever met—I say that he has deserved all of the praise that has been lavished on him. He made a significant contribution to the Edinburgh agreement and has chaired the Referendum (Scotland) Bill Committee with real expertise, which has been reflected in the comments that we have heard from across the chamber.

I turn to some of the specific points that have been raised in the debate. Some of them are points more for the Electoral Commission, the Electoral Management Board or, in some
respects, the Scottish Parliamentary Corporate Body.

First, I will reflect on purdah—or the pre-referendum period, as it is technically known in the bill. As members know, that period covers the 28 days before the referendum, during which time the Government and Scottish public authorities are under a statutory obligation not to publish information that might promote or benefit a particular outcome. Those provisions are based on the PPERA equivalents. I say to Lewis Macdonald that there is no difference between the Scottish public authorities that are covered by the bill and those that would be covered for a normal general election.

I say to Patricia Ferguson that, as a signatory to the Edinburgh agreement, I never have referred to it, and never will refer to it, as a gentlemen’s agreement; I will stick to Edinburgh agreement. In that agreement, the UK Government has committed to act in accordance with the same PPERA-based provisions. That commitment does not have a statutory basis and we have always been clear about that. I note that members of the committee have asked the UK Government whether it would be prepared to legislate. That is a matter for the UK Government to respond to and I will be interested in its response.

As members are aware, Parliament has moved four weeks of the normal summer recess next year to the period before the referendum to prevent the restrictions from causing difficulty with parliamentary business. The committee has noted that there will be a two-day overlap between the pre-referendum period and parliamentary business. I have to say that it was a bit rich to hear Labour members complain about that given the fact that they wanted Parliament to sit throughout the entirety of the purdah period. However, I am sure that the parliamentary authorities will take account of that nearer the time and, as minister responsible, I would, of course, be happy to give due consideration to any sensible amendments lodged at stage 2.

Secondly, I turn to children of service personnel. As has already been commented on, through my officials, I am consulting the Electoral Commission and electoral registration officers on proposals to enable such young people to register and vote. I am committed to finding a solution that allows that to happen and I undertake to report back to the Referendum (Scotland) Bill Committee as soon as possible.

On spending limits, Patrick Harvie was right to caution James Kelly about his language. The rules on the allocation of spending will be clear, and both sides have an absolute obligation—a legal as well as a moral obligation—to comply with them. Patrick Harvie raised a number of specific issues that are worthy of further consideration. He made some important points about the need to strike a balance between allowing smaller permitted participants to contribute and the need for proper expenditure controls. We are continuing to consider that in discussions with the Electoral Commission and we will lodge amendments to the bill at stage 2. The Electoral Commission will also publish guidance on that issue.

The issue of Gaelic was raised, and Rob Gibson made some very important points to which we will give due consideration. The Scottish Government’s aim and objective is to ensure that the referendum is run in a manner that is already familiar to voters and to those who are responsible for administering the referendum. It is for that reason, and not because of any preconceptions about the English-language abilities of Gaelic speakers, that the bill follows established practice by providing for the ballot paper to be in English, but for translations and voter information to be available in Gaelic and other languages where that is required.

I take the opportunity to stress the Scottish Government’s absolute commitment to promoting the use of Gaelic. We will continue to work with Bòrd na Gàidhlig, as its main funder, to ensure that ministerial objectives for Gaelic are being met throughout the country.

Patricia Ferguson raised the issue of proxy voting. When she started talking about volcanoes erupting, I thought that we were about to hear the latest project fear scare story, but it turned out to be a slightly more serious point. I say to her that the Government is considering a range of issues relating to absent voting and that we intend to lodge a number of amendments on the subject at stage 2. We will advise the committee of them before the deadline for stage 2 amendments.

Some members mentioned discussions between the Scottish and UK Governments about what will happen post-referendum, which the Electoral Commission called for. Such discussions are on-going, and I hope that we can reach a sensible agreement, just as we did, through constructive discussion, in the Edinburgh agreement.

Margo MacDonald: Does the Deputy First Minister agree that that is more important than we might think? We will be keen—obviously—to know the result, but there will be a period of uncertainty following the vote, in which all sorts of things could happen, as the Cabinet Secretary for Finance, Employment and Sustainable Growth could undoubtedly recount. Having to wait too long can have international repercussions.
Nicola Sturgeon: I completely agree with those points. The Electoral Commission specifically called on the UK and Scottish Governments to work together to provide a statement on that. I hope that we can do so.

I think that Margo MacDonald was also raising issues to do with counting; Annabel Goldie raised similar issues. I do not have time to go into those at the moment, but I am sure that we will look at them in future stages of the bill’s consideration.

In the time that I have left, I want to talk about the Government’s white paper, to which Richard Baker, Lewis Macdonald and others referred. I am always delighted when I hear that members on the no side are looking forward to publication of the white paper just as much as I am. I will warmly welcome parliamentary scrutiny of the white paper. It is for committees to decide what scrutiny of it they want to undertake as it becomes the focal point for the next phase of the referendum campaign.

Just as, through that white paper, we will answer comprehensively the questions that have been posed to us, it will be incumbent on parties on the no side to say exactly what a no vote will mean for Scotland. It will mean that we will get Governments that we do not vote for, the dismantling of the welfare state, and new Trident weapons on the Clyde; and we will get no guarantee of new powers for the Parliament. That is what a no vote will mean. Let us have a debate on the two futures that Scotland can choose between. When we put it like that, I have no doubt that the yes side will prevail. The referendum matters to me because it is, as Annabelle Ewing said, the key to bringing home the powers to build the kind of country that we want Scotland to be.

I will end by echoing—as other members have done—Bruce Crawford’s call for the debate to be worthy of the decision that Scotland is being asked to make.

We will campaign and debate with passion, vigour and rigour, but let us also do so with respect and civility, whether we are online, offline, in television studios, on doorsteps, in communities or in workplaces. On 19 September next year, whatever the outcome, we will be, as we are today, one Scotland. I hope that the bill that we pass at stage 1 today provides for a campaign that can allow Scotland to take that decision and move forward to a better future.
Scottish Independence Referendum Bill: Financial Resolution

17:02

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-07569, in the name of John Swinney, on the financial resolution for the Scottish Independence Referendum Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Scottish Independence Referendum Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.— [Nicola Sturgeon.]

Decision Time

17:02

The Presiding Officer (Tricia Marwick): There are two questions as a result of today’s business. The first question is, that motion S4M-07610, in the name of Nicola Sturgeon, on the Scottish Independence Referendum Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Scottish Independence Referendum Bill.

The Presiding Officer: The next question is, that motion S4M-07569, in the name of John Swinney, on the financial resolution for the Scottish Independence Referendum Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Scottish Independence Referendum Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

Meeting closed at 17:03.
This letter provides an update for the Committee on two issues arising from its scrutiny of what is now the Scottish Independence Referendum (Franchise) Act 2013 (the ‘Franchise Act’).

Children of People with a Service Qualification

Following earlier consideration of this issue during the passage of the Franchise Act, and my note of 4 June to the Committee, the Committee’s Stage 1 Report on the Scottish Independence Referendum Bill (‘the Bill’) sought an update on “whether there is a practical way of including within the franchise for the referendum any 16 and 17 year olds who will be living outside Scotland with parents serving in the armed forces in September 2014”. In my response of 8 September to the Committee’s report I said that we were consulting with the Electoral Commission and Electoral Registration Officers on specific proposals to enable such young people to register to vote in the referendum, and that I would report back to the Committee as soon as possible.

As you know, the Scottish Government’s referendum legislation applies current arrangements for the registration of service personnel to the referendum. These include provision, as set out in sections 14 to 16 of the Representation of the People Act 1983, that the spouses or civil partners of those who are deemed, by virtue of section 14 of that Act, to have a service qualification, are themselves deemed to have such a qualification and are therefore entitled to register to vote via a service declaration.

However, as the Committee heard during its consideration of Franchise Act, this facility does not extend to children of those with a service qualification, because the voting age for reserved elections is 18. As the voting age for the referendum has been lowered to 16, and 16 and 17 year olds are more likely to still reside with their parents, it is possible that this could have the effect of preventing some young people living outside Scotland to be with parents in the services from registering to vote. While the number of young people affected is likely to be very small, it is important that they are afforded the same opportunity to vote in the referendum as their parents living outwith Scotland and their peers whose parents are based in Scotland. The Government has therefore been committed to finding a solution to enable such young people to register to vote, and I am grateful to Electoral Registration Officers and the Electoral Commission for their help with that.

Scottish Government’s Proposed Way Forward

I therefore intend to bring forward an amendment for the Committee’s consideration at Stage 2 of the Bill which would amend the Franchise Act to provide a mechanism for such young people aged 16 or 17 on the date of the referendum to register to vote in it, if they can provide an address where they would be resident in Scotland.
were it not for the fact that they reside at a place to be with a parent or guardian who has a service qualification. For those who cannot provide such an address, a previous address in Scotland can be given. As the Scottish Government cannot legislate to alter eligibility for inclusion on the local government register, such young people will be registered in the Register of Young Voters.

Under this proposal, the young person would make their own service declaration, the form of which would be largely the same as for those individuals currently able to make service declarations. Any such declaration would apply only to the referendum. Entitlement to register to vote via a service declaration for these young people would be based on the following criteria:

- The young person will have attained the age of 16, but not the age of 18, on the date of the referendum;
- Their parent or guardian has a service qualification under section 14 of RoPA 1983 (i.e. is a member of the armed forces either based in the UK or overseas; is employed in the service of the Crown or by the British Council in a post outside the UK; or is the spouse or civil partner of such a person);
- They reside at a place to be with the parent or guardian mentioned above; and
- The young person should be able to demonstrate that they either would otherwise be resident at a Scottish address or be able to provide a previous Scottish address (it will of course be for the Electoral Registration officer to determine the connection to a Scottish address).

As with the current arrangements for spouses or civil partners, entitlement to register to vote via a service declaration would not be based on whether the parent or guardian of the child has registered to vote via a service declaration. Doing so would disenfranchise otherwise eligible young people if their parent chose not to register to vote.

Addressing this issue through an amendment at Stage 2 means that the provisions will come into force the day after the Bill achieves Royal Assent. As service declarations do not form part of the annual household canvass and can be made at any time, we do not anticipate that there should be any difficulties associated with the timing of our proposals.

Officials have already had initial discussions with the Electoral Commission about how these arrangements could be publicised. Subject to the Committee’s agreement to these proposals (and to amending the Bill) during its Stage 2 consideration, we will finalise those discussions and report back to the Committee before Stage 3.

**Anonymous Registration**

You will recall that, during the closing stages of the Parliament’s consideration of the Franchise Act, there was some correspondence between me, Scotland’s Commissioner for Children and Young People and the Committee about the arrangements relating to the ability to register anonymously, or by using a declaration of local connection.
As a result of those discussions, my letter of 25 June undertook to apply to the Register of Young Voters changes being made to existing arrangements for registering anonymously through the UK Government’s draft Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013. Broadly, those Regulations will extend the list of orders or interdicts which can be used as evidence of entitlement to register anonymously. I intend to do that by laying a draft Order under section 11 of the Franchise Act, which will be subject to affirmative Parliamentary procedure.

I also undertook to consider whether it would be appropriate to make any further changes to the arrangements for anonymous registration as they apply to the Register of Young Voters. The Scottish Government is currently considering this with electoral administrators, and will report back to the Committee as soon as possible. Any such changes would also be made through the Order mentioned above.

Nicola Sturgeon
18 September 2013
SCOTTISH INDEPENDENCE REFERENDUM BILL

LETTER FROM THE ELECTORAL COMMISSION TO THE COMMITTEE CONVENER

Progress report on preparations for the referendum

In January 2013, we published our advice to the Scottish Government on the proposed referendum question and committed to review the state of preparations for the delivery of the referendum. We said we would make a public statement, in autumn 2013, to inform the Scottish Parliament during its consideration of the Referendum Bill so that if any risks were highlighted then there would still be time to address them. We will publish our progress report on preparations for the referendum tomorrow and I have enclosed an embargoed copy for your information. Please note that this is embargoed until 00:01 on Wednesday 25 September.


Our overall assessment is that preparations for the referendum are currently on track for delivering a well-run referendum delivered in the interests of the voter. In reaching our view we have considered the evidence in the context of our established principles for a well-run referendum; the recommendations from our report on the 2011 referendums; our March 2012 response to the Scottish and UK Governments’ consultations on the referendum; our January 2013 report on the referendum question and our advice on spending limits. We have also reviewed any risks which have been identified since setting out our recommendations and assessed the effectiveness of plans to mitigate the risks.

Our main findings are set out below.

Legislation

The Scottish Independence Referendum Franchise Act 2013, passed by the Scottish Parliament in June 2013 provides for 16 and 17 year olds to register and vote in the referendum. We have concluded that it provides a clear administrative framework and was passed sufficiently far in advance of the autumn canvass to allow for effective planning by Electoral Registration Officers (EROs).

Our overall assessment of the Scottish Independence Referendum Bill is that it is well drafted and reflects many of the recommendations the Commission has previously made, including improving the transparency of campaign spending by requiring campaigners to report donations ahead of the poll. If the legislation is enacted by December 2013, as anticipated, it will provide those administering and campaigning at the poll with certainty on the rules nine months ahead of the referendum.

We have also identified some areas where we believe the Bill could be improved and we brought these to the attention of the Scottish Parliament and the Scottish
Government during the passage of the legislation. We will continue to update the Parliament on our views on the legislation as it progresses.

Clarity about rules for campaigners

An issue has recently arisen in relation to legislation before the UK Parliament, which may impact on campaigning at the referendum. The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill seeks to widen the range of activity which is subject to campaign spending rules for non-party campaigners in the year before a UK Parliament election. If passed, these rules would apply from 23 May 2014, a week before the spending rules for referendum campaigners begin to apply. We are concerned that the changes in the Bill may cause uncertainty for referendum campaigners.

We have asked the UK Government to clarify the position under the Bill and to take any steps necessary to ensure that the referendum is not affected. We have noted that the UK Government has taken welcome action before to ensure there are no barriers for voters at the referendum, including delaying the introduction of planned changes to the electoral registration system in Scotland until after polling day. We trust they will continue to put the voters first and take steps to provide campaigners with certainty on the rules.

Information from UK and Scottish Governments

In our report on the proposed referendum question, published in January 2013, we recommended that the Scottish and UK Governments clarify what process should follow the referendum in sufficient detail so as to inform people what would happen if most voters voted ‘Yes’ or if most voters voted ‘No’. We are aware that discussions between both Governments are taking place and there are signs that progress towards a joint position is being made. We welcome this progress and have asked that a joint position is agreed by 20th December. This would provide clarity by the expected time of Royal Assent to the Referendum Bill and the subsequent opening of the register of permitted participants for campaigners at the referendum.

Preparations by the Chief Counting Officer

The Chief Counting Officer (CCO) designate, Mary Pitcaithly, will be appointed once the Bill receives Royal Assent and is responsible for the administration of the poll, the counting of votes and the announcement of the referendum result. We have reviewed the CCOs preparations to ensure that the poll will be run to a consistently high standard across Scotland. We found that the CCO had taken steps to ensure there are sufficient resources and structures in place to underpin an effective planning for the poll.

The progress report also includes information on our own preparations and plans in relation to public awareness activity and for campaigner guidance and regulation.

I trust you will find the report helpful. Please get in touch if you have any questions.

John McCormick
Electoral Commissioner for Scotland
24 September 2013
Scottish Independence Referendum Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Section 1
- Sections 2 and 3
- Sections 4 to 9
- Section 10
- Section 11
- Sections 12 to 28
- Sections 29 to 32
- Sections 33 and 34
- Schedule 1
- Schedule 2
- Schedule 3
- Schedule 4
- Schedules 5 and 6
- Schedule 7
- Schedule 8
- Schedule 9
- Schedule 10
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Schedule 1

Nicola Sturgeon

4 In schedule 1, page 15, line 5, at end insert—

<Official mark>

Nicola Sturgeon

5 In schedule 1, page 15, leave out line 12

After section 2

Nicola Sturgeon

6 After section 2, insert—

<Declarations of local connection and service declarations: further provision

(1) The Scottish Independence Referendum (Franchise) Act 2013 is amended as follows.

(2) In section 7 (declaration of local connection: additional ground for young people), after subsection (5) insert—

“(6) For the purposes of section 5(1)(b), a declaration of local connection made by virtue of this section is to be treated as having effect also for the purpose of meeting any residence requirement for registration in a register of local government electors.”.

(3) After section 7 insert—
7A Children etc. of people with a service qualification

(1) This section applies for the purposes of sections 14 to 17 of the 1983 Act (service declarations), as applied by this Act in relation to registration in the register of young voters.

(2) An eligible child has a service qualification for those purposes.

(3) Accordingly, any reference in an applied enactment to a person having a service qualification is to be read as including an eligible child.

(4) An “eligible child” is a person—
   (a) who will be aged 16 or 17 on the date on which the poll at an independence referendum is to be held,
   (b) a parent or guardian of whom has a service qualification under any of paragraphs (a) to (e) of section 14(1) of the 1983 Act, and
   (c) who is residing at a particular place in order to be with that parent or guardian.

(5) Section 16 of the 1983 Act (contents of service declaration), as applied by this Act, has effect for the purposes of a service declaration by an eligible child subject to the following modifications—
   (a) the references in paragraphs (b) and (d) to the United Kingdom are to be read as references to Scotland,
   (b) the words from “and (except where” to the end of the section are omitted.

(6) Regulation 15 of the Representation of the People (Scotland) Regulations 2001 (contents of service declaration), as applied by this Act, has effect for the purposes of a service declaration by an eligible child as if the references in paragraphs (2), (3) and (4) to the spouse or civil partner of a person included references to—
   (a) a child of the person,
   (b) a child for whom the person acts as guardian,
   (c) a child of the spouse or civil partner of the person,
   (d) a child for whom the spouse or civil partner of the person acts as guardian.

(7) For the purposes of section 5(1)(b), a service declaration made by virtue of this section is to be treated as having effect also for the purpose of meeting any residence requirement for registration in a register of local government electors.”.

(4) In Part 2 of schedule 1 (application of provisions of the 1983 Act), for the entry relating to section 16 of the 1983 Act, substitute—

| “Section 16 (contents of service declaration) | For paragraph (f) substitute— |
| “(f) the declarant’s date of birth.”” | “(f) the declarant’s date of birth.”” |

2
Schedule 2

Nicola Sturgeon

7 In schedule 2, page 22, line 16, at end insert—

<( ) An application to vote by proxy made as described in sub-paragraph (8)(a) must also meet any applicable additional requirements set out in paragraph 7A.>

Nicola Sturgeon

8 In schedule 2, page 23, line 9, after <because> insert—

<(i)>}

Nicola Sturgeon

9 In schedule 2, page 23, line 9, after <date> insert—

<(ii) the applicant will be, or is likely to be, unavoidably absent from the applicant’s qualifying address on the date of the referendum and the applicant only became aware of that fact after the cut-off date, or

(iii) of reasons relating to the applicant’s occupation, service or employment, of which the applicant only became aware after the cut-off date,>

Nicola Sturgeon

10 In schedule 2, page 23, line 19, at end insert—

<Additional requirements as to certain applications to vote by proxy

7A(1) Sub-paragraphs (2) to (5) apply in relation to an application to vote by proxy made as described in paragraph 7(8)(a)(i) or (ii).

(2) The application must contain a statement of the date on which the applicant became aware of the reasons given in the statement required by paragraph 7(4)(c).

(3) The application must be signed by a person who—

(a) is aged 18 or over,
(b) knows the applicant, and
(c) is not related to the applicant.

(4) The person who signs the application in accordance with sub-paragraph (3) must certify in the application that the following information is true to the best of the person’s knowledge and belief—

(a) the information given in the statement required by sub-paragraph (2), and
(b) the reasons given in the statement required by paragraph 7(4)(c).

(5) That person must also state in the application—

(a) the person’s name and address,
(b) that the person—

(i) is aged 18 or over,

(ii) knows the applicant, and
(iii) is not related to the applicant.

(6) Sub-paragraphs (8) to (11) apply in relation to an application to vote by proxy made as described in paragraph 7(8)(a)(iii).

(7) But sub-paragraphs (9) to (11) do not apply if the applicant is or will be registered as a service voter.

(8) The application must contain a statement of—
   (a) where the applicant is an employee, the name of the applicant’s employer,
   (b) where the applicant is not an employee, details of the applicant’s occupation or service,
   (c) the date on which the applicant became aware of the reasons given in the statement required by paragraph 7(4)(c).

(9) The application must be signed—
   (a) where the applicant is an employee, by—
      (i) the applicant’s employer, or
      (ii) another employee to whom this function is delegated by the employer,
   (b) where the applicant is not an employee, by a person who—
      (i) is aged 18 or over,
      (ii) knows the applicant, and
      (iii) is not related to the applicant.

(10) The person who signs the application in accordance with sub-paragraph (9) must certify in the application that the following information is true to the best of the person’s knowledge and belief—
   (a) the information given in the statement required by sub-paragraph (8), and
   (b) the reasons given in the statement required by paragraph 7(4)(c).

(11) That person must also state in the application—
   (a) the person’s name and address,
   (b) if the applicant is an employee, either (as the case may be)—
      (i) that the person is the applicant’s employer, or
      (ii) the position that the person holds in the employment of the applicant’s employer,
   (c) if the applicant is not an employee, that the person—
      (i) is aged 18 or over,
      (ii) knows the applicant, and
      (iii) is not related to the applicant.

(12) For the purposes of this paragraph—
   (a) a person (“A”) is related to another person (“B”) if A is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of B,
(b) a person is registered as a service voter if the person has made a service declaration under section 15 of the 1983 Act and is registered in the register of electors in pursuance of it.

Nicola Sturgeon

11  In schedule 2, page 25, line 36, at end insert—

      <( ) a day appointed for public thanksgiving or mourning.>

Nicola Sturgeon

12  In schedule 2, page 27, line 20, at end insert—

      <( ) a day appointed for public thanksgiving or mourning.>

Nicola Sturgeon

13  In schedule 2, page 28, line 24, leave out paragraph 21 and insert—

      <The counting officer is to issue postal ballot papers (and postal voting statements) as soon as it is practicable to do so.>

Nicola Sturgeon

14  In schedule 2, page 32, line 11, at end insert—

      <Superseded postal ballot papers

(1) This paragraph applies where—

      (a) an application under paragraph 3(2) or (6) is granted, and

      (b) the documents mentioned in sub-paragraph (2) have previously been issued to the applicant.

(2) The documents are—

      (a) a postal ballot paper (a “superseded postal ballot paper”),

      (b) a postal voting statement,

      (c) the envelopes supplied for their return.

(3) The superseded postal ballot paper is void and of no effect.

(4) The applicant must return the documents.

(5) Any postal ballot paper or postal voting statement returned in accordance with sub-paragraph (4) must be immediately cancelled.

(6) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (5), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(7) The counting officer must enter in a list kept for the purpose (“the list of superseded postal ballot papers”)—
(a) the name and number of the applicant as stated in the Polling List (or, in the case of an applicant who has an anonymous entry, the applicant’s voter number alone), and

(b) the number of the superseded postal ballot paper.>

Nicola Sturgeon

15 In schedule 2, page 32, line 13, leave out <referendum agent> and insert <of the referendum agents appointed for the area>

Nicola Sturgeon

16 In schedule 2, page 39, line 33, leave out <and lost> and insert <, lost and superseded>

Nicola Sturgeon

17 In schedule 2, page 45, leave out lines 23 and 24 and insert—

<( ) This paragraph applies to any person holding a copy of a document supplied under paragraph 46(1) or (2), 48(1) or 49(1).>

Section 4

Annabel Goldie

18 In section 4, page 2, line 26, after <if> insert—

<(a) the Chief Counting Officer is convicted of any criminal offence, or
(b)>}

Section 7

Nicola Sturgeon

19 In section 7, page 4, line 19, after <part,> insert <on the part of a deputy of the officer,>

Nicola Sturgeon

20 In section 7, page 4, line 29, after <officer> insert <or a deputy of a counting officer>

Schedule 3

Annabel Goldie

21 In schedule 3, page 47, line 39, at end insert—

<( ) a day appointed for public thanksgiving or mourning.>

Nicola Sturgeon

22 In schedule 3, page 48, line 33, leave out <on the back of the ballot paper> and insert—

<( ) an official mark on the front of the ballot paper, and>
Nicola Sturgeon
23 In schedule 3, page 48, line 34, leave out from <, and> to end of line 1 on page 49 and insert <on the back of the ballot paper.>

Nicola Sturgeon
24 In schedule 3, page 49, line 35, leave out <Subject to paragraph 21(1) of schedule 2>

Nicola Sturgeon
25 In schedule 3, page 49, line 35, leave out <, as soon as reasonably practicable,>

Annabel Goldie
26 In schedule 3, page 53, line 2, at end insert —
   <( ) a day appointed for public thanksgiving or mourning.>

Annabel Goldie
27 In schedule 3, page 55, line 10, after <removed> insert <immediately>

Nicola Sturgeon
28 In schedule 3, page 62, line 36, leave out <publish notice> and insert <give notice in writing to the Chief Counting Officer, each of the referendum agents appointed for the area and any counting agents appointed to attend at the count>

Annabel Goldie
29 In schedule 3, page 65, line 32, leave out <final> and insert <subject to any judicial review in accordance with section 31>

Schedule 4

Lewis Macdonald
112 In schedule 4, page 71, line 17, at end insert —
   <and is not closely connected to a permitted participant, including a permitted participant that is a designated organisation.>

Lewis Macdonald
113 In schedule 4, page 71, line 38, at end insert —
   <and is not closely connected to a permitted participant, including a permitted participant that is a designated organisation.>

Lewis Macdonald
114 In schedule 4, page 71, line 38, at end insert —
   <( ) For the purposes of this schedule, “closely connected to a permitted participant”, means —>
(a) in respect of an individual, that the individual is—
   (i) a member of the board of directors or other governing body, or a member of the advisory board, of a permitted participant, or
   (ii) an employee or worker of a permitted participant who has managerial responsibilities or other powers of decision making on its behalf, or
   (iii) a person engaged in a contract for services by a permitted participant, who has managerial responsibilities or other powers of decision making on its behalf,

(b) in respect of a body, that the body shares with a permitted participant—
   (i) more than 50 per cent of its total funding,
   (ii) more than 50 per cent of its governing body, or
   (iii) its primary decision maker.

Nicola Sturgeon

30 In schedule 4, page 72, line 31, at end insert—

<Further provision about responsible persons

(1) A person who is the responsible person in relation to a permitted participant may not make a declaration under paragraph 2 as a qualifying individual or on behalf of a qualifying body.

(2) An individual who is a permitted participant ceases to be a permitted participant if the individual is the treasurer of a registered party (other than a minor party) that becomes a permitted participant.

(3) A declaration made or notification given by a minor party or a qualifying body does not comply with the requirement in paragraph 3(1)(b) or (3)(a)(ii) if the person whose name is stated—

   (a) is already the responsible person in relation to a permitted participant,
   (b) is an individual who makes a declaration under paragraph 2 at the same time, or
   (c) is the person whose name is stated, in purported compliance with paragraph 3(1)(b) or (3)(a)(ii), in a declaration made or notification given at the same time by another minor party or qualifying body.

(4) Where a registered party (other than a minor party) makes a declaration under paragraph 2 and the treasurer of the party (“T”) is already the responsible person in relation to a permitted participant (“P”)—

   (a) T ceases to be the responsible person in relation to P at the end of the period of 14 days beginning with the day on which (by reason of the declaration) T becomes the responsible person for the party,
   (b) P must, before the end of that period, give a notice of alteration under paragraph 3(4) stating the name of the person who is to replace T as the responsible person in relation to P.

(5) In sub-paragraphs (3) and (4), “the person”, in relation to a qualifying body, is to be read as “the person or officer”.

>
Nicola Sturgeon

31 In schedule 4, page 73, line 27, leave out from <period> to <referendum> in line 28 and insert <application>

Nicola Sturgeon

32 In schedule 4, page 73, line 31, leave out from first <period> to end of line 32 and insert <decision period.>

Nicola Sturgeon

33 In schedule 4, page 73, line 40, at end insert—

<( ) In this paragraph—

“the application period” is the period of 28 days ending with the day before the first day of the decision period, and

“the decision period” is the period of 16 days ending with the 28th day before the first day of the referendum period.>

Nicola Sturgeon

34 In schedule 4, page 80, line 14, leave out <for any special reason>

Drew Smith

115 In schedule 4, page 81, line 22, leave out <£10,000> and insert <£7,500>

Patrick Harvie

1 In schedule 4, page 84, line 29, leave out <17 and>

Patrick Harvie

2 In schedule 4, page 84, line 31, leave out <whether or not> and insert <where>

Drew Smith

116 In schedule 4, page 85, line 27, leave out <£10,000> and insert <£7,500>

Nicola Sturgeon

35 In schedule 4, page 86, leave out lines 11 to 17

Nicola Sturgeon

36 In schedule 4, page 86, line 18, leave out <by the Commission>

Nicola Sturgeon

37 In schedule 4, page 86, line 33, leave out <by the Electoral Commission>
Nicola Sturgeon
38 In schedule 4, page 87, line 15, leave out from <accompanied> to end of line 16

Nicola Sturgeon
39 In schedule 4, page 88, line 5, leave out <received> and insert <accepted>

Liam McArthur (on behalf of the SPCB)
40 In schedule 4, page 89, line 16, leave out from beginning to <SPCB,>

Patrick Harvie
3 In schedule 4, page 89, line 21, at end insert—
< ( ) material published—
   (i) in the Business Bulletin or Official Report of the Scottish Parliament, in accordance with the Parliament’s Standing Orders, or
   (ii) on the Scottish Parliament official website.>

Liam McArthur (on behalf of the SPCB)
41 In schedule 4, page 91, line 7, at end insert—
< ( ) Sub-paragraph (1) does not apply to any material published by or on behalf of the SPCB.>

Nicola Sturgeon
42 In schedule 4, page 100, line 24, leave out from <of> to end of line 25 and insert <ending with the 28th day of the referendum period (including the time before the referendum period),>

Nicola Sturgeon
43 In schedule 4, page 100, line 40, at end insert—
< ( ) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—
   (a) a separate report under this paragraph need not be prepared in respect of any preceding period, but
   (b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.

 ( ) Sub-paragraphs (2) and (3) apply to a relevant donation received by a permitted participant before the start of the referendum period only if the donation was for the purpose of meeting referendum expenses to be incurred by the permitted participant during the referendum period.

( ) References in this paragraph and in paragraph 41A to a relevant donation received by a permitted participant include any donation received at a time before the individual or body concerned became a permitted participant, if the donation would have been a relevant donation had the individual or body been a permitted participant at that time.>
Nicola Sturgeon

117 In schedule 4, page 101, line 27, at end insert—

<Declaration of responsible person as to donation reports under paragraph 41

41A(1) Each report prepared under paragraph 41 in respect of relevant donations received by a permitted participant must be accompanied by a declaration which complies with subparagraph (2) and is signed by the responsible person.

(2) The declaration must state—

(a) that the responsible person has examined the report, and
(b) that to the best of the responsible person’s knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or
(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of donation reports under paragraph 41

41B(1) Where the Electoral Commission receive a report under paragraph 41 they must—

(a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and
(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any donation by an individual, the donor’s address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 41 or other document accompanying it is received by the Commission—

(a) they may cause the report or other document to be destroyed, or
(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.>

Nicola Sturgeon

45 In schedule 4, page 110, line 1, leave out from <of> to end of line 2 and insert <ending with the 28th day of the referendum period (including the time before the referendum period),>
Nicola Sturgeon

46 In schedule 4, page 110, line 21, at end insert—

<( ) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—

(a) a separate report under this paragraph need not be prepared for any preceding period, but

(b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs are to be read accordingly.

( ) Sub-paragraphs (2) and (3) apply to a regulated transaction entered into by a permitted participant before the start of the referendum period only if any money or benefit obtained in consequence of the transaction is to be used for meeting referendum expenses to be incurred by the permitted participant during the referendum period.

( ) References in this paragraph and in paragraph 57A to a regulated transaction entered into by a permitted participant include any transaction entered into at a time before the individual or body concerned became a permitted participant, if the transaction would have been a regulated transaction had the individual or body been a permitted participant at that time.>

Nicola Sturgeon

118 In schedule 4, page 111, line 7, at end insert—

<Declaration of responsible person as to transaction reports under paragraph 57

57A(1) Each report prepared under paragraph 57 in respect of regulated transactions entered into by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—

(a) that the responsible person has examined the report, and

(b) that to the best of the responsible person’s knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of transaction reports under paragraph 57

57B(1) Where the Electoral Commission receive a report under paragraph 57 they must—
(a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and
(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any transaction entered into by the permitted participant with an individual, the individual’s address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 57 or other document accompanying it is received by the Commission—
(a) they may cause the report or other document to be destroyed, or
(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.>

Section 11

Nicola Sturgeon

48 In section 11, page 6, line 8, leave out <contravention of restrictions or other> and insert <failure to comply with certain>

Nicola Sturgeon

49 In section 11, page 6, leave out line 10

Schedule 5

Nicola Sturgeon

50 In schedule 5, page 118, line 23, leave out paragraph 13 and insert—

<(1) Guidance (and revised guidance) published by the Electoral Commission under paragraph 14 of Schedule 19B (investigatory powers of the Commission) to the 2000 Act has effect, with any necessary modifications, for the purposes of this schedule as it has effect for the purposes of that Schedule.

(2) The Commission may publish additional guidance in relation to the application of this schedule.

(3) Where appropriate, the Commission must revise guidance published under sub-paragraph (2) and publish the revised guidance.

(4) The Commission must have regard to the guidance and revised guidance referred to in sub-paragraph (1) and any guidance or revised guidance published under sub-paragraph (2) or (3) in exercising their functions under this Act.>

Nicola Sturgeon

51 In schedule 5, page 119, line 4, leave out from <report> to <information> and insert <Electoral Commission must, in accordance with this paragraph, make a report>
Nicola Sturgeon

52 In schedule 5, page 119, line 17, at end insert—

<(4) The report may be made—

(a) in the report by the Commission under section 24,

(b) in a separate report made as soon as reasonably practicable after the report under section 24 is published, or

(c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(5) The Commission must—

(a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and

(b) after laying, publish the report in such manner as they may determine.>

Schedule 6

Nicola Sturgeon

53 In schedule 6, page 119, line 32, leave out <prescribed>

Nicola Sturgeon

54 In schedule 6, page 119, line 32, leave out from <, or> to end of line 34 and insert <listed in Part 8.>

Nicola Sturgeon

55 In schedule 6, page 120, line 3, leave out <prescribed>

Nicola Sturgeon

56 In schedule 6, page 120, line 3, after <offence> insert <listed in Part 8>

Nicola Sturgeon

57 In schedule 6, page 120, line 4, leave out from <(otherwise)> to <virtue> in line 5 and insert <failed to comply with a requirement imposed by paragraph 22(2), (3) or (4)>

Nicola Sturgeon

58 In schedule 6, page 120, line 7, leave out <a prescribed amount> and insert <£200>

Nicola Sturgeon

59 In schedule 6, page 120, leave out lines 8 to 13

Nicola Sturgeon

60 In schedule 6, page 120, line 18, leave out from <a> to end of line 19 and insert <£200.>
Nicola Sturgeon

61 In schedule 6, page 120, leave out line 31

Nicola Sturgeon

62 In schedule 6, page 120, leave out line 37

Nicola Sturgeon

63 In schedule 6, page 120, line 38, at end insert <and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (4) is received.>

( ) Where an appeal under sub-paragraph (6) is made, the fixed monetary penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.>

Nicola Sturgeon

64 In schedule 6, page 121, line 20, at end insert—

<Late payment

(1) A fixed monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 2(4) is received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.

(3) If the penalty (as increased by sub-paragraph (2)) is not paid within the period of 56 days beginning with the day on which the notice under paragraph 2(4) is received, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

(4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or because the appeal was withdrawn, is payable within the period of 28 days beginning with the day of determination or withdrawal of the appeal, and if not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) is not paid within the period of 56 days beginning with the day of determination or withdrawal of the appeal, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

Nicola Sturgeon

65 In schedule 6, page 122, line 1, leave out <prescribed>

Nicola Sturgeon

66 In schedule 6, page 122, line 1, leave out from <, or> to end of line 3 and insert <listed in Part 8.>

Nicola Sturgeon

67 In schedule 6, page 122, line 6, leave out <prescribed>
Nicola Sturgeon
68 In schedule 6, page 122, line 6, after <offence> insert <listed in Part 8>

Nicola Sturgeon
69 In schedule 6, page 122, line 7, leave out from <(otherwise)> to <virtue> in line 8 and insert <failed to comply with a requirement imposed by paragraph 22(2), (3) or (4)>

Nicola Sturgeon
70 In schedule 6, page 122, line 11, after <determine> insert <up to a maximum of £10,000, (but see also sub-paragraph (6))>

Nicola Sturgeon
71 In schedule 6, page 122, line 13, leave out <contravention> and insert <failure to comply>

Nicola Sturgeon
72 In schedule 6, page 122, line 17, leave out <contravention> and insert <failure to comply>

Nicola Sturgeon
73 In schedule 6, page 122, line 26, leave out <(1)(a)> and insert <(1)>

Nicola Sturgeon
74 In schedule 6, page 123, leave out line 7

Nicola Sturgeon
75 In schedule 6, page 123, leave out line 19

Nicola Sturgeon
76 In schedule 6, page 123, line 20 at end insert <and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (5) is received.>

( ) Where an appeal under sub-paragraph (6) is made, the discretionary requirement is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.>

Nicola Sturgeon
77 In schedule 6, page 124, line 8, at end insert—

<Compliance and restoration certificates>

8A(1) Where, after the service of a notice under paragraph 6(5) imposing a non-monetary discretionary requirement on a person, the Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect.

(2) A notice served under paragraph 6(5) ceases to have effect on the issue of a certificate relating to that notice.
(3) A person on whom a notice under paragraph 6(5) has been served may at any time apply for a certificate and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.

(4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the notice has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—
   (a) the grounds for the decision not to issue a certificate, and
   (b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a certificate, the notice has effect as if the certificate had not been issued.

(8) A person who has applied for a certificate under sub-paragraph (3) may appeal to a sheriff against a decision not to issue a certificate under this paragraph on the ground that the decision was—
   (a) based on an error of fact,
   (b) wrong in law, or
   (c) unfair or unreasonable.

(9) An appeal must be made within the period of 28 days beginning with the day on which notification of the decision is received.>

Nicola Sturgeon

78 In schedule 6, page 124, leave out lines 13 and 14 and insert—

< ( ) The amount of a non-compliance penalty is to be determined by the Commission, but must not exceed £10,000.

( ) A non-compliance penalty must be paid to the Commission.

( ) A notice under sub-paragraph (1) must include information as to—
   (a) the grounds for imposing the non-compliance penalty,
   (b) the amount of the penalty,
   (c) how payment may be made,
   (d) the period within which payment must be made, which must be not less than 28 days beginning with the day on which the notice imposing the penalty is received,
   (e) rights of appeal, and
   (f) the consequences of failure to make payment within the period specified.

( ) If, before the end of the period specified for payment of a non-compliance penalty—
(a) the person on whom the penalty was imposed has taken the steps specified in the notice imposing the non-monetary discretionary requirement to which the penalty relates, and
(b) the Commission have issued a certificate under paragraph 8A(1) in respect of that notice,

the Commission may waive, or reduce the amount of, the penalty.

Nicola Sturgeon

79 In schedule 6, page 124, leave out line 21

Nicola Sturgeon

80 In schedule 6, page 124, line 22, at end insert <and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) is received.>

   ( ) Where an appeal under sub-paragraph (3) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Late payment

(1) A variable monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 6(5) is received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.

(3) If the penalty (as increased by sub-paragraph (2)) is not paid within 56 days of the day on which the notice under paragraph 6(5) is received, the amount payable is the amount of the penalty originally imposed increased by 50%.

(4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or varied it, or because the appeal was withdrawn, is payable within 28 days of the day of determination or withdrawal of the appeal, and if it is not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) is not paid within 56 days of the day of determination or withdrawal of the appeal the amount payable is the amount of the penalty originally imposed increased by 50%.

Nicola Sturgeon

81 In schedule 6, page 124, line 33, leave out <prescribed>

Nicola Sturgeon

82 In schedule 6, page 124, line 33, leave out from <, or> to <4> in line 35 and insert <listed in Part 8>

Nicola Sturgeon

83 In schedule 6, page 125, line 8, leave out <prescribed>
Nicola Sturgeon

84 In schedule 6, page 125, line 8, leave out from <, or> to <4> in line 10 and insert <listed in Part 8>

Nicola Sturgeon

85 In schedule 6, page 125, line 32, at end insert—

<( ) An application for a completion certificate must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the stop notice has been complied with.

( ) Where, on an application under sub-paragraph (3), the Commission decide not to issue a completion certificate they must notify the applicant and provide the applicant with information as to—

(a) the grounds for the decision not to issue a completion certificate, and

(b) rights of appeal.

( ) The Commission may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

( ) Where the Commission revoke a completion certificate, the stop notice has effect as if the certificate had not been issued.>
Nicola Sturgeon
91 In schedule 6, page 126, line 29, leave out <or contravention>

Nicola Sturgeon
92 In schedule 6, page 126, line 32, leave out <or contravention>

Nicola Sturgeon
93 In schedule 6, page 126, line 32, leave out from second <or> to <description,> in line 33

Nicola Sturgeon
94 In schedule 6, page 127, line 8, at end insert—
<Enforcement undertakings: further provision>
15A (1) An enforcement undertaking must be in writing and include—
(a) a statement that the undertaking is an enforcement undertaking regulated by this 
Act,
(b) the terms of the undertaking,
(c) the period within which the action specified in the undertaking must be 
completed,
(d) details of how and when a person is to be considered to have complied with the 
undertaking, and
(e) information as to the consequences of failure to comply in full or in part with the 
undertaking, including reference to the effect of paragraph 15(2).
(2) The enforcement undertaking may be varied or extended if the person who has given the 
undertaking and the Electoral Commission agree.
(3) The Commission may publish any enforcement undertaking which they accept in 
whatever manner they see fit.

Compliance certificate
15B (1) Where, after accepting an enforcement undertaking from a person, the Electoral 
Commission are satisfied that the undertaking has been complied with in full they must 
issue a certificate to that effect.
(2) An enforcement undertaking ceases to have effect on the issue of a certificate relating to 
that undertaking.
(3) A person who has given an enforcement undertaking may at any time apply for a 
certificate, and the Commission must make a decision whether to issue a certificate 
within the period of 28 days beginning with the day on which they receive such an 
application.
(4) An application under sub-paragraph (3) must be accompanied by such information as is 
reasonably necessary to enable the Commission to determine whether the undertaking 
has been complied with.
(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—
   (a) the grounds for the decision not to issue a certificate, and
   (b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a certificate, the enforcement undertaking has effect as if the certificate had not been issued.

Appeals

15C (1) A person who has given an enforcement undertaking may appeal to the sheriff against a decision not to issue a certificate under paragraph 15B on the ground that the decision was—
   (a) based on an error of fact,
   (b) wrong in law, or
   (c) unfair or unreasonable.

(2) An appeal must be made within the period of 28 days beginning with the day on which notification of the Electoral Commission’s decision is received.

Nicola Sturgeon

95 In schedule 6, page 127, line 12, leave out paragraphs 16 to 21

Nicola Sturgeon

96 In schedule 6, page 130, line 6, at end insert—

<Withdrawal or variation of notice

(1) The Electoral Commission may by notice in writing at any time withdraw a notice served under paragraph 2(4).

(2) The Commission may by notice in writing at any time—
   (a) withdraw a notice served under paragraph 6(5),
   (b) reduce the monetary amount payable under such a notice, or
   (c) reduce the steps to be taken under such a notice.

(3) The Commission may by notice in writing at any time withdraw a stop notice (but may serve another stop notice in respect of the same activity specified in the withdrawn notice).

Nicola Sturgeon

97 In schedule 6, page 130, line 20, leave out paragraph 25 and insert—
<1) Guidance (and revised guidance) published by the Electoral Commission under paragraph 25 of Schedule 19C (civil sanctions) to the 2000 Act has effect, with any necessary modifications, for the purposes of this schedule as it has effect for the purposes of that Schedule.

(2) The Commission may publish additional guidance in relation to the application of this schedule.

(3) Where appropriate, the Commission must revise guidance published under sub-paragraph (2) and publish the revised guidance.

(4) The Commission must have regard to the guidance and revised guidance referred to in sub-paragraph (1) and any guidance or revised guidance published under sub-paragraph (2) or (3) in exercising their functions under this Act.>

Nicola Sturgeon

98 In schedule 6, page 131, line 18, at end insert—

<Recovery of penalties etc.

The Electoral Commission may recover as a civil debt—

(a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty, and

(b) any interest or other financial payment for late payment of such a penalty.>

Nicola Sturgeon

99 In schedule 6, page 131, line 29, leave out from <report> to <information> and insert <Electoral Commission must, in accordance with this paragraph, make a report>

Nicola Sturgeon

100 In schedule 6, page 132, line 4, at end insert—

<(4) The report may be made—

(a) in the report by the Commission under section 24,

(b) in a separate report made as soon as reasonably practicable after the report under section 24 is published, or

(c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(5) The Commission must—

(a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and

(b) after laying, publish the report in such manner as they may determine.>

Nicola Sturgeon

101 In schedule 6, page 132, line 13, at end insert—

<Powers of sheriff

(1) On an appeal under paragraph 2(6) the sheriff may overturn or confirm the penalty.

(2) On an appeal under paragraph 6(6), 9(3) or 13(1) the sheriff may—
(a) overturn, confirm or vary the requirement or notice,
(b) take such steps as the Electoral Commission could take in relation to the act or omission giving rise to the requirement or notice,
(c) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Commission.

(3) On an appeal under paragraph 8A(3), 13(2) or 15C(1) the sheriff may make an order requiring the Commission to issue (as appropriate)—
(a) a certificate under paragraph 8A(1),
(b) a completion certificate under paragraph 12(1), or
(c) a certificate under paragraph 15B(1).>

Nicola Sturgeon

102 In schedule 6, page 132, leave out lines 18 and 19

Nicola Sturgeon

103 In schedule 6, page 132, leave out line 26

Nicola Sturgeon

104 In schedule 6, page 132, leave out line 31

Nicola Sturgeon

119 In schedule 6, page 132, line 32, at end insert—

<PART 8
LISTED CAMPAIGN OFFENCES

The following table lists campaign offences for the purposes of this schedule.

<table>
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<th>Provision creating offence</th>
<th>General description of campaign offence</th>
</tr>
</thead>
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<tr>
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<td>Incurring referendum expenses without authority</td>
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<tr>
<td>Paragraph 13(4)(a) of schedule 4</td>
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<tr>
<td>Paragraph 13(4)(b) of schedule 4</td>
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<tr>
<td>Provision creating offence</td>
<td>General description of campaign offence</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Paragraph 14(3)(a) of schedule 4</td>
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</tr>
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<td>Paragraph 14(3)(b) of schedule 4</td>
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<tr>
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<td>Individual (other than permitted participant) exceeding limits on referendum expenses</td>
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<td>Paragraph 26(7) or (8) of schedule 4</td>
<td>Printing or publishing referendum material without details of printer or publisher</td>
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<td>Paragraph 33(7) of schedule 4</td>
<td>Failure to provide information about donors</td>
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<tr>
<td>Provision creating offence</td>
<td>General description of campaign offence</td>
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<tr>
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<td>----------------------------------------</td>
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<tr>
<td>Paragraph 34(4) or (6) of schedule 4</td>
<td>Failure to return donations</td>
</tr>
<tr>
<td>Paragraph 41(7)(a) of schedule 4</td>
<td>Failure to deliver donation reports to Electoral Commission within time limits</td>
</tr>
<tr>
<td>Paragraph 41(7)(b) of schedule 4</td>
<td>Failure to comply with requirements for recording donations in donation reports</td>
</tr>
<tr>
<td>Paragraph 41A(3)(b) of schedule 4</td>
<td>Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with donation report</td>
</tr>
<tr>
<td>Paragraph 49(1) of schedule 4</td>
<td>Permitted participant (individual) knowingly enters into regulated transaction with unauthorised participant</td>
</tr>
<tr>
<td>Paragraph 49(2) of schedule 4</td>
<td>Permitted participant (other than an individual) knowingly enters into regulated transaction with unauthorised participant</td>
</tr>
<tr>
<td>Paragraph 49(3) of schedule 4</td>
<td>Responsible person for permitted participant (other than an individual) knowingly enters into regulated transaction with unauthorised participant</td>
</tr>
<tr>
<td>Paragraph 49(4) of schedule 4</td>
<td>Permitted participant (individual) unknowingly enters into regulated transaction with unauthorised participant and fails to take steps to repay</td>
</tr>
<tr>
<td>Paragraph 49(5) or (6) of schedule 4</td>
<td>Failure of responsible person for permitted participant (other than an individual) to take steps to repay money received in connection with a regulated transaction with an unauthorised participant which was entered into unknowingly</td>
</tr>
<tr>
<td>Paragraph 49(7) of schedule 4</td>
<td>Permitted participant (individual) knowingly benefits from regulated transaction with unauthorised participant</td>
</tr>
<tr>
<td>Paragraph 49(8) or (9) of schedule 4</td>
<td>Permitted participant (other than an individual) knowingly benefits from connected transaction with unauthorised participant</td>
</tr>
<tr>
<td>Provision creating offence</td>
<td>General description of campaign offence</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Paragraph 49(10) of schedule 4</td>
<td>Permitted participant (individual) fails to take steps to repay benefits from connected transaction with unauthorised participant which was entered into unknowingly</td>
</tr>
<tr>
<td>Paragraph 49(11) or (12) of schedule 4</td>
<td>Failure of responsible person for permitted participant (other than an individual) to take steps to repay benefits from connected transaction with unauthorised participant which was entered into unknowingly</td>
</tr>
<tr>
<td>Paragraph 57(7)(a) of schedule 4</td>
<td>Failure to deliver transaction reports to Electoral Commission within time limits</td>
</tr>
<tr>
<td>Paragraph 57(7)(b) of schedule 4</td>
<td>Failure to comply with requirements for recording transactions in transaction reports</td>
</tr>
<tr>
<td>Paragraph 57A(3)(b) of schedule 4</td>
<td>Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with report relating to regulated transactions</td>
</tr>
<tr>
<td>Paragraph 12(1) of schedule 5</td>
<td>Failure to comply with investigation requirement</td>
</tr>
</tbody>
</table>

**Section 16**

**Nicola Sturgeon**

106 In section 16, page 8, line 32, at end insert—

<( ) a day appointed for public thanksgiving or mourning.>

**After section 20**

**Annabelle Ewing**

110 After section 20, insert—

<Code of practice on attendance of observers

(1) The Electoral Commission must prepare a code of practice on the attendance of—

(a) representatives of the Commission,

(b) accredited observers, and

(c) nominated members of accredited organisations,

at proceedings relating to the referendum.

(2) The code must in particular—
(a) specify the manner in which applications under section 18(1) or 19(1) are to be made to the Commission,

(b) specify the criteria that the Commission will take into account in determining such applications,

(c) give guidance to relevant officers as to the exercise of the powers conferred by section 20(1) and (2),

(d) give guidance to such officers as to the exercise, in relation to a person entitled to attend any proceedings by virtue of section 18 or 19, of any other power under this Act to control the number of persons present at any proceedings relating to the referendum,

(e) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations as to the exercise of the rights conferred by sections 17, 18 and 19.

(3) The code may make different provision for different purposes.

(4) Before preparing the code, the Commission must consult the Scottish Ministers.

(5) The Commission must lay the code before the Scottish Parliament.

(6) The Commission must publish the code in such manner as they may determine.

(7) The following persons must have regard to the code in exercising any function or right conferred by section 17, 18, 19 or 20—

(a) the Commission,

(b) representatives of the Commission,

(c) relevant officers.

(8) The Commission may at any time revise the code.

(9) Subsections (4) to (7) apply to a revision of the code as they apply to the code.

(10) In this section—

“accredited observer” is to be construed in accordance with section 18,

“accredited organisation” is to be construed in accordance with section 19, and

“nominated member” is to be construed accordingly,

“relevant officer” has the meaning given in section 20(4),

“representative of the Commission” means a representative of the Electoral Commission within the meaning of section 17(4).>

Section 22

Nicola Sturgeon

107 In section 22, page 11, line 18, at end insert—

<( ) The Chief Counting Officer may issue guidance to counting officers and registration officers about the exercise of their respective functions under this Act.>

Drew Smith

120 In section 22, page 11, line 23, at end insert—
Guidance issued under subsection (3) must include information as to the circumstances that constitute a common plan or other arrangement for the purposes of paragraph 19 of schedule 4.

**After section 23**

**Rob Gibson**

111* After section 23, insert—

<Encouraging participation

(1) The Chief Counting Officer must take whatever steps the Chief Counting Officer considers appropriate to—

(a) encourage participation in the referendum, and

(b) facilitate co-operation among officers taking steps under this section.

(2) A counting officer must take whatever steps the counting officer considers appropriate to encourage participation in the referendum in the local government area for which the officer is appointed.>

**Schedule 7**

**Nicola Sturgeon**

108 In schedule 7, page 134, line 10, after <person> insert <or by post>

**Nicola Sturgeon**

109 In schedule 7, page 134, line 10, at end insert—

< A votes by post as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum.>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Ballot paper: location of official mark**
4, 5, 22, 23

**Franchise: declarations of local connection and service declarations by young voters**
6

**Absent voting**
7, 8, 9, 10, 13, 14, 15, 16, 24, 25, 108, 109

**Computation of periods: exclusion of days appointed for public thanksgiving or mourning**
11, 12, 21, 26, 106

**Destruction of registration documents**
17

**Removal of Chief Counting Officer**
18

**Correction of procedural errors**
19, 20

**Removal of disorderly persons from polling stations**
27

**Publication of count notice**
28

**Decisions on ballot papers**
29
Campaign rules: connection between permitted participants
112, 113, 114, 30

Campaign rules: applications for designation as designated organisation
31, 32, 33

Campaign rules: payment and return of referendum expenses
34, 35, 36, 37, 38, 39

Campaign rules: general referendum expenses limit
115, 116

Campaign rules: application of common plan rules to individuals or bodies that are not permitted participants
1, 2

Campaign rules: publications by SPCB
40, 3, 41

Campaign rules: pre-poll reports of donations
42, 43, 117, 45, 46, 118

Enforcement of campaign rules: civil sanctions
48, 49, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 101, 102, 103, 104, 119

Enforcement of campaign rules: Electoral Commission’s guidance and reports
50, 51, 52, 97, 99, 100

Code of practice on attendance of observers
110

Power for chief counting officer to issue guidance to counting officers and registration officers
107

Guidance on common plans
120

Encouraging participation
111
Present:
Bruce Crawford (Convener)   Annabelle Ewing
Linda Fabiani                   Rob Gibson
Annabel Goldie                Patrick Harvie
Lewis Macdonald             Stewart Maxwell
Stuart McMillan               Tavish Scott
Drew Smith

Also present: Nicola Sturgeon, Deputy First Minister (Government Strategy and the Constitution).

Scottish Independence Referendum Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 4, 5, 6, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39.

The following amendments were agreed to (by division)—
7 (For 9, Against 0, Abstentions 2)
8, 9 and 10 en bloc (For 9, Against 0, Abstentions 2)
14 (For 9, Against 0, Abstentions 2)
16 (For 9, Against 0, Abstentions 2).

The following amendments were disagreed to (by division)—
112 (For 4, Against 6, Abstentions 1)
113 (For 4, Against 6, Abstentions 1)
114 (For 4, Against 6, Abstentions 1)
115 (For 5, Against 6, Abstentions 0).

Amendment 1 was moved and, no member having objected, withdrawn.

The following amendments were not moved: 2 and 116.

The following provisions were agreed to without amendment: sections 1, 2, 3, 5, 6, 8, 9 and 10.

The following provisions were agreed to as amended: schedules 1 and 2, sections 4 and 7 and schedule 3.

The Committee ended consideration of the Bill for the day amendment 39 having been agreed to.
Scottish Independence Referendum Bill: Stage 2

09:31

The Convener: Item 3 is stage 2 of the Scottish Independence Referendum Bill. I welcome the Deputy First Minister, Nicola Sturgeon, and her officials.

Everyone should have a copy of the bill as introduced, the marshalled list of amendments and the groupings paper, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to their amendment and other amendments in the group and to move their amendment. I will call the Deputy First Minister to speak on every group. Members who have not lodged amendments in a group and who want to speak should indicate that by catching my attention in the usual way.

At the end of each debate, the member who moved the lead amendment will have the opportunity to wind up. Only members of the committee are allowed to vote in any division. In a vote, it will be important that members keep their hands raised until the clerk has recorded their names. I will ensure that the clerks have time to do that—I probably rushed things a bit the last time we considered a bill at stage 2.

As well as disposing of amendments, the committee is required formally to consider each section and schedule and the long title. I will put the questions at the appropriate point.

Given the number of amendments, it seems certain that the committee will need two meetings to complete stage 2. My aim today is to get through as many amendments as possible up to group 15; I do not intend to go beyond that point. We let Liam McArthur know that yesterday evening, so that he would not have to attend today's proceedings—he will turn up next week.

Let us get on with the proceedings.

Section 1 agreed to.

Schedule 1—Form of ballot paper

The Convener: Amendment 4, in the name of the Deputy First Minister, is grouped with amendments 5, 22 and 23.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): Amendments 4, 5, 22 and 23 relate to the position of the official mark on the ballot paper. The bill provides for the mark to appear on the back of the ballot paper. The issue was raised during evidence at stage 1, and I explained then to the committee that the reason for putting the official mark on the back was to enable voters to demonstrate to polling staff that their ballot papers were genuine, without revealing how they had voted.

However, after discussions with returning officers about their clear preference for moving the official mark to the front of the ballot paper, I agreed to lodge amendments to move the position of the official mark. I hope that the amendments will increase the efficiency of the count while maintaining the security of the ballot and protecting voters’ identity.

I move amendment 4.

The Convener: No one has indicated that they want to speak. In the circumstances, I guess that the Deputy First Minister does not need to wind up.

Amendment 4 agreed to.

Schedule 1, as amended, agreed to.

Section 2 agreed to.

After section 2

The Convener: Amendment 6, in the name of the Deputy First Minister, is in a group on its own.

Nicola Sturgeon: Amendment 6 relates to the position of the children of service personnel, which has been discussed extensively by the committee. Committee members are familiar with the issue, and I have made it clear, throughout all the discussions that we have had prior to today, that the Government is committed to ensuring that every young person who should be entitled to vote in the referendum is able to exercise their entitlement to vote. However, existing United Kingdom legislation does not allow the children of those with a service qualification—unlike the position of spouses and civil partners—to register to vote by making a service declaration themselves. As the voting age has been lowered to 16, and given that 16 and 17-year-olds are more likely still to reside with their parents, it is possible that that could have the effect of preventing some young people who live outside Scotland to be with their parents in the services from registering to vote.

I have made it clear in my correspondence with the committee that the number of young people so affected is likely to be extremely small. Nevertheless, it is important that they are afforded the same opportunity to vote in the referendum as
their peers whose parents reside in Scotland. We have been committed to finding a solution to enable such young people to register to vote and I am, therefore, pleased to bring amendment 6 to the committee. The amendment is the product of constructive discussions with electoral registration officers and the Electoral Commission—I thank them for their positive and pragmatic contributions.

Amendment 6 amends the Scottish Independence Referendum (Franchise) Act 2013 to provide a mechanism for young people aged 16 or 17 on the date of the referendum to register to vote in the referendum if they can demonstrate that they would be resident in Scotland were it not for the fact that they reside elsewhere to be with a parent or guardian who has a service qualification. Such young people would be included in the register of young voters, assuming that they meet all the other requirements for registration in that register.

Under the terms of the amendment, the young person will make their own service declaration, the form of which will be largely the same as that for those who are currently able to make service declarations. The declaration will be a one-off and will apply only to the referendum, and entitlement to vote in the referendum by this method will be subject to residence criteria. Completely in line with normal practice, applications will be for electoral registration officers to determine, and such decisions will depend on the circumstances of individual cases.

As I have told the committee, officials have had initial discussions with the Electoral Commission about how best to publicise the arrangements. Subject to the committee’s agreement to amendment 6 today, I will report back to the committee on the outcome of those discussions before stage 3.

I am confident that these proposals present a workable and practical solution to an issue that has been identified by committee members. I repeat that the number of people affected is likely to be very small. Nevertheless, even if only one or two people are affected, it is important that we do everything that we can to ensure that young voters are able to participate in the referendum, and the amendment achieves that.

I move amendment 6.

Drew Smith: I welcome the efforts of the Deputy First Minister and her officials. We have come to a good solution for those 16 and 17-year-olds.

An issue that has been raised with me is the position of 18-year-olds who still reside with a parent or guardian in a service base or somewhere similar. I presume, from the Deputy First Minister’s letter to the committee, that because we are able to amend only the register of young voters we cannot do anything to assist those people. However, I seek clarification from her that that is the case.

I also ask the Deputy First Minister whose responsibility it is to promote the right to vote to those 16 and 17-year-olds. Is that balanced between the Electoral Commission and the Ministry of Defence as the employer? Does she have any more information that she is able to share in responding to the debate?

Annabelle Ewing (Mid Scotland and Fife) (SNP): I would be interested to hear what the Deputy First Minister has to say about that, but I think that we touched on the issue in our earlier deliberations. The voting system for 18-year-olds is set by the UK Government, under the Representation of the People Act 2000, and we have already identified that is where responsibility for the issue lies.

Nicola Sturgeon: Drew Smith’s own analysis of the situation regarding his first point is correct: such 18-year-olds would be termed overseas voters, and overseas voters are not on the local government register. It is of course the local government register that is being used for the referendum. That is the position, and we are not able to alter it.

On Drew Smith’s second point, which was about promoting the arrangements, the MOD has a big role to play. It has responsibility not just to promote the arrangements for registration to the children of service personnel but to promote the arrangements to service personnel generally to ensure that we are challenging a myth that has been perpetuated in some quarters that service personnel will not have the right to vote in the referendum if they are not in Scotland, which is clearly not the case.

As I said in moving amendment 6, we are discussing the promotion of the arrangements with the Electoral Commission, and I am happy to feed back on that and to factor into that feedback any input that the MOD might have.

Amendment 6 agreed to.

Section 3 agreed to.

Schedule 2—Further provision about voting in the referendum

The Convener: Amendment 7, in the name of the Deputy First Minister, is grouped with amendments 8 to 10, 13 to 16, 24, 25, 108 and 109.

Nicola Sturgeon: This group of amendments relates to absent voting. The issue was raised at stage 1, including during the stage 1 debate in the chamber. Members will be aware that the bill
currently provides that the deadline for an application to vote by proxy is 5 pm on the 11th working day before the poll. The intention of that was to standardise the cut-off dates that run across schedule 2 to the bill. Given that the date of the referendum is already known and is known far in advance, it was felt that a cut-off date 11 days before the poll would give individuals more than sufficient notice to decide how they wish to vote. However, both the Electoral Commission and the electoral administrators have raised the matter as a potential issue, and they have requested that the bill be amended in line with the usual practice in Scottish Parliament and local government elections, so that the cut-off date for applications to vote by proxy in person should be 5 pm on the sixth day before the date of the poll, to provide another method of voting for those who cannot vote in person on polling day but who are too late to apply to vote by post.

We have carefully considered the best way to amend the bill to meet the concerns raised by electoral administrators and the commission and do so in a proportionate way that best addresses those concerns. Changing the bill to move the proxy application deadline to the sixth day before the poll would require extensive amendment to schedule 2, which might give rise to some unintended effects. In addition, and perhaps more saliently, we do not believe that that would necessarily address the specific concerns that have been raised, given that making such a change would not help anyone whose plans unexpectedly changed after the six-day cut-off point. The Icelandic volcano situation was raised as an example of why this needs to change and changing the cut-off date to six days before would not necessarily help people caught up in a situation like that.

Instead of amending the bill along those lines, we propose to extend the eligibility for making an emergency proxy vote. That would achieve the same end, and it would more appropriately address the concerns that have been expressed given that many people might be unexpectedly called away from home or prevented from returning home after the suggested six-day cut-off.

The bill currently provides for people who have suffered a disability after the cut-off date to appoint a proxy to vote for them in person up until 5 pm on the day of the referendum. Among its suggestions for amending the absent voting arrangements, the Electoral Commission suggested that the bill be amended to extend eligibility to appoint an emergency proxy to those who have been called away unexpectedly for occupation, service or employment reasons. We propose to extend that slightly further to include any individual who is unavoidably and unforeseeably away from home on polling day. That will enable some people to apply to vote by proxy who would otherwise be unable to participate in the referendum.

The bill currently provides that emergency proxy applications on the grounds of disability require no independent verification. However, EROs have expressed concerns about the potential for misuse, so we also propose to introduce requirements for attestation for all emergency proxy applications.

09:45

Any person making a false statement or providing false information in an application for an emergency proxy vote, as with any postal or proxy vote application, would be committing an offence under paragraph 4 of schedule 7 if they tried to gain a vote to which they were not entitled or to deprive another person of a vote. Such an offence is a corrupt practice that carries a maximum penalty of two years’ imprisonment, an unlimited fine, or both.

We also propose to amend the bill so that counting officers are able to issue postal ballot papers before the cut-off date, when it is practicable to do so, and to expand the offence provisions, along with other amendments, to prevent voters from attempting to vote by proxy as well as voting in person or by post.

We consider that the changes that we propose to make to the bill in this area at stage 2 will help to ensure that we put the interests of the voter first, by avoiding as far as possible any unnecessary barriers to voting, but do so in a way that helps to ensure that the referendum is conducted to the highest possible standards of probity. I hope that members will think that we have arrived at the right balance.

I move amendment 7.

Lewis Macdonald: As the Deputy First Minister has indicated, this is one of the areas in which the bill as introduced is not wholly in line with existing best practice, and a number of the Government’s proposed amendments are not supported by the Electoral Commission, so I shall focus my comments on those amendments, particularly amendments 7 to 10, 14 and 16, most of which have been commented on directly by the Electoral Commission this week.

Best practice in this context should be to follow as closely as possible the existing technical rules as to who can vote, how they can vote and in what circumstances. I welcome the fact that, in the main, the bill meets that standard and that the Government has moved its position in a number of areas to meet that standard. However, I believe that, for proxy votes, it does not. Whereas normal practice, as the Deputy First Minister has
indicated, is to have a deadline for applying of six working days before the poll—in this case, 10 September 2014—the provision in the bill is for the deadline for ordinary proxy votes to be a week earlier, on 3 September 2014. That remains the case in spite of the amendments. The Electoral Commission has affirmed that it wants that changed to 10 September 2014, and I therefore ask why ministers have not proposed to make that amendment at this stage, and whether they will revisit the issue at stage 3.

Those who apply for an emergency proxy vote under the provision that the Deputy First Minister has outlined after 3 September will face a new requirement that their application should have a supporting attestation from their employer or from another person. That is reasonable for very late applications, despite the inconvenience, because of the need to prevent fraud, but those who apply for a proxy vote between 3 September and 10 September, who under existing practice would simply be applying for an ordinary proxy vote, now face an additional inconvenience, which represents an additional disadvantage compared with existing best practice at elections and referendums.

I have not heard a good reason why the ordinary proxy vote date cannot be moved. The Deputy First Minister mentioned that there might be consequential requirements for amendments to schedule 2. She has already shown a willingness, in the area of the list of offences, to make significant and substantial consequential amendments in order to achieve the desired outcome, and I think that she should look again at this area.

Under the Government’s amendments, emergency proxy votes are now to be available where voters find out late that they will be away from home and unable to vote in person for work reasons, but not for voters who are unable to vote in person for reasons that keep them at home because they are caring for family members. That appears to be at variance with the approach suggested by the Electoral Commission, and again it is an area in which I would ask the Government to think again.

Finally, the Electoral Commission has also raised questions about amendment 14—and 16—which makes provision for cancelling postal votes where the voters in question then apply for proxy votes, but which does not make any provision where, for example, a postal vote is cancelled because the voter decides to vote in person, nor does it require the ERO to notify the counting officer when a proxy vote has been granted to someone who already has a postal vote. If the Electoral Commission says that those things should be spelled out in the bill, I am inclined to believe it, and I wonder if the minister will tell us whether she also agrees with it and, if so, whether she will lodge further amendments in that area at a later stage.

Stewart Maxwell (West Scotland) (SNP): I welcome the Government’s shift, which is welcome. I accept the logic that states that an erupting volcano will not necessarily want to erupt between the 11th and the sixth day before a poll; it may well want to erupt between the sixth day before and the polling day itself. Shifting the day itself does not change the emergency situation.

The procedure that has been suggested for allowing people to access an emergency proxy vote is very sensible, and I very much welcome the fact that it has been widened to include a number of other groups.

I accept what the Deputy First Minister has said—and I hope that she will explain it further—about why what she called an extensive number of amendments would be required to make the shift from 11 to six days. Of course, we might not know what the unintended consequences might be but a series of amendments at this stage could indeed have unintended consequences that we would be unaware of. I would be concerned about taking on at this stage large-scale amendments or major changes to schedule 2 that might cause a problem further down the line, given the care that we have taken to get a bill that we can all support, that is of the gold standard and which meets the criteria that we and the people of Scotland are after. I would welcome further explanation of the situation, but I accept that there is a risk that, at this stage, I am not keen to take on.

Patrick Harvie (Glasgow) (Green): Echoing some of the points that were made earlier, I would welcome a general indication from the Deputy First Minister of whether these stage 2 amendments are, if you like, a work in progress and whether the general intention is to develop schedule 2 further at stage 2 or whether what we are being asked to approve today is the final draft.

Nicola Sturgeon: Picking up on Patrick Harvie’s point first, I remain open to further discussions if members have any further amendments that they wish to lodge. For example—and this goes to the latter part of Lewis Macdonald’s comments—we received the Electoral Commission’s briefing note fairly late last night and we will want to have further discussions about some of the points that it has raised. We will be happy to report back on those discussions, which might give rise to further amendments before stage 3. As in all of these things, I am open minded with regard to further suggestions that might come forward and am happy to take on board committee members’ comments and have further discussions around the issue.
However, we have been and are continuing to try to strike the right balance, recognising a situation in which people, for unforeseeable reasons, are unable to apply in time for a postal or proxy vote under the deadline in the bill and giving them the ability, in a proportionate way, to retain their right to vote through another mechanism. As I have said, amending the bill as originally recommended by the Electoral Commission would be very complex, and I will give members some more detail about that.

To ensure that the bill stays within devolved competence, which, as members will appreciate, it has to do, the scheme set out in the bill has to differ in some ways from other electoral legislation. In certain areas, including the absent voting provisions, the bill—and indeed the previous version that was issued for consultation—is drafted to reflect the intention of measures in other legislation but uses different drafting to keep the bill within devolved competence. As we cannot simply replicate UK electoral law in relevant parts of the bill, amending the bill to move the proxy application deadline to six working days before the poll would require really extensive amendment to schedule 2 that might have unintended consequences. By definition, you cannot always say what certain unintended consequences might be—after all, if you knew what they might be, you would be able to avoid their happening—but the complexity of the amendments that would be required would introduce a degree of risk that, as Stewart Maxwell has suggested, should not be introduced at this stage. Nevertheless, I will continue to have discussions to see whether there are any further steps that we can take before stage 3.

I repeat the earlier point that, with regard to the people who would benefit from these provisions, simply changing the cut-off date from 11 to six days will not necessarily help someone who, the day before the poll, finds themselves called away for work reasons or unavoidably detained and unable to get back in time. For people in those circumstances, these amendments provide a solution that not only makes things technically more manageable for the Government and those scrutinising the bill but is more practically effective for the people who might want to make use of the provisions.

I ask members to support these amendments but I give an undertaking that I am happy to have further discussions and see whether there are any further amendments that we could lodge in advance of stage 3, particularly with regard to the points in the Electoral Commission’s briefing that we received last night and which we might want to move further on.

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Stirling) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Maxwell, Stewart (West Scotland) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Scott, Tavish (Shetland Islands) (LD)

Abstentions
Macdonald, Lewis (North East Scotland) (Lab)
Smith, Drew (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 2.

Amendment 7 agreed to.

Amendments 8 to 10 moved—[Nicola Sturgeon].

The Convener: Does any member object to a single question being put on amendments 8 to 10?

Lewis Macdonald: We would be happy to abstain en bloc, if that suits the convener.

The Convener: The question is, that amendments 8 to 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Stirling) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Maxwell, Stewart (West Scotland) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Scott, Tavish (Shetland Islands) (LD)

Abstentions
Macdonald, Lewis (North East Scotland) (Lab)
Smith, Drew (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 2.

Amendments 8 to 10 agreed to.

The Convener: Amendment 11, in the name of the Deputy First Minister, is grouped with amendments 12, 21, 26 and 106.

Nicola Sturgeon: Amendments 11, 12 and 106 are technical amendments that arise directly from requests made to us by electoral administrators to standardise our provisions on the computation of time with those in other electoral legislation.
Several points in the bill require the calculation of a date. For example, rule 1(1) of schedule 3 states:

“The counting officer must publish notice of the referendum not later than the twenty-fifth day before the date of the referendum.”

The bill provides a list of days that are to be disregarded for the purposes of calculating such dates. Our original policy decision was not to include days appointed for thanksgiving or mourning in that list, as the referendum date will be known well in advance and so any such dates could be absorbed into the timetable.

However, the Electoral Commission and electoral administrators have strong views about inclusion for the purposes of consistency with existing legislation. Therefore, we have decided to lodge amendments to allow such days to be disregarded for the purposes of the computation of time.

Amendments 11, 12 and 106 take account of the views of key stakeholders and will bring the bill into line with existing electoral legislation. Therefore, I commend them to the committee.

Annabel Goldie (West Scotland) (Con): I have registered an interest that is de minimis but unusual: the Law Society of Scotland gave me a lift in a taxi for which it paid because I was accompanying a gentleman who was coming to the Parliament for a meeting. In the circumstances, I have put that in the register of members’ interests because amendments 21 and 26 emanate from the Law Society of Scotland. They are on the same theme as that to which the Deputy First Minister referred.

Amendment 21 would ensure that, under the bill, days of public thanksgiving or mourning would be disregarded when calculating the deadline for publication of the referendum notice.

Rule 1(2) in schedule 3 provides that certain days are to be disregarded, including Saturdays, Sundays, Christmas eve, Christmas day and bank holidays. In the referendum rules in the Parliamentary Voting System and Constituencies Act 2011, rule 2(1) in part 1 of schedule 2 provides that “any day appointed as a day of public thanksgiving or mourning” is to be disregarded. The aim of amendment 21 is simply to achieve consistency, avoid any ambiguity or doubt and have the arrangements on the face of the bill.

Amendment 26 is in a similar vein. Again, it is to ensure that days of public thanksgiving or mourning are disregarded when the deadline for notification of a polling or counting agent’s appointment is calculated. The rationale is as I have previously described. Rule 14(5) provides that certain days are to be disregarded in the calculation of that time period, but they do not include days that are allocated to public thanksgiving or mourning. I lodged amendment 26 to ensure consistency with my proposed wording for rule 1(1) in schedule 3.

I reassure members that I sought clarification from the bill team and I am told that, just as the Interpretation Act 1978 states that the use of the masculine embraces the feminine, which I thought was a very nice concept, “a”, although singular, embraces the plural if there is more than one day. I reassure members on that front.

The Convener: I am glad that you made that point clear at the end. As no other member wishes to comment, I ask the Deputy First Minister whether she wishes to wind up.

Nicola Sturgeon: I thank Annabel Goldie for that welcome clarification at the end of her contribution.

Amendment 11 agreed to.

Amendments 12 to 16 moved—[Nicola Sturgeon].

The Convener: Does any member object to a single question being put on amendments 12 to 16?

Lewis Macdonald: Yes.

The Convener: I will go through the amendments one by one.

Amendments 12 and 13 agreed to.

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Stirling) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Maxwell, Stewart (West Scotland) (SNP)
McMillan, Stuart (West Scotland) (LD)
Scott, Tavish (Shetland Islands) (LD)

Abstentions
Macdonald, Lewis (North East Scotland) (Lab)
Smith, Drew (Glasgow) (Lab)
The Convener: The result of the division is: For 9, Against 0, Abstentions 2.

Amendment 14 agreed to.

Amendment 15 agreed to.

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Stirling) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Maxwell, Stewart (West Scotland) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Scott, Tavish (Shetland Islands) (LD)

Abstentions
Macdonald, Lewis (North East Scotland) (Lab)
Smith, Drew (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 2.

Amendment 16 agreed to.

The Convener: Amendment 17, in the name of the Deputy First Minister, is in a group on its own.

Nicola Sturgeon: Paragraphs 46 and 48 of schedule 2 provide that counting officers and the designated organisations are entitled to receive copies of certain registration documents relating to the polling list in order to enable them to fulfil their respective roles and responsibilities under the bill. Paragraph 53(1) requires secure destruction of those documents within one year of the referendum.

Paragraph 49 provides that permitted participants are entitled to receive, for the purposes of the referendum, a copy of the register of local government electors, any updates to that register and associated lists, but there is no requirement in the bill for those to be destroyed. Amendment 17 is a technical amendment that adds copies of the local government register and related documents to the registration documents that must be destroyed within one year of the referendum.

I move amendment 17.

Amendment 17 agreed to.

Schedule 2, as amended, agreed to.

Section 4—Chief Counting Officer

The Convener: Amendment 18, in the name of Annabel Goldie, is in a group on its own.

Annabel Goldie: Amendment 18 deals with section 4, which covers the chief counting officer. The effect would be to clarify the basis on which a chief counting officer could be removed. Obviously, section 4 requires the Scottish ministers to appoint a chief counting officer for the referendum and, logically, section 4(5) allows the Scottish ministers to remove the chief counting officer if they are satisfied that he or she “is unable to perform” his or her functions

“by reason of any physical or mental illness or disability.”

That is different from section 5, which covers other counting officers and which allows the chief counting officer to remove a counting officer from office if he or she is satisfied

“that the counting officer is for any reason unable to perform the counting officer’s functions”.

Amendment 18 would simply expand the grounds of removal for the chief counting officer, with particular reference to the criminal conviction of the chief counting officer. It would be unfortunate and inappropriate for the chief counting officer to be convicted of an offence following his or her appointment and for him or her to remain in post. I do not think that that will happen, but when we legislate we have to anticipate everything. Amendment 18 would specifically ensure that the Scottish ministers would be empowered to take appropriate action in that unforeseen, perhaps unlikely, but certainly very unwelcome event.

I move amendment 18.

Nicola Sturgeon: My starting point on the issue is that the chief counting officer should be—and should be seen to be—indepenent of Government. Because of that, it is right that the reasons for removing the chief counting officer are limited. That is why the bill restricts the power of removal to situations in which the chief counting officer cannot perform his or her duties for reasons of physical or mental illness or disability. Amendment 18 makes it clear that the Scottish ministers “may” remove the chief counting officer from office if the postholder is convicted of a criminal offence. Having heard Annabel Goldie’s comments on the amendment, I am minded to support it, and I encourage members to do likewise.

Annabel Goldie: I thank the Deputy First Minister for clarifying the Scottish Government’s position, which is helpful.

Amendment 18 agreed to.

Section 4, as amended, agreed to.

Sections 5 and 6 agreed to.
Section 7—Correction of procedural errors

The Convener: Amendment 19, in the name of the Deputy First Minister, is grouped with amendment 20.

Nicola Sturgeon: As it stands, section 7 allows the chief counting officer and other counting officers to correct their own errors and those of various relevant persons who are listed in section 7(3), including registration officers and those who assist them.

However, electoral professionals have pointed out that the bill does not specifically mention errors by deputies of the chief counting officer or counting officers. Although it might be implicit in the bill that the officers could correct errors of their deputies, our amendments seek to put the position beyond doubt. Amendments 19 and 20 to section 7 will insert reference to the deputies of those officers and place beyond doubt their power to correct errors that are made by their deputies and, in the case of the chief counting officer, the deputies of counting officers. They are technical amendments.

I move amendment 19.

Amendment 19 agreed to.

Amendment 20 moved—[Nicola Sturgeon]—and agreed to.

Section 7, as amended, agreed to.

Sections 8 and 9 agreed to.

Schedule 3—Conduct rules

Amendment 21 moved—[Annabel Goldie]—and agreed to.

Amendments 22 to 25 moved—[Nicola Sturgeon]—and agreed to.

Amendment 26 moved—[Annabel Goldie]—and agreed to.

The Convener: Amendment 27, in the name of Annabel Goldie, is in a group on its own.

Annabel Goldie: Amendment 27 concerns a provision devoted to removal of disorderly persons from polling stations. The bill states that:

“the presiding officer may order the person to be removed from the polling station.”

If someone creates a rumpus, is exceedingly difficult and distracts other people from legitimate exercise of their lawful franchise, it could be very tiresome if a presiding officer were to feel inhibited by the absence of clarity in the bill. The amendment proposes the insertion of the word “immediately” so that the presiding officer is explicitly empowered in such a situation to do what he or she thinks would be fit.

I move amendment 27.

Nicola Sturgeon: Amendment 27 confirms that a person who causes problems in a polling station should be removed “immediately”, unless that person has yet to vote and wishes to do so. We are content to support the amendment on the grounds that it will provide additional clarification about the powers of presiding officers to keep order in polling stations.

The Convener: Annabel—do you wish to wind up?

Annabel Goldie: I have nothing more to say. I thank the Deputy First Minister for her support.

Amendment 27 agreed to.

The Convener: Amendment 28, in the name of the Deputy First Minister, is in a group on its own.

Nicola Sturgeon: Amendment 28 relates to attendance at counting of votes. It is obviously an important part of any election or referendum that the counting of votes be carried out transparently. Rule 29 of schedule 3 therefore sets out those who are entitled to attend the counting of votes. Counting officers need to notify interested parties of the timing and location of that count to allow them to attend.

Schedule 3, rule 29(2) provides that they should do that by publishing notice of the time and location of the count. Electoral administrators have expressed concerns that that might be taken to imply that they must post their public notice and that this could have implications for general management of the count. The committee subsequently raised that issue in its stage 1 report.

To address the concerns of the electoral administrators, and in line with my response to the stage 1 report, amendment 28 will amend rule 29(2) to make it clear that counting officers need notify only the chief counting officer, the referendum agents appointed for the local area and any counting agents appointed to attend the count. The amendment will bring the bill into line with existing electoral legislation, which does not require that notice of the count be posted publicly.

I move amendment 28.

Amendment 28 agreed to.

The Convener: Amendment 29, in the name of Annabel Goldie, is in a group on its own.

Annabel Goldie: Amendment 29 is a technical amendment. It concerns decisions on ballot papers, as provided for in schedule 3. The provision in schedule 3 at rule 33 simply states:

“The decision of the counting officer on any question arising in respect of a ballot paper is final.”

In fact, section 31 of the bill allows for challenge by judicial review. Amendment 29 would tie up a
loose end and provide coherence. The amendment provides that where there can be a challenge to the referendum result by way of judicial review, rule 33 would reflect the possibility of a challenge under section 31.

I move amendment 29.

Nicola Sturgeon: The bill states:

“The decision of the counting officer on any question arising in respect of a ballot paper is final.”

Amendment 29 in the name of Annabel Goldie would explicitly provide that the decision of a counting officer would nonetheless be subject to judicial review, if that decision were to affect the number of ballot papers counted or votes cast. Section 31 of the bill provides for judicial review; it is arguable that it is implicit that that provision already covers the decisions of counting officers on ballot papers.

However, Annabel Goldie's remarks have persuaded me of the merits of amendment 29. I am, for the third time this morning, happy to support Annabel Goldie's amendment in the interests of ensuring that the bill is absolutely clear.

Annabel Goldie: This experience is innovatory and refreshing.

Nicola Sturgeon: It will probably not last. [Laughter.]

The Convener: Was that you winding up, Annabel?

Annabel Goldie: Indeed, it was.

Amendment 29 agreed to.

Schedule 3, as amended, agreed to.

Section 10 agreed to.

Schedule 4—Campaign rules

10:15

The Convener: Amendment 112, in the name of Lewis Macdonald, is grouped with amendments 113, 114 and 30.

Lewis Macdonald: It is in the nature of the referendum campaign that over the next few months, organisations will work together that would ordinarily work towards very different objectives. The political parties involved in the yes Scotland and the better together campaigns are obvious examples of that. It is also reasonable to expect that ad hoc organisations will be formed to advance an argument on one side or the other of the campaign that will dissolve once the referendum has passed. However, what would not be reasonable would be for political parties, the designated lead organisation on either side or, indeed, anyone else to form an organisation on its initiative simply to allow spending and campaigning to be done outwith the limits imposed on the parent organisation by the bill’s terms. Such practice would clearly be contrary to the spirit of the legislation. The amendments in this group are intended simply to ensure that such practice would also be contrary to the law.

Our proposal is that no one should be able to register as a permitted participant who is already a director, an employee or a contractor of another such permitted participant and that no organisation should be recognised as a permitted participant if it is mainly run or funded by another such body or shares with that body its primary decision maker. Those restrictions would not prevent bodies from working together to a common plan, as the bill already provides for that. We will seek to strengthen and clarify that provision. The amendments seek to remove any temptation for campaigners either to increase their spending opportunities or to mislead voters about the breadth of their support by setting up bodies that have no independent existence but are registered as if they did.

The committee recognised those concerns at stage 1. I know that members took the general view that public scrutiny and the oversight of the Electoral Commission would help to ensure that any front organisations would not be set up at all or would be dissolved as soon as they were found out. However, I am not sure that experience elsewhere suggests that that will necessarily be the case, and public scrutiny and oversight might not be enough on their own. That is surely particularly true for a referendum on a profound constitutional change, because any penalties exacted after the event will certainly pale into insignificance compared with what is at stake for both sides.

When the referendum group no to AV gave its evidence at stage 1, it supported a general approach similar to that of the amendments. The group identified that the objective of the common plan provisions in the bill was to prevent the evasion of spending limits by the creation of what it called dummy organisations. It argued that it would be far easier and more effective for the Electoral Commission to prevent evasion if it were able to reject registration by such organisations than if it could only seek to detect them and penalise abuse after the event. For that reason, it recommended that that part of the bill should be amended, which is what we propose to do.

I move amendment 112.

The Convener: The Deputy First Minister will speak to amendment 30 and other amendments in the group.
Nicola Sturgeon: I acknowledge the intention behind Lewis Macdonald’s amendment 112 and I have some sympathy for what he is trying to achieve with it, but I cannot support amendments 112, 113 and 114. I will outline my reasons for that, and then I will outline the reasoning behind my amendment 30.

The Edinburgh agreement confirmed that the regulations for the independence referendum campaign should be based, as far as possible, on existing United Kingdom legislation for elections and referendums. Amendments 112, 113 and 114 would depart from the Political Parties, Elections and Referendums Act 2000 regime in a way that I think is untested. For example, it is not clear what the consequences of the proposed changes would be, particularly around defining managerial responsibilities or decision making on behalf of the body. I am therefore concerned that the amendments could lead to unforeseen and unintended consequences. For those reasons, I ask the committee to reject Lewis Macdonald’s amendments.

As I said, though, I have some sympathy with the intention behind the amendments. Although the committee has said that it is generally satisfied with the rules regarding campaigners working together, I acknowledge that some members have expressed concerns about the possibility of a campaigner or an individual setting up multiple campaigns that appear to be separate organisations but are in fact run by the same people, with the intention of circumventing spending limits. It is absolutely right that anybody who wishes to participate in the debate should be able to do so; indeed, they should be encouraged to do so. However, it is also important to have robust controls in place to ensure that campaigning activity is seen to be fair.

The bill already provides for circumstances in which campaigners are working to a common plan, to prevent campaigners from setting up separate organisations to increase their spending capability. I hope that Lewis Macdonald will be reassured to some extent by the Government’s amendment 30, which will ensure that each registered campaigner has a different responsible person. That will make it harder for a single campaigner to try to circumvent spending limits by establishing multiple campaign groups.

Amendment 30 is based on a similar provision made in the enabling legislation for the referendum on the parliamentary voting system in 2011 and it has been recommended by the Electoral Commission.

With those remarks, I ask the committee to support amendment 30 and—albeit recognising the good intentions behind them—to reject amendments 112, 113 and 114.

Tavish Scott (Shetland Islands) (LD): I recognise the tone of the Deputy First Minister’s remarks. I believe that Lewis Macdonald has come up with a decent stab at an issue that we dealt with quite extensively in committee evidence in the summer—I think that is a reasonable effort.

At that time, I expressed my concern about the court of public opinion, as it were, being the test as to how this issue would be scrutinised. If we are all objective about it—as Lewis Macdonald has indicated—in the aftermath of whatever happens next September, I suspect that that and the penalty regime that is envisaged in the legislation will be neither here nor there.

It appears to me that the balance of the argument supports some tightening of these rules and therefore of the law. I think that these amendments go some way towards addressing what we did, after all, tease out in evidence.

Annabelle Ewing: I take a different view. I recall well our discussions on the issue in earlier meetings. It is important to note that the Electoral Commission supports the provisions of the bill as drafted in this respect, which would serve to indicate that it does not support Mr Macdonald’s amendments.

I recall that Mr Macdonald himself put forward a submission to the Scottish Government’s consultation on the referendum in which he said that it should be for the Electoral Commission to set not only the limits on expenditure but the rules of conduct for the campaigns. I think that that is the way to proceed. I think that he was absolutely right in his earlier submission to the Scottish Government and therefore I do not quite see why he has changed his position on that.

I certainly welcome the Deputy First Minister’s amendment 30, which would indeed make it harder to circumvent the rules. I therefore support amendment 30, but I cannot support Mr Macdonald’s amendments.

Patrick Harvie: Can Lewis Macdonald, when he is winding up on this group, indicate whether this is the only approach to the issue that he considered or whether he thinks that there may be other ways in which the issue could be addressed? I am minded to reserve my judgment on the amendments that are in front of us, but I would welcome an indication as to whether Lewis Macdonald is open to variations on this theme as we move on.

Annabel Goldie: Initially, I thought that perhaps Mr Macdonald was being a little fussy, but then I am the epitome of fussiness, so I looked at the amendments more closely in the context of the schedule and I think that he has a point. I think that there is a little gap within the text and the phrasing of the schedule and I am minded to think
that these amendments help. I therefore propose to support the amendments.

**Lewis Macdonald:** I am grateful for the comments from the minister and from members and of course I welcome amendment 30 and I will support it. I see it as a step in the right direction. However, it is not an adequate step. That is why I lodged my amendments.

Annabelle Ewing rightly says that the general approach that my party colleagues and I have favoured is one in which the Electoral Commission should set the parameters within which the Parliament legislates. However, it is finally for the Parliament to legislate. The amendments strike the right balance because they are not punitive.

Patrick Harvie asked whether I had considered other approaches. I had suggested that this approach was the right one; the question was at which level a debar should be imposed. A debar at the level of 50 per cent seems to me to be a sensible compromise. Any organisation that is funded by more than 50 per cent is clearly not wholly independent.

It may be argued that an organisation funded at 40 per cent is not likely to be wholly independent either but, in recognition of the need to seek compromise and meet the views of colleagues around the table, 50 per cent struck me as a good point at which to pitch it.

The Deputy First Minister said that the proposed changes might have consequences in relation to defining managerial responsibilities or decision making. Such issues would be raised by any set of amendments in this territory. I would invite the Deputy First Minister and committee members to accept that these amendments take us forward.

However, if the Deputy First Minister, or indeed the Electoral Commission, have any points that they wish to clarify, there would be no difficulty in lodging amendments at stage 3. If these amendments are passed, I am sure that I and others would be open to discussion about how to refine them further in order to ensure that they achieve their objective and no more than their objective.

The issue of openness and transparency must be absolutely at the top of our agenda, as a committee and a Parliament. It is for that reason that I will press the amendments.

**The Convener:** The question is, that amendment 112 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

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**Abstentions**

| Harvie, Patrick (Glasgow) (Green) |

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 1.

**Amendment 112 disagreed to.**

**Amendment 113 moved—[Lewis Macdonald].**

**The Convener:** The question is, that amendment 113 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

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**Abstentions**

| Harvie, Patrick (Glasgow) (Green) |

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 1.

**Amendment 113 disagreed to.**

**Amendment 114 moved—[Lewis Macdonald].**

**The Convener:** The question is, that amendment 114 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

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Abstentions
Harvie, Patrick (Glasgow) (Green)

The Convener: The result of the division is: For 4, Against 6, Abstentions 1.

Amendment 114 disagreed to.
Amendment 30 moved—[Nicola Sturgeon]—and agreed to.

10:30
The Convener: Amendment 31, in the name of the Deputy First Minister, is grouped with amendments 32 and 33.

Nicola Sturgeon: The timetable for designation of lead campaigners that is provided for in the bill is the same as the one that is set out in the Political Parties, Elections and Referendums Act 2000. It provides that applications for designation must be made within the first 28 days of the referendum period and that the Electoral Commission must make a decision within a further 14 days.

That means that it could be six weeks into the 16-week referendum period before the designated organisations are confirmed. Subject to parliamentary approval of the bill, there will of course be a longer period between the enactment of the bill and the start of the referendum period than has typically been the case for PPERA referendums.

In light of that and the fact that referendum campaigning is already well under way, the Electoral Commission has recommended that it would be beneficial to decouple the designation process from the start of the referendum period. In this case, we and the commission think that a minor adjustment to the PPERA approach is justified.

Bringing forward designation will provide earlier certainty to campaigners and voters about the identity of lead campaigners and enable lead campaigners to make effective use of the benefits that are available to them during the whole 16-week referendum period. The proposed approach might also help to facilitate collaboration between lead and other campaigners, to ensure that messages to voters are consistent, and it will give the Electoral Commission more time to consider alternative arrangements in the event that it is unable to designate for one or both outcomes.

I note that the committee agreed with the proposed approach in its stage 1 report. On the basis of our discussions with the Electoral Commission, the amendments in this group provide for designation to be confirmed around a month before the start of the referendum period. That will allow sufficient time for the benefits of early designation to be realised, while avoiding potential risks associated with designating too far in advance of the referendum period.

The referendum will take place on 18 September, so applications for designation will have to be submitted between Thursday 20 March and Wednesday 16 April next year. The Electoral Commission will have to make its decision between Thursday 17 April and Friday 2 May.

I hope that the committee agrees that the amendments strike a reasonable balance.

I move amendment 31.

Amendment 31 agreed to.
Amendments 32 and 33 moved—[Nicola Sturgeon]—and agreed to.

The Convener: Amendment 34, in the name of the Deputy First Minister, is grouped with amendments 35 to 39.

Nicola Sturgeon: The amendments relate to the campaign rules on payment and return of referendum expenses.

Amendments 34 and 38 are minor technical amendments to the provisions on the payment of late claims in respect of referendum expenses, in line with the Electoral Commission’s recommendations. As a result of amendment 34, it will be for the Electoral Commission to determine whether late claims may be paid without referring to any special reason. Amendment 38 will simplify the process for a permitted participant who has been granted leave to pay a late claim.

Amendments 35 to 37 relate to the Electoral Commission’s power to appoint an auditor to report on referendum expenses in certain circumstances. The bill provides that where a permitted participant’s referendum expenditure exceeds £250,000, an auditor’s report must be provided with the expense return. Given the spending limits in the bill, the requirement will apply only to the three largest registered parties and to designated organisations.

The bill gives the commission power to appoint an auditor if it appears that the permitted participant has not done so within three months of the end of the referendum period. The commission suggested to us that the power should be removed, as it will not be able to confirm that an audit is needed until the expense return has been submitted. The power is not currently available to the commission under PPERA. Amendment 35, accordingly, will remove the power.

Where the commission is aware that an audit is required but has not been carried out, it may impose a compliance notice under paragraph 3(1)(b) of schedule 5, to require an audit to be undertaken. In addition, failure to deliver the audit
Amendments 36 and 37 are consequential on amendment 35. They are minor amendments, which will bring provisions more closely in line with PPERA.

The bill provides that when a permitted participant submits the referendum expenses return, they must include a declaration confirming that all relevant donations received were from permissible donors, or if not, that donations were handled according to the provisions relating to impermissible donations.

On the Electoral Commission’s recommendation, amendment 39 replaces the reference to “received” donations with a reference to donations that have been “accepted”. The intended purpose of the declaration is to encourage permitted participants to pay particular attention to the accuracy of the return and confirm that accepted donations are indeed from permissible donors or, if it is discovered that an impermissible donation has been mistakenly accepted, that it has been handled correctly. That serves as a reminder to check the permissibility of donations declared as accepted. Given that these amendments are in line with Electoral Commission recommendations, I hope that the committee will feel able to support them.

I move amendment 34.

Amendment 34 agreed to.

The Convener: Amendment 115, in the name of Drew Smith, is grouped with amendment 116.

Drew Smith: Amendments 115 and 116 seek to make a reasonably simple change to the level of spend made by an individual or group that would trigger registration by replacing the current figure of £10,000 with £7,500.

There are two elements to these amendments. First, general evidence that the committee heard about the level of donations or spend that should trigger reporting or registration suggested, broadly speaking, that it is more transparent for lower amounts of money to trigger reporting or registration because it allows the public to see the origin of more of the money that is spent in a campaign.

That said, there is always a balance to be struck between transparency and practicality for campaign groups, and I do not intend to discourage donations or spending. After all, as the Deputy First Minister commented in speaking to a previous group of amendments, people have the right to campaign and, as we recognise, the public’s requirement for information costs money.

In reducing the level at which spend should trigger registration, I am seeking to aid transparency without creating a requirement that would discourage spend or prove too onerous for campaign administrators.

If we agree that a lower trigger point aids transparency but that that trigger point should not be so low that it becomes administratively cumbersome, the question, then, is what the figure should be. Making £7,500 the new level at which spend should trigger registration is a good and logical proposal, given that the bill already reflects electoral law elsewhere by providing that campaign donations of £7,500 should be declared. If the view is that the public should be made aware of when a campaign benefits from a £7,500 donation, I find it somewhat anomalous that spending the same amount of money is not subject to the same transparency. Put simply, if donating £7,500 to someone else triggers transparency provisions, spending £7,500 should do the same.

I move amendment 115.

Stuart McMillan (West Scotland) (SNP): On Drew Smith’s point about striking a balance with regard to transparency, the committee comments on this issue in paragraph 2 on page 34 of its stage 1 report and agrees with the Electoral Commission’s recommendation of £10,000 as the limit. In paragraph 1.8 of its advice note on spending limits for the referendum, the commission recommends

"a spending threshold for registration as a campaigner of £10,000."

The committee has simply taken the commission’s advice that £10,000 is a legitimate amount of money in this respect.

With regard to Drew Smith’s comment that lowering the threshold to £7,500 would not result in a cumbersome administrative burden, I believe that it would create an additional layer of bureaucracy for smaller organisations that want to participate in the referendum.

For those reasons, I am not minded to support a reduction in the limit to £7,500.

The Convener: I would like to say a couple of words on this particular issue. Throughout the process, we have used the Electoral Commission as a guide and a starting point for how the committee acts. Unless something significant comes along, we should not unpick what the Electoral Commission is doing—otherwise, in effect, we would be cherry picking elements of the Electoral Commission’s advice to us in a way that was never expected at the beginning of the process.
All parties accepted the advice provided by the Electoral Commission at the beginning of the process. Indeed, all parties encouraged one another to do exactly that. It would be difficult to start cherry picking at this stage, unpicking the rules on which elements of the Electoral Commission’s advice we can and cannot support, especially given the evidence that has been taken.

Patrick Harvie: On the general point about accepting the Electoral Commission’s recommendations, it seems to me that increasing the reporting threshold would fly in the face of the Electoral Commission’s recommendation about a reporting threshold, whereas reducing it would do the opposite and would come within what has been recommended. I am, therefore, minded to support amendment 115 unless I hear a compelling case against it from the Deputy First Minister.

Tavish Scott: Convener, I was not going to say anything until you made that impassioned defence of the Electoral Commission. I take your point, up to a point, that legislators have a responsibility to assess the arguments that have been made by an independent body and, as Stuart McMillan said, to reflect on the evidence that has been provided. However, Drew Smith has made a reasoned argument—which Patrick Harvie has extended—for our ability, as legislators, to make an assessment of that evidence.

I take your point about cherry picking, convener, but I think that it is reasonable for legislators to say that there is a consistency argument and to apply that. It would be difficult for the Electoral Commission to argue against the consistency argument, particularly in the context of Patrick Harvie’s remarks.

Lewis Macdonald: Earlier we debated postal and proxy voting, and the Scottish Government and the majority of the committee chose to take a different approach to postal and proxy voting from the recommendations of the Electoral Commission. That was entirely legitimate, and it seems entirely legitimate now to do as Patrick Harvie says, which is to implement the wishes of the Electoral Commission—only more so—and accept that an inconsistency has been exposed, which Drew Smith has articulated clearly. Drew Smith’s amendments would allow us to address that inconsistency.

Stewart Maxwell: I accept what Drew Smith says. There is always a question of balance in these things, and we could argue about the figures. On Lewis Macdonald’s point about departing from the Electoral Commission’s recommendations, throughout the process we have been very careful to ensure that, when we have departed from the Electoral Commission’s recommendations, it has been for very good reasons. That is the important point.

In relation to the recommended figure of £10,000, I seek clarification of something—perhaps the Deputy First Minister can provide it, or Drew Smith when he responds to the debate. My recollection is that the PPERA rules say that the figure should be £10,000. Is that the case? I wonder whether any member can clarify that. If so, the proposal would represent another departure. We would need a very good reason for departing from both the Electoral Commission’s recommendation and the PPERA rules, which I suggest that we do not have at this stage.

Annabel Goldie: We all acknowledge that the Electoral Commission’s role in all of this is pivotal. Its general role is one of providing advice and protecting the public interest, and the two amendments propose a tightening of the public interest and making more specific what that protection is. As has been pointed out in support of the amendments, they would also achieve consistency in the bill.

I do not think that agreeing to the amendments in any way impugns the Electoral Commission. The commission put forward a figure, but we are the politicians and, if there is an inconsistency in the bill, we make a judgment whether or not to address it. I am attracted to addressing the inconsistency. To address it is not prejudicial, dangerous or risky; it is helpful.

10:45

Nicola Sturgeon: I find the amendments and the debate that we have just had a little bit ironic. I am sure that members will recall with great clarity that, when the Government first issued a bill for consultation, we proposed a threshold of £5,000 for registration as a campaigner, but the commission then published its recommendations on spending limits, in which it considered that that threshold was too low. It specifically recommended a threshold of £10,000. With the greatest respect to Patrick Harvie, I am not sure that he is right to say that moving downwards as opposed to upwards would be staying within the spirit of the Electoral Commission’s recommendations. The commission deemed the initial recommendation of the Scottish Government—albeit it was lower than £7,500—to be too low.
The irony that I find in this discussion comes from the fact that, before the Electoral Commission published its recommendations, I was told in no uncertain terms by Drew Smith’s party, as I clearly recall, that any departure on the part of the Scottish Government from the Electoral Commission’s recommendations—specifically on spending limits, it seems to recall—would be completely unacceptable and outrageous. Of course, the Scottish Government did not depart from the Electoral Commission’s recommendations—we accepted them in full, and they are reflected in full in the bill.

The commission stated that, based on evidence from previous elections and referendums, and in light of the commission’s recommended maximum spending limits for different types of campaigners, it could see no reason for departing from the PPERA registration threshold. This is an important point to make. If we were to pass the amendments in this group, we would not just be departing from the Electoral Commission’s recommendations; Stewart Maxwell is absolutely right: we would be departing from the thresholds that are laid down for other referendums in PPERA.

I would strongly argue that, far from addressing an inconsistency, which some members have suggested the amendments would do, we would be creating an inconsistency with the rules that are in place for other referendums. Having been encouraged in the strongest possible terms and having taken the decision to accept the Electoral Commission’s recommendations—and having started from a much lower point than the figure proposed in Drew Smith’s amendments—it would be rather strange for us, at this point and in the absence of any good argument, to go against PPERA and to go against the Electoral Commission.

A lower threshold would create a larger administrative burden for smaller, local campaigners, which it is important to avoid. A £10,000 threshold will allow us to ensure robust expenditure controls, while reducing the risk of inadvertent non-compliance and therefore helping voters to engage with the debate without unnecessary barriers.

For all those reasons, including my desire at all times to follow the advice of the Opposition, to stay consistent and to follow the advice of the Electoral Commission, I ask members to reject Drew Smith’s amendments 115 and 116.

Drew Smith: I am always happy to surprise the Deputy First Minister with an attempt at compromise.

Based on the debate that we have had, I do not think that the argument about departure from the Electoral Commission’s recommendations flies, but there is an illogicality in saying that if someone provides £7,500 to another organisation—Better Together, Yes Scotland or whomever—the public needs to know that they have done that because they are influencing the debate and there is a need for transparency around that, whereas if the person sets up their own campaign and spends the same amount of money themselves, that is absolutely fine. That is the inconsistency that the amendments address.

I do not think that there was any disagreement in the discussion that, in general terms, reducing the level of spend at which registration would be required promotes transparency, and I do not feel that a clear argument was made to why £7,500, as opposed to £10,000, would be administratively onerous on any of the campaigns. I therefore press amendment 115.

The Convener: The question is, that amendment 115 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Macdonald, Lewis (North East Scotland) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)

Against
Crawford, Bruce (Stirling) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McMillan, Stuart (West Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 6, Abstentions 0.

Amendment 115 disagreed to.

The Convener: Amendment 1, in the name of Patrick Harvie, is grouped with amendment 2.

Patrick Harvie: Amendments 1 and 2 relate to some of the arguments that we have heard in debates on other groups around the possibility of common plans and co-operation between groups, and the fear or concern that that could be used as a tactic to circumvent spending limits. That was debated in the chamber at stage 1, when I had an exchange with James Kelly, trying to make the argument that that concern should in some way be sharper for small bodies than for large ones, particularly the designated organisations.

Paragraph 19 of schedule 4 is not about the spending limits. It is about how expenses are declared when they are part of a common plan. In particular, paragraph 19(2) of schedule 4 requires that, where there is a common plan involving small organisations—which is my concern in this case—
expenses have to be declared as having been incurred by both individuals or bodies, although in fact they will have been spent only once.

I can see why there is a case in favour of that, but my concern is that small organisations or individuals may find themselves breaching a reporting threshold and committing an offence inadvertently, not because they have in fact spent more money than they were supposed to but because they have been involved in a common plan and had a reporting requirement that they may not have been aware of. If an individual, a small community group or a small political party that is not given its own spending limit in the legislation were to spend a small amount of money on, for example, running a website or a series of public meetings, and if a larger organisation that was expecting to breach the £10,000 threshold were to publicise that website or those public meetings and spend large amounts of money on a postal campaign or paid advertising campaign, the individual or small organisation could be required to declare, perhaps very late on in the campaign, spending that it had never intended to incur and had not in fact incurred but which it was expected to report as if it had—as if the money had been spent twice.

Amendment 1 removes the reference to paragraph 17 in paragraph 19(2) of schedule 4, so it removes the possibility that a small organisation or individual in that situation would be committing an offence.

Amendment 2 says that paragraph 19 of schedule 4 would then apply where any of the individuals or bodies involved in the arrangement was a permitted participant, so that removes the application of that provision to those who do not intend to breach, or do not have any realistic expectation of breaching, the £10,000 threshold.

There may be good arguments against the amendments, but even if there are, I would ask the Deputy First Minister, in responding, to reflect on the situation that I am describing. We still do not yet know the definition of or rules for a common plan or what counts as a common plan. What is the situation of an individual or a very small organisation that finds itself, perhaps at the last minute, expected to report as though it had spent a large amount of money that was actually spent by somebody else, if it finds that it has broken the law entirely unintentionally, not by spending more money than it was supposed to but by incurring a requirement to report it as if it had?

I move amendment 1.

Stewart Maxwell: I have a question for Patrick Harvie. He makes an interesting point, but I am slightly puzzled by his definition of what is small. He mentioned an individual, a small community group and, I think, a small political party. That is quite a range for the definition of small. Perhaps when he sums up, he could define what he means by small, as that is important to the amendments.

Lewis Macdonald: My concern is not with Patrick Harvie’s intention, which I hear clearly; it is that the real dichotomy is not between large organisations and small ones but between registered participants and unregistered participants. Experience elsewhere suggests that, if participants who are not registered can play a large role in a referendum campaign, they can have a large influence on the outcome even if, technically, they are small organisations. That comes back to the discussions that we have had this morning about the importance of transparency on who spends what and on whose behalf.

I understand what Patrick Harvie is seeking to achieve but, although his amendments would apparently assist small organisations, as he puts it, the effect would actually be to enable what we might call large organisations or permitted participants to use non-registered participants more easily as a channel for spending money. I know that that is not Patrick Harvie’s intention, but the concern is that the provisions might be open to abuse in that way. Therefore, on those grounds, I am not inclined to support his amendments.

Nicola Sturgeon: Like other members, I have a lot of sympathy with the principles and intentions that underpin Patrick Harvie’s amendments. The campaign regulations in the bill are designed to ensure, on the one hand, that expenditure controls are fair and transparent and command the confidence of both sides of the debate, and, on the other, that they are not overly burdensome to smaller campaigners who intend to spend only a small amount of money or who will make only a small contribution to the work of another campaigner. We have tried to strike the right balance on that, but it is not completely easy.

We are talking about pretty complex provisions, so we need to be careful not to make piecemeal changes that could have unintended consequences. I absolutely accept that the amendments would act to prevent an individual or small community group from inadvertently breaching reporting regulations, but Lewis Macdonald is absolutely right that, at the other end of the spectrum, there is a danger that the amendments would open up a loophole for, and more easily as a channel for spending money. I

I can see why there is a case in favour of that, but my concern is that small organisations or individuals may find themselves breaching a reporting threshold and committing an offence inadvertently, not because they have in fact spent more money than they were supposed to but because they have been involved in a common plan and had a reporting requirement that they may not have been aware of. If an individual, a small community group or a small political party that is not given its own spending limit in the legislation were to spend a small amount of money on, for example, running a website or a series of public meetings, and if a larger organisation that was expecting to breach the £10,000 threshold were to publicise that website or those public meetings and spend large amounts of money on a postal campaign or paid advertising campaign, the individual or small organisation could be required to declare, perhaps very late on in the campaign, spending that it had never intended to incur and had not in fact incurred but which it was expected to report as if it had—as if the money had been spent twice.

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influence would be exactly the same as that of a bigger organisation.

I hope to recommend a compromise, because I recognise that there is perhaps more work to be done on the issue. My officials will meet the Electoral Commission tomorrow to discuss how common plans will be handled in the commission’s guidance and to try to ensure that the bill achieves the policy intention in a way that is clear and practicable and avoids unintended consequences. I am happy for Patrick Harvie’s amendments to form part of that discussion. I can then report back to Patrick Harvie and to the committee on the outcome of those discussions ahead of stage 3, to allow him to make an informed decision on whether to resubmit the amendments at stage 3 or to agree on other amendments that would meet the principles and intentions in a better way.

I ask Patrick Harvie to seek to withdraw amendment 1 and not to press amendment 2, to allow for that further discussion, so that we can either be collectively satisfied that the commission’s guidance will deal with the issues or have amendments at stage 3.

Patrick Harvie: I thank members for the debate. I recognise that there is a tricky balance to strike between, on the one hand, not overburdening people and placing them in a position in which they might inadvertently and entirely innocently commit an offence, perhaps even without knowing it, and, on the other hand, preventing genuine attempts to subvert the rules or find workarounds.

On what is small, the effect of the amendments is the spending threshold that is in paragraph 17. I have not attempted to define “small” in any other way.

11:00
Stewart Maxwell talked about the reference that I made to political parties. There are some very small political parties that spend a few tens or hundreds of pounds a year, unlike the range of small to large parties that exist in the Parliament. Some very small political parties will also want to campaign, and I am still concerned that some organisations of that scale might find themselves being required to report expenditure that they did not make themselves but which was made by a larger organisation that can be expected to know what the rules are and to have to register and report as a permitted participant.

I am not asking for unregistered organisations to play a larger role or to be allowed to spend more money. It is simply a question about what the reporting requirements are. Having said that, I am grateful to the Deputy First Minister for indicating that there is some scope to discuss the matter further. It may be that amendments 1 and 2 are not the best way of addressing the issue. I hope that another way of addressing it can be found.

Amendment 1, by agreement, withdrawn.

Amendments 2 and 116 not moved.

Amendments 35 to 39 moved—[Nicola Sturgeon]—and agreed to.

The Convener: That ends proceedings for today. As previously agreed, we will come back to stage 2 next week. Members are, of course, entitled to lodge further stage 2 amendments on any parts of the bill not dealt with today. The deadline for lodging such amendments is 12 noon on Monday 7 October.

The next meeting is scheduled for Thursday 10 October, when the committee will consider the bill again at stage 2.

I thank the Deputy First Minister, her officials and members of the committee for attending today.

Meeting closed at 11:02.
Scottish Independence Referendum Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Section 1
- Sections 2 and 3
- Sections 4 to 9
- Section 10
- Section 11
- Sections 12 to 28
- Sections 29 to 32
- Sections 33 and 34
- Schedule 1
- Schedule 2
- Schedule 3
- Schedule 4
- Schedules 5 and 6
- Schedule 7
- Schedule 8
- Schedule 9
- Schedule 10
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Schedule 4

Patrick Harvie

3 In schedule 4, page 89, line 21, at end insert—

<(< ) material published—

(i) in the Business Bulletin or Official Report of the Scottish Parliament, in accordance with the Parliament’s Standing Orders, or

(ii) on the Scottish Parliament official website,>

Liam McArthur (on behalf of the SPCB)

121 In schedule 4, page 89, line 21, at end insert—

<(< ) material published—

(i) in a report of a committee, the Business Bulletin or the Official Report of the Scottish Parliament, in accordance with the Parliament’s Standing Orders,

(ii) on the Scottish Parliament official website, or

(iii) in relation to any meeting, debate, discussion or other Parliamentary event authorised by the SPCB and held in accordance with the SPCB’s rules and policies applicable during the relevant period,>

Nicola Sturgeon

42 In schedule 4, page 100, line 24, leave out from <of> to end of line 25 and insert <ending with the 28th day of the referendum period (including the time before the referendum period),>
Nicola Sturgeon

43  In schedule 4, page 100, line 40, at end insert—

<\(\) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—

(a) a separate report under this paragraph need not be prepared in respect of any preceding period, but

(b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.

\(\) Sub-paragraphs (2) and (3) apply to a relevant donation received by a permitted participant before the start of the referendum period only if the donation was for the purpose of meeting referendum expenses to be incurred by the permitted participant during the referendum period.

\(\) References in this paragraph and in paragraph 41A to a relevant donation received by a permitted participant include any donation received at a time before the individual or body concerned became a permitted participant, if the donation would have been a relevant donation had the individual or body been a permitted participant at that time.>

Nicola Sturgeon

117  In schedule 4, page 101, line 27, at end insert—

\<Declaration of responsible person as to donation reports under paragraph 41

41A(1) Each report prepared under paragraph 41 in respect of relevant donations received by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—

(a) that the responsible person has examined the report, and

(b) that to the best of the responsible person’s knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of donation reports under paragraph 41

41B(1) Where the Electoral Commission receive a report under paragraph 41 they must—
(a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and
(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any donation by an individual, the donor’s address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 41 or other document accompanying it is received by the Commission—
(a) they may cause the report or other document to be destroyed, or
(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

Nicola Sturgeon

45 In schedule 4, page 110, line 1, leave out from <of> to end of line 2 and insert <ending with the 28th day of the referendum period (including the time before the referendum period),>

Nicola Sturgeon

46 In schedule 4, page 110, line 21, at end insert—

( ) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—
(a) a separate report under this paragraph need not be prepared for any preceding period, but
(b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs are to be read accordingly.

( ) Sub-paragraphs (2) and (3) apply to a regulated transaction entered into by a permitted participant before the start of the referendum period only if any money or benefit obtained in consequence of the transaction is to be used for meeting referendum expenses to be incurred by the permitted participant during the referendum period.

( ) References in this paragraph and in paragraph 57A to a regulated transaction entered into by a permitted participant include any transaction entered into at a time before the individual or body concerned became a permitted participant, if the transaction would have been a regulated transaction had the individual or body been a permitted participant at that time.

Nicola Sturgeon

118 In schedule 4, page 111, line 7, at end insert—

<Declaration of responsible person as to transaction reports under paragraph 57
57A(1) Each report prepared under paragraph 57 in respect of regulated transactions entered into by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—
(a) that the responsible person has examined the report, and
(b) that to the best of the responsible person’s knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—
(a) the person knowingly or recklessly makes a false declaration under this paragraph, or
(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of transaction reports under paragraph 57

57B(1) Where the Electoral Commission receive a report under paragraph 57 they must—
(a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and
(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any transaction entered into by the permitted participant with an individual, the individual’s address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 57 or other document accompanying it is received by the Commission—
(a) they may cause the report or other document to be destroyed, or
(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

Section 11

Nicola Sturgeon

48 In section 11, page 6, line 8, leave out <contravention of restrictions or other> and insert <failure to comply with certain>

Nicola Sturgeon

49 In section 11, page 6, leave out line 10
Schedule 5

Nicola Sturgeon

50 In schedule 5, page 118, line 23, leave out paragraph 13 and insert—

<(1) Guidance (and revised guidance) published by the Electoral Commission under paragraph 14 of Schedule 19B (investigatory powers of the Commission) to the 2000 Act has effect, with any necessary modifications, for the purposes of this schedule as it has effect for the purposes of that Schedule.

(2) The Commission may publish additional guidance in relation to the application of this schedule.

(3) Where appropriate, the Commission must revise guidance published under sub-paragraph (2) and publish the revised guidance.

(4) The Commission must have regard to the guidance and revised guidance referred to in sub-paragraph (1) and any guidance or revised guidance published under sub-paragraph (2) or (3) in exercising their functions under this Act.>

Nicola Sturgeon

51 In schedule 5, page 119, line 4, leave out from <report> to <information> and insert <Electoral Commission must, in accordance with this paragraph, make a report>

Nicola Sturgeon

52 In schedule 5, page 119, line 17, at end insert—

<(4) The report may be made—

(a) in the report by the Commission under section 24,

(b) in a separate report made as soon as reasonably practicable after the report under section 24 is published, or

(c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(5) The Commission must—

(a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and

(b) after laying, publish the report in such manner as they may determine.>

Schedule 6

Nicola Sturgeon

53 In schedule 6, page 119, line 32, leave out <prescribed>

Nicola Sturgeon

54 In schedule 6, page 119, line 32, leave out from <, or> to end of line 34 and insert <listed in Part 8.>
Nicola Sturgeon
55 In schedule 6, page 120, line 3, leave out <prescribed>

Nicola Sturgeon
56 In schedule 6, page 120, line 3, after <offence> insert <listed in Part 8>

Nicola Sturgeon
57 In schedule 6, page 120, line 4, leave out from <otherwise> to <virtue> in line 5 and insert <failed to comply with a requirement imposed by paragraph 22(2), (3) or (4)>

Nicola Sturgeon
58 In schedule 6, page 120, line 7, leave out <a prescribed amount> and insert <£200>

Nicola Sturgeon
59 In schedule 6, page 120, leave out lines 8 to 13

Nicola Sturgeon
60 In schedule 6, page 120, line 18, leave out from <a> to end of line 19 and insert <£200.>

Nicola Sturgeon
61 In schedule 6, page 120, leave out line 31

Nicola Sturgeon
62 In schedule 6, page 120, leave out line 37

Nicola Sturgeon
63 In schedule 6, page 120, line 38, at end insert <and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (4) is received.>

( ) Where an appeal under sub-paragraph (6) is made, the fixed monetary penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.>

Nicola Sturgeon
64 In schedule 6, page 121, line 20, at end insert—

<Late payment>

(1) A fixed monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 2(4) is received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.

(3) If the penalty (as increased by sub-paragraph (2)) is not paid within the period of 56 days beginning with the day on which the notice under paragraph 2(4) is received, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.
(4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or because the appeal was withdrawn, is payable within the period of 28 days beginning with the day of determination or withdrawal of the appeal, and if not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) is not paid within the period of 56 days beginning with the day of determination or withdrawal of the appeal, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

Nicola Sturgeon

65 In schedule 6, page 122, line 1, leave out <prescribed>

Nicola Sturgeon

66 In schedule 6, page 122, line 1, leave out from <, or> to end of line 3 and insert <listed in Part 8.>

Nicola Sturgeon

67 In schedule 6, page 122, line 6, leave out <prescribed>

Nicola Sturgeon

68 In schedule 6, page 122, line 6, after <offence> insert <listed in Part 8>

Nicola Sturgeon

69 In schedule 6, page 122, line 7, leave out from <(otherwise) to <virtue> in line 8 and insert <failed to comply with a requirement imposed by paragraph 22(2), (3) or (4)>

Nicola Sturgeon

70 In schedule 6, page 122, line 11, after <determine> insert <up to a maximum of £10,000, (but see also sub-paragraph (6))>

Nicola Sturgeon

71 In schedule 6, page 122, line 13, leave out <contravention> and insert <failure to comply>

Nicola Sturgeon

72 In schedule 6, page 122, line 17, leave out <contravention> and insert <failure to comply>

Nicola Sturgeon

73 In schedule 6, page 122, line 26, leave out <(1)(a)> and insert <(1)>

Nicola Sturgeon

74 In schedule 6, page 123, leave out line 7
Nicola Sturgeon

75 In schedule 6, page 123, leave out line 19

Nicola Sturgeon

76 In schedule 6, page 123, line 20 at end insert <and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (5) is received.>

( ) Where an appeal under sub-paragraph (6) is made, the discretionary requirement is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.>

Nicola Sturgeon

77 In schedule 6, page 124, line 8, at end insert—

<Compliance and restoration certificates>

8A(1) Where, after the service of a notice under paragraph 6(5) imposing a non-monetary discretionary requirement on a person, the Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect.

(2) A notice served under paragraph 6(5) ceases to have effect on the issue of a certificate relating to that notice.

(3) A person on whom a notice under paragraph 6(5) has been served may at any time apply for a certificate and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.

(4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the notice has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—

(a) the grounds for the decision not to issue a certificate, and

(b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a certificate, the notice has effect as if the certificate had not been issued.

(8) A person who has applied for a certificate under sub-paragraph (3) may appeal to a sheriff against a decision not to issue a certificate under this paragraph on the ground that the decision was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unfair or unreasonable.

(9) An appeal must be made within the period of 28 days beginning with the day on which notification of the decision is received.>
Nicola Sturgeon

78 In schedule 6, page 124, leave out lines 13 and 14 and insert—

< ( ) The amount of a non-compliance penalty is to be determined by the Commission, but must not exceed £10,000.

( ) A non-compliance penalty must be paid to the Commission.

( ) A notice under sub-paragraph (1) must include information as to—

(a) the grounds for imposing the non-compliance penalty,
(b) the amount of the penalty,
(c) how payment may be made,
(d) the period within which payment must be made, which must be not less than 28 days beginning with the day on which the notice imposing the penalty is received,
(e) rights of appeal, and
(f) the consequences of failure to make payment within the period specified.

( ) If, before the end of the period specified for payment of a non-compliance penalty—

(a) the person on whom the penalty was imposed has taken the steps specified in the notice imposing the non-monetary discretionary requirement to which the penalty relates, and
(b) the Commission have issued a certificate under paragraph 8A(1) in respect of that notice,

the Commission may waive, or reduce the amount of, the penalty.>

Nicola Sturgeon

79 In schedule 6, page 124, leave out line 21

Nicola Sturgeon

80 In schedule 6, page 124, line 22, at end insert <and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) is received.

( ) Where an appeal under sub-paragraph (3) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Late payment

(1) A variable monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 6(5) is received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.

(3) If the penalty (as increased by sub-paragraph (2)) is not paid within 56 days of the day on which the notice under paragraph 6(5) is received, the amount payable is the amount of the penalty originally imposed increased by 50%.>
(4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or varied it, or because the appeal was withdrawn, is payable within 28 days of the day of determination or withdrawal of the appeal, and if it is not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) is not paid within 56 days of the day of determination or withdrawal of the appeal the amount payable is the amount of the penalty originally imposed increased by 50%. 

Nicola Sturgeon

81 In schedule 6, page 124, line 33, leave out <prescribed>

Nicola Sturgeon

82 In schedule 6, page 124, line 33, leave out from <, or> to <4> in line 35 and insert <listed in Part 8>

Nicola Sturgeon

83 In schedule 6, page 125, line 8, leave out <prescribed>

Nicola Sturgeon

84 In schedule 6, page 125, line 8, leave out from <, or> to <4> in line 10 and insert <listed in Part 8>

Nicola Sturgeon

85 In schedule 6, page 125, line 32, at end insert—

<( ) An application for a completion certificate must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the stop notice has been complied with.

( ) Where, on an application under sub-paragraph (3), the Commission decide not to issue a completion certificate they must notify the applicant and provide the applicant with information as to—

(a) the grounds for the decision not to issue a completion certificate, and

(b) rights of appeal.

( ) The Commission may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

( ) Where the Commission revoke a completion certificate, the stop notice has effect as if the certificate had not been issued.>

Nicola Sturgeon

86 In schedule 6, page 126, leave out line 4

Nicola Sturgeon

87 In schedule 6, page 126, leave out line 10
Nicola Sturgeon

88 In schedule 6, page 126, line 11, at end insert—

<( ) An appeal under sub-paragraph (1) against a decision to serve a stop notice must be made within the period of 28 days beginning with the day on which the stop notice is received.

( ) An appeal under sub-paragraph (2) against a decision not to issue a completion certificate must be made within the period of 28 days beginning with the day on which notification of the decision is received.

( ) Where an appeal under sub-paragraph (1) or (2) is made, the stop notice continues to have effect unless it is suspended or varied on the order of the sheriff.>

Nicola Sturgeon

89 In schedule 6, page 126, line 23, leave out <prescribed>

Nicola Sturgeon

90 In schedule 6, page 126, line 23, leave out from <, or> to end of line 25 and insert <listed in Part 8,>

Nicola Sturgeon

91 In schedule 6, page 126, line 29, leave out <or contravention>

Nicola Sturgeon

92 In schedule 6, page 126, line 32, leave out <or contravention>

Nicola Sturgeon

93 In schedule 6, page 126, line 32, leave out from second <or> to <description,> in line 33

Nicola Sturgeon

94 In schedule 6, page 127, line 8, at end insert—

<Enforcement undertakings: further provision>

15A (1) An enforcement undertaking must be in writing and include—

(a) a statement that the undertaking is an enforcement undertaking regulated by this Act,

(b) the terms of the undertaking,

(c) the period within which the action specified in the undertaking must be completed,

(d) details of how and when a person is to be considered to have complied with the undertaking, and

(e) information as to the consequences of failure to comply in full or in part with the undertaking, including reference to the effect of paragraph 15(2).
(2) The enforcement undertaking may be varied or extended if the person who has given the undertaking and the Electoral Commission agree.

(3) The Commission may publish any enforcement undertaking which they accept in whatever manner they see fit.

Compliance certificate

15B (1) Where, after accepting an enforcement undertaking from a person, the Electoral Commission are satisfied that the undertaking has been complied with in full they must issue a certificate to that effect.

(2) An enforcement undertaking ceases to have effect on the issue of a certificate relating to that undertaking.

(3) A person who has given an enforcement undertaking may at any time apply for a certificate, and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.

(4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the undertaking has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—
   (a) the grounds for the decision not to issue a certificate, and
   (b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a certificate, the enforcement undertaking has effect as if the certificate had not been issued.

Appeals

15C (1) A person who has given an enforcement undertaking may appeal to the sheriff against a decision not to issue a certificate under paragraph 15B on the ground that the decision was—
   (a) based on an error of fact,
   (b) wrong in law, or
   (c) unfair or unreasonable.

(2) An appeal must be made within the period of 28 days beginning with the day on which notification of the Electoral Commission’s decision is received.

Nicola Sturgeon

95 In schedule 6, page 127, line 12, leave out paragraphs 16 to 21

Nicola Sturgeon

96 In schedule 6, page 130, line 6, at end insert—
**Withdrawal or variation of notice**

1. The Electoral Commission may by notice in writing at any time withdraw a notice served under paragraph 2(4).

2. The Commission may by notice in writing at any time—
   - withdraw a notice served under paragraph 6(5),
   - reduce the monetary amount payable under such a notice, or
   - reduce the steps to be taken under such a notice.

3. The Commission may by notice in writing at any time withdraw a stop notice (but may serve another stop notice in respect of the same activity specified in the withdrawn notice).

Nicola Sturgeon

97 In schedule 6, page 130, line 20, leave out paragraph 25 and insert—

<1> Guidance (and revised guidance) published by the Electoral Commission under paragraph 25 of Schedule 19C (civil sanctions) to the 2000 Act has effect, with any necessary modifications, for the purposes of this schedule as it has effect for the purposes of that Schedule.

2. The Commission may publish additional guidance in relation to the application of this schedule.

3. Where appropriate, the Commission must revise guidance published under sub-paragraph (2) and publish the revised guidance.

4. The Commission must have regard to the guidance and revised guidance referred to in sub-paragraph (1) and any guidance or revised guidance published under sub-paragraph (2) or (3) in exercising their functions under this Act.

Nicola Sturgeon

98 In schedule 6, page 131, line 18, at end insert—

**Recovery of penalties etc.**

The Electoral Commission may recover as a civil debt—

- a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty, and
- any interest or other financial payment for late payment of such a penalty.

Nicola Sturgeon

99 In schedule 6, page 131, line 29, leave out from <report> to <information> and insert <Electoral Commission must, in accordance with this paragraph, make a report>

Nicola Sturgeon

100 In schedule 6, page 132, line 4, at end insert—

<4> The report may be made—

- in the report by the Commission under section 24,
(b) in a separate report made as soon as reasonably practicable after the report under
section 24 is published, or
(c) partly in accordance with paragraph (a) and partly in accordance with paragraph
(b).

(5) The Commission must—
(a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and
(b) after laying, publish the report in such manner as they may determine.

Nicola Sturgeon

101 In schedule 6, page 132, line 13, at end insert—

<
Powers of sheriff
(1) On an appeal under paragraph 2(6) the sheriff may overturn or confirm the penalty.
(2) On an appeal under paragraph 6(6), 9(3) or 13(1) the sheriff may—
(a) overturn, confirm or vary the requirement or notice,
(b) take such steps as the Electoral Commission could take in relation to the act or
omission giving rise to the requirement or notice,
(c) remit the decision whether to confirm the requirement or notice, or any matter
relating to that decision, to the Commission.
(3) On an appeal under paragraph 8A(3), 13(2) or 15C(1) the sheriff may make an order
requiring the Commission to issue (as appropriate)—
(a) a certificate under paragraph 8A(1),
(b) a completion certificate under paragraph 12(1), or
(c) a certificate under paragraph 15B(1).>

Nicola Sturgeon

102 In schedule 6, page 132, leave out lines 18 and 19

Nicola Sturgeon

103 In schedule 6, page 132, leave out line 26

Nicola Sturgeon

104 In schedule 6, page 132, leave out line 31

Nicola Sturgeon

119 In schedule 6, page 132, line 32, at end insert—
## PART 8
### LISTED CAMPAIGN OFFENCES

The following table lists campaign offences for the purposes of this schedule.

<table>
<thead>
<tr>
<th>Provision creating offence</th>
<th>General description of campaign offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 13(4)(a)</td>
<td>Failure to supply information to relevant person as required by schedules 4 to 6</td>
</tr>
<tr>
<td>Paragraph 12(2) of schedule 4</td>
<td>Incurring referendum expenses without authority</td>
</tr>
<tr>
<td>Paragraph 13(4)(a) of schedule 4</td>
<td>Making payment in respect of referendum expenses without authority</td>
</tr>
<tr>
<td>Paragraph 13(4)(b) of schedule 4</td>
<td>Failure to notify responsible person of payment in respect of referendum expenses</td>
</tr>
<tr>
<td>Paragraph 14(3)(a) of schedule 4</td>
<td>Paying claim in respect of referendum expenses where failure to comply with procedure</td>
</tr>
<tr>
<td>Paragraph 14(3)(b) of schedule 4</td>
<td>Paying claim in respect of referendum expenses outside specified time period</td>
</tr>
<tr>
<td>Paragraph 17(3) of schedule 4</td>
<td>Individual (other than permitted participant) exceeding limits on referendum expenses</td>
</tr>
<tr>
<td>Paragraph 17(5) of schedule 4</td>
<td>Body (other than permitted participant) exceeding limits on referendum expenses</td>
</tr>
<tr>
<td>Paragraph 18(6) of schedule 4</td>
<td>Permitted participant exceeding limits on referendum expenses</td>
</tr>
<tr>
<td>Paragraph 20(7)(a) of schedule 4</td>
<td>Failure to comply with requirements for declaration</td>
</tr>
<tr>
<td>Paragraph 22(5)(a) of schedule 4</td>
<td>Failure to deliver return to Electoral Commission</td>
</tr>
<tr>
<td>Provision creating offence</td>
<td>General description of campaign offence</td>
</tr>
<tr>
<td>----------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Paragraph 22(5)(b) of schedule 4</td>
<td>Failure to comply with requirements for return to Electoral Commission</td>
</tr>
<tr>
<td>Paragraph 22(5)(c) of schedule 4</td>
<td>Failure to deliver to the Electoral Commission a return of sums paid in pursuance of leave given to pay late claims</td>
</tr>
<tr>
<td>Paragraph 23(4)(b) of schedule 4</td>
<td>Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with return to Electoral Commission</td>
</tr>
<tr>
<td>Paragraph 26(7) or (8) of schedule 4</td>
<td>Printing or publishing referendum material without details of printer or publisher</td>
</tr>
<tr>
<td>Paragraph 33(7) of schedule 4</td>
<td>Failure to provide information about donors</td>
</tr>
<tr>
<td>Paragraph 34(4) or (6) of schedule 4</td>
<td>Failure to return donations</td>
</tr>
<tr>
<td>Paragraph 41(7)(a) of schedule 4</td>
<td>Failure to deliver donation reports to Electoral Commission within time limits</td>
</tr>
<tr>
<td>Paragraph 41(7)(b) of schedule 4</td>
<td>Failure to comply with requirements for recording donations in donation reports</td>
</tr>
<tr>
<td>Paragraph 41A(3)(b) of schedule 4</td>
<td>Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with donation report</td>
</tr>
<tr>
<td>Paragraph 49(1) of schedule 4</td>
<td>Permitted participant (individual) knowingly enters into regulated transaction with unauthorised participant</td>
</tr>
<tr>
<td>Paragraph 49(2) of schedule 4</td>
<td>Permitted participant (other than an individual) knowingly enters into regulated transaction with unauthorised participant</td>
</tr>
<tr>
<td>Paragraph 49(3) of schedule 4</td>
<td>Responsible person for permitted participant (other than an individual) knowingly enters into regulated transaction with unauthorised participant</td>
</tr>
<tr>
<td>Provision creating offence</td>
<td>General description of campaign offence</td>
</tr>
<tr>
<td>----------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Paragraph 49(4) of schedule 4</td>
<td>Permitted participant (individual) unknowingly enters into regulated transaction with unauthorised participant and fails to take steps to repay</td>
</tr>
<tr>
<td>Paragraph 49(5) or (6) of schedule 4</td>
<td>Failure of responsible person for permitted participant (other than an individual) to take steps to repay money received in connection with a regulated transaction with an unauthorised participant which was entered into unknowingly</td>
</tr>
<tr>
<td>Paragraph 49(7) of schedule 4</td>
<td>Permitted participant (individual) knowingly benefits from regulated transaction with unauthorised participant</td>
</tr>
<tr>
<td>Paragraph 49(8) or (9) of schedule 4</td>
<td>Permitted participant (other than an individual) knowingly benefits from connected transaction with unauthorised participant</td>
</tr>
<tr>
<td>Paragraph 49(10) of schedule 4</td>
<td>Permitted participant (individual) fails to take steps to repay benefits from connected transaction with unauthorised participant which was entered into unknowingly</td>
</tr>
<tr>
<td>Paragraph 49(11) or (12) of schedule 4</td>
<td>Failure of responsible person for permitted participant (other than an individual) to take steps to repay benefits from connected transaction with unauthorised participant which was entered into unknowingly</td>
</tr>
<tr>
<td>Paragraph 57(7)(a) of schedule 4</td>
<td>Failure to deliver transaction reports to Electoral Commission within time limits</td>
</tr>
<tr>
<td>Paragraph 57(7)(b) of schedule 4</td>
<td>Failure to comply with requirements for recording transactions in transaction reports</td>
</tr>
<tr>
<td>Paragraph 57A(3)(b) of schedule 4</td>
<td>Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with report relating to regulated transactions</td>
</tr>
</tbody>
</table>
| Paragraph 12(1) of schedule 5 | Failure to comply with investigation requirement >
Section 16

Nicola Sturgeon

In section 16, page 8, line 32, at end insert—

<(  ) a day appointed for public thanksgiving or mourning.>

After section 20

Annabelle Ewing

After section 20, insert—

<Code of practice on attendance of observers

(1) The Electoral Commission must prepare a code of practice on the attendance of—

(a) representatives of the Commission,
(b) accredited observers, and
(c) nominated members of accredited organisations,
at proceedings relating to the referendum.

(2) The code must in particular—

(a) specify the manner in which applications under section 18(1) or 19(1) are to be made to the Commission,
(b) specify the criteria that the Commission will take into account in determining such applications,
(c) give guidance to relevant officers as to the exercise of the powers conferred by section 20(1) and (2),
(d) give guidance to such officers as to the exercise, in relation to a person entitled to attend any proceedings by virtue of section 18 or 19, of any other power under this Act to control the number of persons present at any proceedings relating to the referendum,
(e) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations as to the exercise of the rights conferred by sections 17, 18 and 19.

(3) The code may make different provision for different purposes.

(4) Before preparing the code, the Commission must consult the Scottish Ministers.

(5) The Commission must lay the code before the Scottish Parliament.

(6) The Commission must publish the code in such manner as they may determine.

(7) The following persons must have regard to the code in exercising any function or right conferred by section 17, 18, 19 or 20—

(a) the Commission,
(b) representatives of the Commission,
(c) relevant officers.

(8) The Commission may at any time revise the code.
(9) Subsections (4) to (7) apply to a revision of the code as they apply to the code.

(10) In this section—

“accredited observer” is to be construed in accordance with section 18,
“accredited organisation” is to be construed in accordance with section 19, and
“nominated member” is to be construed accordingly,
“relevant officer” has the meaning given in section 20(4),
“representative of the Commission” means a representative of the Electoral Commission within the meaning of section 17(4).>

Section 22

Nicola Sturgeon
107 In section 22, page 11, line 18, at end insert—

<(  ) The Chief Counting Officer may issue guidance to counting officers and registration officers about the exercise of their respective functions under this Act.>

Drew Smith
122 In section 22, page 11, line 23, at end insert—

<(  ) Guidance issued under subsection (3) must include information on what may constitute a common plan or other arrangement for the purposes of paragraph 19 of schedule 4.>

After section 23

Rob Gibson
111 After section 23, insert—

<Encouraging participation

(1) The Chief Counting Officer must take whatever steps the Chief Counting Officer considers appropriate to—

(a) encourage participation in the referendum, and

(b) facilitate co-operation among officers taking steps under this section.

(2) A counting officer must take whatever steps the counting officer considers appropriate to encourage participation in the referendum in the local government area for which the officer is appointed.>

Schedule 7

Nicola Sturgeon
108 In schedule 7, page 134, line 10, after <person> insert <or by post>

Nicola Sturgeon
109 In schedule 7, page 134, line 10, at end insert—
<( ) A votes by post as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum.>
Scottish Independence Referendum Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Campaign rules: publications by SPCB**
3, 121

**Campaign rules: pre-poll reports of donations**
42, 43, 117, 45, 46, 118

**Enforcement of campaign rules: civil sanctions**
48, 49, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 101, 102, 103, 104, 119

**Enforcement of campaign rules: Electoral Commission’s guidance and reports**
50, 51, 52, 97, 99, 100

**Code of practice on attendance of observers**
110

**Power for chief counting officer to issue guidance to counting officers and registration officers**
107

**Guidance on common plans**
122

**Encouraging participation**
111
Amendments already debated

Absent voting
With 7 - 108, 109

Computation of periods: exclusion of days appointed for public thanksgiving or mourning
With 11 - 106
Scottish Independence Referendum Bill: The Committee resumed consideration of the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 121, 42, 43, 117, 45, 46, 118, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 119, 106, 110, 107, 122, 111, 108 and 109.

Amendment 3 was moved and, no member having objected, withdrawn.

The following provisions were agreed to without amendment: sections 12, 13, 14, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32, schedule 8, sections 33 and 34 and the long title.

The following provisions were agreed to as amended: schedule 4, section 11, schedules 5 and 6, sections 16 and 22 and schedule 7.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Referendum (Scotland) Bill Committee
Thursday 10 October 2013

[The Convener opened the meeting at 10:00]

Scottish Independence Referendum Bill: Stage 2

The Convener (Bruce Crawford): Good morning everyone and welcome to the committee’s 22nd meeting in 2013—I was quite surprised when I read that number this morning. No apologies have been received.

Our only item of business is day 2 of stage 2 consideration of the Scottish Independence Referendum Bill. I welcome the Deputy First Minister, Nicola Sturgeon, and her officials. I also welcome Liam McArthur. I ask members to ensure that they have before them the bill as introduced, the second marshalled list of amendments and the second list of groupings. My aim is to conclude stage 2 today, so let us get on with proceedings.

Schedule 4—Campaign rules

The Convener: Amendment 3, in the name of Patrick Harvie, is grouped with amendment 121. I ask Patrick Harvie to move amendment 3 and to speak to both amendments in the group.

Patrick Harvie (Glasgow) (Green): At the tail-end of our stage 1 consideration and during the stage 1 debate it became clear that the slight overlap between purdah and the parliamentary term could give rise to some unfortunate consequences. It is perhaps regrettable that we are in the position of having to find a workaround for that situation, to which various solutions have been put forward.

Whereas the original amendment from the Scottish Parliamentary Corporate Body suggested simply removing the reference to the SPCB from paragraph 25(2) of schedule 4 to the bill, my amendment 3 seeks simply to exempt aspects of the corporate body’s publications—that is, the Official Report and the Business Bulletin—that refer to the business or meetings of the Parliament, which may or may not be scheduled to happen during the short period of overlap. The new amendment—amendment 121—that Liam McArthur has lodged on behalf of the corporate body takes a similar approach.

I guess that the question is simply whether we go with my amendment 3, which was drafted in my office—not exactly on the back of a fag packet but without the assistance of the corporate body’s no doubt excellent lawyers—or with amendment 121. The committee may be minded to go with Liam McArthur’s amendment 121, but I will move my amendment so that we can have the debate.

I move amendment 3.

Liam McArthur MSP (Scottish Parliamentary Corporate Body): Patrick Harvie has already set the scene and the background. I am here on behalf of the corporate body, following a formal decision by the corporate body. I will set out for the record the basis for the amendment that has been lodged. As Patrick Harvie said, amendment 121 is a second stab at the issue and follows a similar approach to Patrick Harvie’s amendment 3, although it perhaps covers the issue a little more comprehensively.

Paragraph 25 of schedule 4 to the bill refers to restrictions on publication by public bodies. “Publication” is defined very broadly:

“publish’ means make available to the public at large, or any section of the public, in whatever form and by whatever means”.

The provision thus has broad application and the SPCB believes that it would prohibit a range of normal parliamentary activities within the 28-day purdah period.

As Patrick Harvie mentioned, there will be a slight overlap between the start of purdah on 21 August 2014 and the end of term on 23 August 2014. I know that the committee has already noted that point, and the corporate body is grateful that it has been flagged up. Perhaps more substantively, paragraph 25 would prevent members from lodging motions, amendments and parliamentary questions dealing with “any of the issues raised by the referendum question”.

The prohibition would in effect preclude any statement that any devolved policy area would be better or worse in an independent Scotland.

The provisions would also prevent the publication of the Official Report of parliamentary proceedings in written form and on the website. That would affect not only any plenary proceedings that take place the day before the start of purdah, but potentially committee proceedings that took place up to a week beforehand. The broadcasting of proceedings live and on the website would also be affected.

Publication of the Business Bulletin would be similarly prohibited, as would other parliamentary services such as dealing with inquiries from the public via our public information and social media outlets. Although we do not expect many committee reports to be published during that time, some reports on Scottish statutory instruments could be due to be published after the
start of the 28-day period and could therefore be caught by the existing provision.

Restrictions could also have an impact on other parliamentary activities. The Parliament has a unique function in Scottish public life and will attract worldwide attention in the run-up to the referendum. It may therefore wish to offer the facilities to host debates, discussions and other events relevant to the referendum during the 28-day period. That could be prohibited under the bill’s terms, given the wide interpretation given to the meaning of publication. Depending on how far the concept of publication by the Parliament stretches, members also might not be able to engage in media activities within the parliamentary campus during the 28-day period.

We have had discussions with the Scottish Government about the SPCB amendment and fully understand and agree with the objectives of schedule 4 as they apply to public bodies. However, the SPCB is of the opinion that the references to the SPCB in paragraphs 25 and 26 are appropriate to neither the factual reporting of parliamentary proceedings nor wider parliamentary functions.

We wish to give a very specific assurance: it is the Parliament’s function to act impartially at all times and we have the track record to prove that we have the robust rules, procedures and policies to uphold that. It almost goes without saying that the SPCB will be especially vigilant to maintain that record before and during the 28-day period, having due regard to the constitutional debate that will go on in the run-up to the vote.

I will move my amendment 121 and I hope that the committee will support it in preference to Patrick Harvie’s amendment 3.

The Convener: Thank you. Does anyone else wish to contribute?

Linda Fabiani (East Kilbride) (SNP): I would like to add a couple of words as a fellow member of the corporate body. My starting point is the Edinburgh agreement, which was the result of work by Nicola Sturgeon and, of course, Michael Moore, then the Secretary of State for Scotland. That work was carried out with mutual respect, which has in some way underpinned the way in which we have been able to work in this committee: with mutual respect across parties and political views. It has been worth while.

The Scottish Parliamentary Corporate Body also works with mutual respect—despite political differences—with the wellbeing of the Parliament and the Parliament’s reputation at its core. That comes from the Presiding Officer at the top, the members of the SPCB—me and Liam McArthur, and also Mary Scanlon and David Stewart—and, of course, the senior staff, who give us very good advice. So I am able to back everything that Liam McArthur has said about the Parliament’s function to act impartially at all times and I believe that we have the robust rules, procedures and policies that will uphold that. I am very happy to support in full the SPCB amendment, to which I was party.

Lewis Macdonald (North East Scotland) (Lab): I would be interested to hear from Liam McArthur about a procedural point, if you like, about the purdah period and how the corporate body would proceed. He mentioned that in the nature of things the corporate body would be minded to authorise events in the Parliament that will respect both the mutual respect that has been referred to and the normal policies and procedures. Will the corporate body meet during purdah or will members maintain contact through correspondence? Clearly, everyone will be very busy in that period, one way or another, and the corporate body’s ability to deal with any issues that arise will be important in light of the exemption that is offered in amendment 121.

The Convener: I will make a few comments before I come back to you, Mr McArthur. Your introduction covered all the issues and, importantly, the technical aspects. You put your case across well. However, your most important point was your assurance on behalf of the corporate body because, at the end of the day, the issue is about trust and whether we have mutual respect across the chamber about how we will operate within the confines of the referendum purdah period. That assurance from the corporate body is pretty essential. I was one of the first to raise the issue in the chamber during the stage 1 debate; I suggested that we take the SPCB out of coverage and I think that amendment 121 will do that.

I come back to the issue of trust. It is hugely important that Liam McArthur and Linda Fabiani have put their comments on that on the record, because we must all respect that point all the way through the process.

If no one else wants to comment, I will let the Deputy First Minister come in. First, though, because a question has been asked of Liam McArthur, I will ask him to answer it. As his amendment is not the lead amendment in the group, he would not normally have an opportunity to come back in but, unusually, I will let him answer it. I will not make a habit of this. In any case, it is the last day of stage 2, so I cannot.

Liam McArthur: I will make my historic intervention, then. [Laughter.]

I could not agree with you more, convener, on your point about trust. However, I believe that we have procedures and standing orders in place that should offer reassurance. I can probably do no
better than echo Linda Fabiani’s point about the way in which the corporate body approaches such issues.

On Lewis Macdonald’s question about what will happen during purdah, my understanding is that no decisions have yet been taken on whether there will be meetings, but it is standard procedure for the corporate body, when it is not meeting, to deal with issues by correspondence if necessary. If issues arose and it was not possible to get diaries to coincide to enable a meeting, there is no reason at all why they could not be dealt with by correspondence and within fairly tight timeframes.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): With your permission, convener, I will take a few moments to put the Government’s position on the issue on the record. The bill, as we introduced it to the Parliament, contains provisions that are firmly based on the Political Parties, Elections and Referendums Act 2000 to restrict the publication of certain material by the Government or other public bodies in Scotland during the 28-day period prior to the referendum. As we have heard, paragraph 25 in schedule 4 to the bill specifically identifies the Scottish Parliamentary Corporate Body as one of the publicly funded bodies that are covered by the restrictions.

The restrictions that are imposed by paragraph 25 are deliberately designed to prevent any suggestion that public money or public officials are involved in campaigning for a particular outcome in the referendum, so there is good reason for the provisions. Similar restrictions were imposed on the Welsh Assembly and the Westminster Parliament in 2011 in the run-up to the Welsh and alternative vote referendums.

That said, we recognise the concerns that the corporate body and others have expressed about the effect that the restrictions might have on the Parliament. I specifically recognise that the particular circumstances of the independence referendum make it unlike other recent referendums. The interest across Scotland and beyond will be intense. Liam McArthur has explained fully that, if the bill is not amended, the restrictions on the Scottish Parliament would be significantly more onerous than those faced in Cardiff or Westminster in 2011. Having listened to Liam McArthur, I understand the rationale for the amendment that has been lodged on behalf of the SPCB.

The amendment will exempt specified material that is published by or under the auspices of the SPCB from the restrictions that are imposed on publication during the 28-day period. It will also exempt anything that is published that relates to the promotion of any material that could be perceived to be one-sided during the 28-day period. In that regard, it will be enormously helpful that the Parliament has agreed recess arrangements that will avoid it sitting for all but two days of the so-called purdah period. However, it is also important that those who schedule business in the Parliament in the last days before recess take account of restrictions on Government activity. Even if we agree the amendments in relation to the Parliament, the Government will still be covered by restrictions about what it can and cannot do, which will have implications for the ability to debate certain matters in the Parliament.

10:15

On the basis that the SPCB will continue to operate in a totally impartial manner—Liam McArthur was right to say that it has a track record of so doing—and that any use of the Parliament’s facilities to host events in the 28-day period will adhere strictly to the SPCB’s rules and policies, I am happy to support Liam McArthur’s amendment 121. However, I ask Patrick Harvie to consider withdrawing his amendment 3, because I think that what it proposes is covered more comprehensively by Liam McArthur’s amendment.

The Convener: Thank you, Deputy First Minister. We now go to Patrick Harvie to wind up.

Patrick Harvie: I echo the comments that others have made about impartiality and trust. It is
crucial that both of those are offered and accepted, so it is good that we have had that tone.

I thought that it was slight overkill to remove the SPCB from the bill entirely. My amendment was an attempt to introduce something a wee bit more specific, but perhaps Liam McArthur’s amendment 121 will do that more successfully. I am very glad that there is broad support, including from the Government, for the amendment. I therefore ask permission to withdraw amendment 3.

Amendment 3, by agreement, withdrawn.

Amendment 121 moved—[Liam McArthur]—and agreed to.

The Convener: Amendment 42, in the name of Nicola Sturgeon, is grouped with amendments 43, 117, 45, 46 and 118.

Nicola Sturgeon: To give voters as much information as possible about how campaigners are funded, the bill requires all permitted participants to provide regular reports to the Electoral Commission, ahead of the poll, on any donations and loans received. In its stage 1 report, the committee asked the Government to consider whether there should be greater public access to information about donations during the referendum campaign in the interests of transparency. To that end, amendments 42, 43, 45 and 46 will extend the scope of the first pre-poll reports on donations and loans to include any donations and loans that are received before the referendum period but that are to be used to meet referendum expenses during the referendum period. That approach, which we have discussed with the Electoral Commission, will help to give voters a more accurate picture of the sources of campaigners’ funding, given that the majority of fundraising will have taken place in the months preceding the referendum period.

Amendments 117 and 118 will make amendments in support of that policy and will require the campaigner to provide a declaration confirming the accuracy of the report, and they will place an explicit duty on the Electoral Commission to publish the reports as soon as is reasonably practicable.

I move amendment 42.

Amendment 42 agreed to.

Amendments 43, 117, 45, 46, 118 moved—[Nicola Sturgeon]—and agreed to.

Schedule 4, as amended, agreed to.

Section 11—Monitoring and securing compliance with the campaign rules

The Convener: Amendment 48 is grouped with amendments 49, 53 to 96, 98, 101 to 104 and 119.

Nicola Sturgeon: The bill gives the Electoral Commission responsibility for monitoring and ensuring compliance with the regulations that apply to referendum campaigners. To do that, the Electoral Commission must have at its disposal the tools necessary to investigate any alleged breaches of the campaign rules and to sanction those who are suspected of committing a campaign offence or failing to comply with a requirement of the campaign rules. This is a vital element in promoting public confidence in the fairness and transparency of the referendum campaign.

Schedule 6 provides for the civil sanction regime that will underpin the commission’s regulatory role, including a delegated power to make supplementary provision about the application of those sanctions. In my responses to the committee’s stage 1 report and the report of the Delegated Powers and Law Reform Committee, I confirmed that, in order to provide earlier certainty about the civil sanctions, the Government would lodge amendments to set out the additional detail in the bill, instead of through a later supplementary order.

These amendments fulfil that commitment. In line with the Edinburgh agreement, we have sought to replicate the equivalent regime under the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010. Some minor changes have been made to ensure consistency with the rest of the bill and reflect the Scottish context, such as setting the maximum amount of variable or non-compliance penalties in line with the Scottish statutory maximum. The majority of the amendments in this group set out further details about how the civil sanctions should work in practice, while others are minor technical and drafting amendments consequential on the fact that the provisions will no longer be prescribed by order.

I move amendment 48.

Amendment 48 agreed to.

Amendment 49 moved—[Nicola Sturgeon]—and agreed to.

Section 11, as amended, agreed to.

Schedule 5—Campaign rules: investigatory powers of the Electoral Commission

The Convener: Amendment 50, in the name of the Deputy First Minister, is grouped with amendments 51, 52, 97, 99 and 100.

Nicola Sturgeon: As part of its regulatory role in the referendum, the Electoral Commission will have a range of investigatory and sanctioning powers to enable it to monitor and ensure compliance with the campaign rules. The bill
requires the commission to prepare and publish guidance about how it intends to use these powers, but the commission has pointed out to us that it has published similar guidance on its equivalent powers under PPERA that could reasonably be used for the referendum. Producing new guidance would therefore be an unnecessary duplication of work.

Amendments 50 and 97 seek to remove the obligation on the commission to produce new guidance and instead to apply the PPERA guidance to the relevant powers under the bill. The amendments also permit the commission to publish additional guidance on any aspects of its referendum role that it feels would benefit from further explanation.

Section 24 requires the Electoral Commission to prepare and publish a report on the conduct of the referendum that must include information relating to the commission’s functions under the bill, including, by virtue of schedules 5 and 6, its role in relation to campaign regulation. The majority of the enforcement work undertaken by the commission will take place after receipt of spending and donation reports and in response to any concerns raised about published information. As that could be some time after the referendum, the commission’s report to the Parliament could be delayed under section 24.

Amendments 51, 52, 99 and 100 seek to enable the commission to report on the use of its investigatory and sanctioning powers in the section 24 report as far as possible in the time allowed but give it the option to produce a separate follow-up report on the use of these powers and sanctions to cover anything that has not already been reported.

I move amendment 50.

Amendment 50 agreed to.

Amendments 51 and 52 moved—Nicola Sturgeon—and agreed to.

Schedule 5, as amended, agreed to.

Schedule 6—Campaign rules: civil sanctions

Amendments 53 to 104 and 119 moved—Nicola Sturgeon—and agreed to.

Schedule 6, as amended, agreed to.

Sections 12 to 15 agreed to.

Section 16—Referendum agents

Amendment 106 moved—Nicola Sturgeon—and agreed to.

Section 16, as amended, agreed to.

Sections 17 to 20 agreed to.

After section 20

The Convener: Amendment 110, in the name of Annabelle Ewing, is in a group on its own. I ask Annabelle Ewing to move and speak to amendment 110 and other amendments—in fact, there are no other amendments in the group, so just speak to your one.

Annabelle Ewing (Mid Scotland and Fife) (SNP): Thank you, convener. I was getting a wee bit worried that there was another amendment that I did not know about, but it does not exist.

The bill contains provisions at sections 17 to 20 relating to observers at the referendum, although as it stands there is no provision in the bill to require the Electoral Commission to prepare and publish a code of practice for observers. Indeed, we noted that gap in our stage 1 report and also noted that PPERA “required the Commission to prepare and publish a code of practice for observers at elections, but this requirement only applied to referendums if provided for in the” specific “referendum legislation.”

There is no automatic application in this case, and the Electoral Commission recommended amending the bill to provide for a statutory code of practice in the context of the referendum, as this would demonstrate “a clear commitment to transparency by facilitating international scrutiny of a country’s electoral processes.”

In our stage 1 report, we welcomed the Electoral Commission’s recommendations.

Amendment 110 would insert a new section into the bill after the current section 20, based on the relevant provisions of PPERA, to ensure a consistent approach. The new section would require the Electoral Commission to prepare and publish a code of practice for observers at the referendum. The amendment sets out what the code should cover and to whom it should apply. Observers are defined as “representatives of the Commission … accredited observers, and … nominated members of accredited organisations”—as previously dealt with in the earlier sections.

The code must specify the manner in which applications for accreditation by individuals or organisations are to be made to the Electoral Commission and the criteria to be taken into account by the commission when granting such applications. The commission should also give guidance in the code to relevant officers as to the exercise of their powers to limit the number of people in attendance at proceedings or to remove a person’s entitlement to attend because of an act
of misconduct. It is likely that the code would be similar to that for other elections and referendums.

Amendment 110 provides that the Electoral Commission “must consult the Scottish Ministers” before preparing the code and that they “must lay the code before the Scottish Parliament.”

I understand from the commission that that is consistent with the approach taken ahead of the local government elections in 2012. The provisions also allow the commission to revise the code at any time subject to the same requirements to consult and lay it before the Scottish Parliament.

As we have heard, it is very likely that next year’s referendum will attract significant attention from outwith Scotland and that a large number of individuals and organisations will apply to be observers. I believe that a statutory code of practice for observers will help to facilitate that.

I note, finally, that the Electoral Commission supports the amendment. It states that the provision in the amendment “will ensure that the referendum meets the highest international standards of transparency by supporting full independent scrutiny of the referendum processes.”

I move amendment 110.

Annabel Goldie (West Scotland) (Con): I accept the principle of the amendment but I seek clarification. The proposed new subsection (4) states that “the Commission must consult the Scottish Ministers.”

Is that not unintentionally restrictive? I presume that the commission is free to consult whoever it wants. I take it that the purpose of the amendment is that, among other people, it should consult the Scottish ministers. I just do not want it to be restrictive.

The Convener: Annabelle Ewing will have the opportunity to wind-up at the end and can answer the questions then.

10:30

Nicola Sturgeon: The Government’s view is that nothing in the bill would prevent the Electoral Commission from producing and publishing a code of practice for observers at the referendum, which is why we did not think it necessary to make explicit provision for such a code when we introduced the bill.

I have reassured the committee on several occasions that the Government is committed to ensuring that the referendum meets, and is seen to meet, the highest possible international standards of fairness and transparency. The commission has argued that a clear statutory code of practice for observers at the referendum will help to facilitate proper scrutiny of the process and will therefore increase transparency. On that basis, and having listened to Annabelle Ewing’s persuasive comments, I am persuaded of the merits of amendment 110 and I am happy to support it.

Annabelle Ewing: On Annabel Goldie’s point, my understanding is that the proposed new section is not restrictive and that the Electoral Commission will remain in a position to consult widely, as it does on many issues. The subsection to which the member referred simply makes it clear that, whatever else the commission does, it must consult the Scottish ministers. I hope that that provides clarification. I press amendment 110.

Amendment 110 agreed to.

Section 21 agreed to.

Section 22—Guidance

The Convener: Amendment 107, in the name of the Deputy First Minister, is in a group on its own.

Nicola Sturgeon: Amendment 107 was lodged in response to a suggestion by the Electoral Commission and will provide the chief counting officer with the power to issue guidance to counting and registration officers about the exercise of their respective functions under the bill.

The power is implicit in the bill, but the amendment will remove any ambiguity by stating expressly that the chief counting officer can issue guidance as well as give directions.

I move amendment 107.

Amendment 107 agreed to.

The Convener: Amendment 122, in the name of Drew Smith, is in a group on its own.

Drew Smith (Glasgow) (Lab): Amendment 122 is a revised version of amendment 120, which I withdrew on Monday. It has the same purpose as amendment 120, which is to make it clear that, in drawing up guidance in advance of the referendum, the Electoral Commission should include information on what might constitute a common plan.

As members know, the common plan is referred to a number of times in the bill, and there are provisions that relate to it, to assist in the regulation of how organisations on either side of the debate work and campaign together and plan in common. In lodging amendment 122, it was not my objective to restrict the right or practical ability of organisations to work together in planning in common; rather, I sought to bring greater clarity to how the Electoral Commission might define a
common plan and therefore to how the common plan provisions will operate in practice.

From my discussions with the Electoral Commission, it is clear that the commission recognises that the term “common plan” is currently undefined and is difficult to define. In recognition of the difficulty at arriving at a fool-proof definition, and given that the common plan is a unique concept in the context of the bill, the drafting of amendment 122 is not prescriptive and would simply allow the Electoral Commission, in guidance, perhaps to give examples of what might constitute a common plan, rather than rule things in or out. I hope that the change from the amendment that I withdrew addresses the concerns about workability that the Electoral Commission had.

I move amendment 122.

Patrick Harvie: I welcome amendment 122 and I am pleased that the commission supports Drew Smith’s new version of his amendment.

When I have spoken at campaign events, many people have asked me how the rules will affect them. Many small organisations, in particular, which do not necessarily have paid staff and formal sources of advice, do not know where to go to find legislation and read what it says. Such organisations need clarity on what will be allowed. I hope that all members want to ensure that organisations are clear about what is expected of them, so that the rules do not end up having to be enforced.

We would prefer to have compliance rather than enforcement. Clarity around the guidance is extremely important, and I welcome the fact that Drew Smith has brought back a new version of his amendment.

Nicola Sturgeon: The Government is happy to support amendment 122. Although we understand that the Electoral Commission is already planning to cover the common plan rules in its guidance—I think that it made that point in a letter sent to members yesterday—the amendment will provide greater certainty and reassurance that the sorts of circumstances that could be seen to constitute common plans will be included in the campaign guidance.

With those comments, I am happy to support amendment 122.

Drew Smith: I thank members for contributing to the debate and for their support. I thank the Government for considering and supporting the amendment, and I thank the Electoral Commission for the discussions that it has been prepared to have with us about it. I also thank the clerks for circulating the commission’s advice on it at a late stage this morning.

Amendment 122 agreed to.

Section 22, as amended, agreed to.
Section 23 agreed to.

After section 23

The Convener: Amendment 111, in the name of Rob Gibson, is in a group on its own.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I have been interested throughout this process in encouraging participation. Section 21 gives the Electoral Commission the power and the duty to “take such steps as they consider appropriate to promote public awareness and understanding in Scotland about ... the referendum ... the referendum question, and ... voting in the referendum.”

The bill does not contain any specific provision to give counting officers either the power or the duty to promote or encourage voter participation. The Scottish Government has previously said that the bill as introduced does not prevent counting officers from promoting participation in the referendum.

The Electoral Commission will have a duty to promote public awareness, and we would all expect it to work with counting officers and others to encourage participation. However, we have heard from the commission and others that, although that may be the case, the commission would prefer a specific provision in the bill to give counting officers powers of their own in this important area.

The Electoral Commission and the electoral administrators have noted in evidence to the committee that the current position in the bill is at odds with other recent electoral legislation, including the act setting out the regulations under which the alternative vote referendum was run. That act gave the power to encourage participation to the chief counting officer and to individual counting officers.

The Electoral Commission has suggested that an amendment to the Scottish Independence Referendum Bill to give counting officers a specific power to encourage participation in next year’s referendum “would clarify the intention of the Bill and enable counting officers to take forward their local public awareness plans with increased confidence”.

I am sure that we are all keen to do everything that we can to ensure a high turnout next September.

I move amendment 111.

Tavish Scott (Shetland Islands) (LD): I wish to ask Mr Gibson a couple of questions for clarity. I
note his consistent position on participation, which has been very fair throughout our proceedings.

In Mr Gibson’s discussions with and advice from the Electoral Commission, has the commission clarified the role that the counting officers will play in respect of the—dare I say it—nakedly political period that we will be in? It will be a challenge for all of us, especially for those officers who are charged with taking the impartial role that Mr Gibson described in his opening remarks, in terms of the spirit and the intent.

I would like some clarity, if Mr Gibson is able to provide it, as to how the counting officers will deal with that situation. Will they be monitored by any other body or, were we to pass amendment 111, would they potentially be open to challenge? If so, what would that challenge be?

**The Convener:** Rob Gibson can deal with those questions when he winds up.

**Nicola Sturgeon:** The Scottish Government’s position on this issue has always been that there is nothing in the bill to prevent the chief counting officer or counting officers from promoting participation in the referendum, and that an explicit power is not strictly necessary. However, I realise that electoral professionals are particularly keen to ensure that that point is covered in the bill, not least to ensure consistency with other legislation.

To address the point that Tavish Scott made, I know that the chief counting officer is well aware of the obligations as regards impartiality.

In light of that, and the arguments that Rob Gibson has put forward this morning and previously, I am persuaded that amendment 111 would be helpful in providing clarity about the powers that are available to encourage participation, which will make it easier for the chief counting officer and counting officers to exercise their functions. For those reasons, I am happy to support amendment 111.

**Rob Gibson:** I thank Tavish Scott and Nicola Sturgeon for those comments.

It is my understanding that counting officers who apply themselves to the election process in normal circumstances do so, and provide advice to people, in a fashion that is unequivocally not partisan, and I would not expect them to act any differently in the circumstances of the referendum. Therefore, I believe that their professional behaviour should be beyond reproach.

With regard to the monitoring of counting officers, I think that the provisions for the Electoral Commission to make reports on such issues could deal with that matter, if it arises. Tavish Scott’s question about monitoring should be addressed in the context of the reports that the Electoral Commission produces on the overall procedures.

I press amendment 111.

Amendment 111 agreed to.

Sections 24 to 28 agreed to.

**Schedule 7—Offences**

Amendments 108 and 109 moved—[Nicola Sturgeon]—and agreed to.

Schedule 7, as amended, agreed to.

Sections 29 to 32 agreed to.

Schedule 8 agreed to.

Sections 33 and 34 agreed to.

Long title agreed to.

**The Convener:** That ends stage 2 consideration of the bill.

According to the committee’s published timetable, it is intended that stage 3 proceedings will take place in the week beginning 12 November. I thank my fellow committee members for their attention to detail and their robust scrutiny during stage 2, and for conducting the whole exercise in the appropriate spirit.

No further meetings are scheduled for the committee, but we may need to meet again to consider subordinate legislation. The clerks will contact members as soon as they have an indication of when that will be forthcoming, which I think may well be sooner than we expect.

I thank everyone—including the Deputy First Minister and her officials—very much for their attendance.

Meeting closed at 10:43.
Scottish Independence Referendum Bill
[AS AMENDED AT STAGE 2]

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Scottish Independence Referendum Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision, in accordance with paragraph 5A of Part 1 of Schedule 5 to the Scotland Act 1998, for the holding of a referendum in Scotland on a question about the independence of Scotland.

Referendum

5 1 Referendum on Scottish independence

(1) A referendum is to be held in Scotland on a question about the independence of Scotland.

(2) The question is—

“Should Scotland be an independent country?”.

(3) The ballot paper to be used for the purpose of the referendum is to be printed—

(a) in the form set out in schedule 1, and

(b) according to the directions set out in that schedule.

(4) The date on which the poll at the referendum is to be held is 18 September 2014, unless before then an order is made under subsection (6).

(5) Subsection (6) applies if the Scottish Ministers are satisfied—

(a) that it is impossible or impracticable for the poll at the referendum to be held on 18 September 2014, or

(b) that it cannot be conducted properly if held on that date.

(6) The Scottish Ministers may by order appoint a later day (being no later than 31 December 2014) as the day on which the poll at the referendum is to be held.

(7) An order under subsection (6)—

(a) may include supplementary or consequential provision,

(b) may modify any enactment (including this Act), and

(c) is subject to the affirmative procedure.
Franchise

Those who are entitled to vote

Provision about who is entitled to vote in the referendum is made by the Scottish Independence Referendum (Franchise) Act 2013.

2A Declarations of local connection and service declarations: further provision

(1) The Scottish Independence Referendum (Franchise) Act 2013 is amended as follows.

(2) In section 7 (declaration of local connection: additional ground for young people), after subsection (5) insert—

“(6) For the purposes of section 5(1)(b), a declaration of local connection made by virtue of this section is to be treated as having effect also for the purpose of meeting any residence requirement for registration in a register of local government electors.”.

(3) After section 7 insert—

“7A Children etc. of people with a service qualification

(1) This section applies for the purposes of sections 14 to 17 of the 1983 Act (service declarations), as applied by this Act in relation to registration in the register of young voters.

(2) An eligible child has a service qualification for those purposes.

(3) Accordingly, any reference in an applied enactment to a person having a service qualification is to be read as including an eligible child.

(4) An “eligible child” is a person—

(a) who will be aged 16 or 17 on the date on which the poll at an independence referendum is to be held,

(b) a parent or guardian of whom has a service qualification under any of paragraphs (a) to (e) of section 14(1) of the 1983 Act, and

(c) who is residing at a particular place in order to be with that parent or guardian.

(5) Section 16 of the 1983 Act (contents of service declaration), as applied by this Act, has effect for the purposes of a service declaration by an eligible child subject to the following modifications—

(a) the references in paragraphs (b) and (d) to the United Kingdom are to be read as references to Scotland,

(b) the words from “and (except where” to the end of the section are omitted.

(6) Regulation 15 of the Representation of the People (Scotland) Regulations 2001 (contents of service declaration), as applied by this Act, has effect for the purposes of a service declaration by an eligible child as if the references in paragraphs (2), (3) and (4) to the spouse or civil partner of a person included references to—

(a) a child of the person,

(b) a child for whom the person acts as guardian,
(c) a child of the spouse or civil partner of the person,
(d) a child for whom the spouse or civil partner of the person acts as guardian.

(7) For the purposes of section 5(1)(b), a service declaration made by virtue of this section is to be treated as having effect also for the purpose of meeting any residence requirement for registration in a register of local government electors.”.

(4) In Part 2 of schedule 1 (application of provisions of the 1983 Act), for the entry relating to section 16 of the 1983 Act, substitute—

"Section 16 (contents of service declaration)"

For paragraph (f) substitute—

“(f) the declarant’s date of birth.”.

Voting etc.

3 Provision about voting etc.

Schedule 2 makes provision about voting in the referendum, including—

(a) provision about the manner of voting (including provision for absent voting),
(b) provision about the register of electors,
(c) provision about postal voting, and
(d) provision about the supply of certain documents.

Conduct

4 Chief Counting Officer

(1) The Scottish Ministers must, in writing, appoint a Chief Counting Officer for the referendum.

(2) The Chief Counting Officer is to be the person who, immediately before this section comes into force, is the person appointed as the convener of the Electoral Management Board for Scotland by virtue of section 2 of the Local Electoral Administration (Scotland) Act 2011.

(3) But subsection (2) does not apply if—

(a) there is no person appointed as convener at that time, or
(b) that person is unable or unwilling to be appointed as the Chief Counting Officer.

(4) The Chief Counting Officer may resign by giving notice in writing to the Scottish Ministers.

(5) The Scottish Ministers may, by notice in writing, remove the Chief Counting Officer from office if—

(a) the Chief Counting Officer is convicted of any criminal offence, or
(b) they are satisfied that the Chief Counting Officer is unable to perform the Chief Counting Officer’s functions by reason of any physical or mental illness or disability.
If the Chief Counting Officer dies, resigns or is removed from office, the Scottish Ministers must appoint another person to be the Chief Counting Officer.

The Chief Counting Officer may, in writing, appoint deputies to carry out some or all of the officer’s functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to the Chief Counting Officer is to be read as including a deputy.

A person may be appointed to be—
(a) the Chief Counting Officer,
(b) a deputy of the Chief Counting Officer,
only if the person is or has been a returning officer appointed under section 41(1) of the 1983 Act.

Other counting officers

(1) The Chief Counting Officer must, in writing, appoint a counting officer for each local government area.

(2) The Chief Counting Officer must notify the Scottish Ministers of each appointment made under subsection (1).

(3) A counting officer may resign by giving notice in writing to the Chief Counting Officer.

(4) The Chief Counting Officer may, by notice in writing, remove a counting officer from office if—
(a) the Chief Counting Officer is satisfied that the counting officer is for any reason unable to perform the counting officer’s functions, or
(b) the counting officer fails to comply with a direction given or requirement imposed by the Chief Counting Officer.

If the counting officer for an area dies, resigns or is removed from office, the Chief Counting Officer must appoint another person to be the counting officer for the area.

A counting officer may, in writing, appoint deputies to carry out some or all of the officer’s functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to a counting officer is to be read as including a deputy.

Functions of the Chief Counting Officer and other counting officers

(1) The Chief Counting Officer is responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of votes, in accordance with this Act.

(2) Each counting officer must—
(a) conduct the poll and the counting of votes cast in the local government area for which the officer is appointed in accordance with this Act, and
(b) certify—
(i) the number of ballot papers counted by the officer,
(ii) the number of votes cast in the area in favour of each answer to the referendum question, and
(iii) the number of rejected ballot papers.

(3) A counting officer—
   (a) must consult the Chief Counting Officer before making a certification under subsection (2)(b), and
   (b) must not make the certification or any public announcement of the result of the count until authorised to do so by the Chief Counting Officer.

(4) The Chief Counting Officer must, for the whole of Scotland, certify—
   (a) the total number of ballot papers counted,
   (b) the total number of votes cast in favour of each answer to the referendum question, and
   (c) the total number of rejected ballot papers.

(5) A counting officer must give the Chief Counting Officer any information which the Chief Counting Officer requires for the carrying out of the Chief Counting Officer’s functions.

(6) A counting officer must carry out the counting officer’s functions under this Act in accordance with any directions given by the Chief Counting Officer.

(7) The Chief Counting Officer must not impose a requirement or give a direction that is inconsistent with this Act.

(8) The Chief Counting Officer may—
   (a) appoint such staff,
   (b) require a council to provide, or ensure the provision of, such property, staff and services,
   as may be required by the Chief Counting Officer for the carrying out of the Chief Counting Officer’s functions.

(9) The council for the local government area for which a counting officer is appointed must provide, or ensure the provision of, such property, staff and services as may be required by the counting officer for the carrying out of the counting officer’s functions.

7 Correction of procedural errors

(1) The Chief Counting Officer or a counting officer may take such steps as the officer thinks appropriate to remedy any act or omission on the officer’s part, on the part of a deputy of the officer, or on the part of a relevant person, which—
   (a) arises in connection with any function the Chief Counting Officer, counting officer or relevant person (as the case may be) has in relation to the referendum, and
   (b) is not in accordance with the requirements of this Act relating to the conduct of the referendum.

(2) But the Chief Counting Officer or a counting officer may not under subsection (1) recount the votes cast in the referendum after the result has been declared.

(3) For the purposes of subsection (1), each of the following is a relevant person—
   (a) in relation to the Chief Counting Officer, a counting officer or a deputy of a counting officer,
(b) a registration officer,
(c) a presiding officer,
(d) a person providing goods or services to the counting officer,
(e) a deputy of any registration officer or presiding officer,
(f) a person appointed to assist or, in the course of the person’s employment, assisting any person mentioned in paragraphs (b) to (d) in connection with any function that person has in relation to the referendum.

(4) The Chief Counting Officer or a counting officer does not commit an offence under paragraph 5 of schedule 7 by virtue of an act or omission in breach of the officer’s official duty if the officer remedies that act or omission in full by taking steps under subsection (1).

(5) Subsection (4) does not affect any conviction, or any penalty imposed, before the date on which the act or omission is remedied in full.

8 Expenses of counting officers

(1) The Chief Counting Officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the Chief Counting Officer of functions under this Act.

(2) A counting officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the counting officer of functions under this Act.

(3) The amount of charges and expenses recoverable under this section is not to exceed such maximum amount as is specified in, or determined under, an order made by the Scottish Ministers.

(4) An order under subsection (3)—

(a) may make different provision for different functions, cases or areas,
(b) may include incidental and supplementary provision.

(5) If the Chief Counting Officer or a counting officer requests from the Scottish Ministers an advance on account of any charges or expenses recoverable by the officer from the Scottish Ministers under this section, the Scottish Ministers may make such advance on such terms as they think fit.

9 Conduct rules

Schedule 3 makes provision about the conduct of the referendum.

Campaign

10 Campaign rules

Schedule 4 makes provision about the conduct of campaigning in the referendum, including provision—

(a) limiting the amount of expenses that can be incurred by those campaigning in the referendum,
(b) restricting the publication of certain material,
(c) controlling donations, and the provision of loans and credit, to those campaigning
in the referendum.

11 Monitoring and securing compliance with the campaign rules

(1) The Electoral Commission must—

(a) monitor compliance with the restrictions and other requirements imposed by
    schedule 4, and
(b) take such steps as they consider appropriate with a view to securing compliance
    with those restrictions and requirements.

(2) The Electoral Commission may prepare and publish guidance setting out, in relation to
    any restriction or requirement imposed by schedule 4, their opinion on any of the
    following matters—

(a) what it is necessary, or is sufficient, to do (or avoid doing) in order to comply with
    the restriction or requirement,
(b) what it is desirable to do (or avoid doing) in view of the purpose of the restriction
    or requirement.

(3) Subsection (2) does not affect the generality of section 22(3).

(4) Schedule 5 makes provision about the investigatory powers of the Electoral Commission
    for the purpose of subsection (1).

(5) Schedule 6 makes provision for civil sanctions in relation to—

(a) the commission of campaign offences,
(b) the failure to comply with certain requirements imposed by schedule 4.

(6) In this section, “restriction” includes a prohibition.

12 Inspection of Electoral Commission’s registers etc.

(1) This section applies to any register kept by the Electoral Commission under paragraph 4
    of schedule 4.

(2) The Commission must make a copy of the register available for public inspection during
    ordinary office hours, either at the Commission’s offices or at some convenient place
    appointed by them.

(3) The Commission may make other arrangements for members of the public to have
    access to the contents of the register.

(4) If requested to do so by any person, the Commission must supply the person with a copy
    of the register or any part of it.

(5) The Commission may charge such reasonable fee as they may determine in respect of—

(a) any inspection or access allowed under subsection (2) or (3), or
(b) any copy supplied under subsection (4).

(6) Subsections (2) to (5) apply in relation to any document a copy of which the
    Commission are for the time being required to make available for public inspection by
    virtue of paragraph 24 of schedule 4 as they apply in relation to any register falling
    within subsection (1).
Where any register falling within subsection (1) or any document falling within subsection (6) is held by the Commission in electronic form, any copy—

(a) made available for public inspection under subsection (2), or
(b) supplied under subsection (4),

must be made available, or (as the case may be) supplied, in a legible form.

13 Campaign rules: general offences

(1) A person commits an offence if—

(a) the person—

(i) alters, suppresses, conceals or destroys any document to which this subsection applies, or
(ii) causes or permits the alteration, suppression, concealment or destruction of any such document, and

(b) the person does so with the intention of falsifying the document or enabling any person to evade any of the provisions of schedules 4 to 6.

(2) Subsection (1) applies to any book, record or other document which is or is liable to be required to be produced for inspection under paragraph 1 or 3 of schedule 5.

(3) Subsection (4) applies where the relevant person in the case of a supervised organisation, or a person acting on behalf of the relevant person, requests a person holding an office in any such organisation (“the office-holder”) to supply the relevant person with any information which the relevant person reasonably requires for the purposes of any of the provisions of schedules 4 to 6.

(4) The office-holder commits an offence if—

(a) without reasonable excuse, the office-holder fails to supply the relevant person with that information as soon as is reasonably practicable, or

(b) in purporting to comply with the request, the office-holder knowingly supplies the relevant person with any information which is false in a material particular.

(5) A person commits an offence if, with intent to deceive, the person withholds—

(a) from the relevant person in the case of a supervised organisation, or

(b) from a supervised individual,

any information required by the relevant person or that individual for the purposes of any of the provisions of schedules 4 to 6.

(6) In subsections (1) to (5) any reference to a supervised organisation or individual includes a reference to a former supervised organisation or individual.

(7) A person who commits an offence under subsection (1), (4)(b) or (5) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(8) A person who commits an offence under subsection (4)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(9) In this section—

“supervised individual” means an individual who is a permitted participant,
“supervised organisation” means a permitted participant other than an individual,
“relevant person” means a person who is (or has been), in relation to a permitted
participant, the responsible person for the purposes of this Act.

14 Campaign offences: summary proceedings

(1) Summary proceedings for a campaign offence may, without prejudice to any jurisdiction
exercisable apart from this subsection, be taken—

(a) against any body, including an unincorporated association, at any place at which it
has a place of business, and

(b) against an individual at any place at which the individual is for the time being.

(2) Despite anything in section 136 of the Criminal Procedure (Scotland) Act 1995  (time
limit for certain offences), summary proceedings for a campaign  offence may be
commenced at any time within 3 years after the commission of the offence and within 6
months after the relevant date; and subsection (3) of that section applies for the purposes
of this subsection as it applies for the purposes of that section.

(3) In this section “the relevant date” means the date on which evidence sufficient in the
opinion of the prosecutor to justify proceedings comes to the prosecutor’s knowledge.

(4) For the purposes of subsection (3) a certificate of any prosecutor as to the date on which
such evidence as is there mentioned came to the prosecutor’s knowledge is conclusive
evidence of that fact.

15 Duty of court to report convictions to the Electoral Commission

The court by or before which a person is convicted of a campaign offence must notify
the Electoral Commission of the conviction as soon as is practicable.

Referendum agents

16 Referendum agents

(1) A permitted participant may, for any local government area, appoint an individual (who
may be the responsible person) to be the permitted participant’s agent (“referendum
agent”).

(2) If a permitted participant appoints a referendum agent for a local government area, the
responsible person must give the counting officer for that area notification of the name
and address of—

(a) the permitted participant, and

(b) the referendum agent.

(3) The notification must be—

(a) in writing,

(b) signed by the responsible person, and

(c) given before noon on the twenty-fifth day before the date of the referendum.
For the purpose of subsection (3)(c), the following days are to be disregarded—
(a) a Saturday or Sunday,
(b) Christmas Eve or Christmas Day,
(c) a day which is a bank holiday in Scotland under the Banking and Financial
   Dealings Act 1971,
(d) a day appointed for public thanksgiving or mourning.

The duties imposed on a responsible person by this section may be discharged by any
person authorised in writing by the responsible person.

A counting officer who receives a notification under subsection (2) must, as soon as
practicable, publish notice of—
(a) the name of the permitted participant, and
(b) the name and address of the referendum agent.

If—
(a) a permitted participant revokes the appointment of a referendum agent or a
    referendum agent dies, and
(b) the permitted participant has notified the counting officer of the appointment of a
    polling or counting agent under rule 14 of the conduct rules,
the permitted participant must, as soon as practicable, appoint another referendum agent
under subsection (1).

The notification under subsection (2) must be made as soon as practicable after the
appointment of the new referendum agent (and subsection (3)(c) does not apply to that
notification).

Observers

Attendance of Electoral Commission at proceedings and observation of working
practices

A representative of the Electoral Commission may attend proceedings relating to the
referendum that are the responsibility of—
(a) the Chief Counting Officer, or
(b) a counting officer.

The right conferred by subsection (1) is subject to any other provision of this Act which
regulates attendance at the proceedings in question.

A representative of the Electoral Commission may observe the working practices of
each of the following in carrying out functions under this Act—
(a) a registration officer,
(b) the Chief Counting Officer,
(c) a counting officer,
(d) any person acting under the direction of a person mentioned in paragraphs (a) to
   (c).

In this section, “representative of the Electoral Commission” means any of the
following—
(a) a member of the Electoral Commission,
(b) a member of staff of the Electoral Commission,
(c) a person appointed by the Electoral Commission for the purposes of this section.

18 **Accredited observers: individuals**

(1) A person who is aged 16 or over may apply to the Electoral Commission to be an accredited observer at any of the following proceedings relating to the referendum—
   (a) proceedings at the issue or receipt of postal ballot papers,
   (b) proceedings at the poll,
   (c) proceedings at the counting of votes.

(2) If the Commission grant the application, the accredited observer may attend the proceedings in question.

(3) An application under subsection (1) must be made in the manner specified by the Commission.

(4) The Commission may at any time revoke the grant of an application under subsection (1).

(5) If the Commission—
   (a) refuse an application under subsection (1), or
   (b) revoke the grant of any such application,
they must give their decision in writing and must, when doing so, give reasons for the refusal or revocation.

(6) The right conferred on an accredited observer by this section is subject to any provision of this Act which regulates attendance at the proceedings in question.

19 **Accredited observers: organisations**

(1) An organisation may apply to the Electoral Commission to be accredited for the purpose of nominating observers at any of the following proceedings relating to the referendum—
   (a) proceedings at the issue or receipt of postal ballot papers,
   (b) proceedings at the poll,
   (c) proceedings at the counting of votes.

(2) If the Commission grant the application the organisation may nominate members who may attend the proceedings in question.

(3) The Commission, in granting the application, may specify a limit on the number of observers nominated by the organisation who may attend, at the same time, specified proceedings by virtue of this section.

(4) An application under subsection (1) must be made in the manner specified by the Commission.

(5) The Commission may at any time revoke the grant of an application under subsection (1).

(6) If the Commission—
(a) refuse an application under subsection (1), or
(b) revoke the grant of any such application,
they must give their decision in writing and must, when doing so, give reasons for the refusal or revocation.

(7) The right conferred by this section is subject to any provision of this Act which regulates attendance at the proceedings in question.

20  Attendance and conduct of accredited observers

(1) A relevant officer may limit the number of persons who may be present at any proceedings at the same time by virtue of section 18 or 19.

(2) If a person who is entitled to attend any proceedings by virtue of section 18 or 19 commits misconduct while attending the proceedings, the relevant officer may cancel the person’s entitlement.

(3) Subsection (2) does not affect any power that a relevant officer has by virtue of any enactment or rule of law to remove a person from any place.

(4) A relevant officer is—
(a) in the case of proceedings at a polling station, the presiding officer,
(b) in the case of any other proceedings at a referendum, the Chief Counting Officer or a counting officer,
(c) any other person authorised by a person mentioned in paragraph (a) or (b) for the purposes of the proceedings mentioned in that paragraph.

20A  Code of practice on attendance of observers

(1) The Electoral Commission must prepare a code of practice on the attendance of—
(a) representatives of the Commission,
(b) accredited observers, and
(c) nominated members of accredited organisations,
at proceedings relating to the referendum.

(2) The code must in particular—
(a) specify the manner in which applications under section 18(1) or 19(1) are to be made to the Commission,
(b) specify the criteria that the Commission will take into account in determining such applications,
(c) give guidance to relevant officers as to the exercise of the powers conferred by section 20(1) and (2),
(d) give guidance to such officers as to the exercise, in relation to a person entitled to attend any proceedings by virtue of section 18 or 19, of any other power under this Act to control the number of persons present at any proceedings relating to the referendum,
(e) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations as to the exercise of the rights conferred by sections 17, 18 and 19.
(3) The code may make different provision for different purposes.
(4) Before preparing the code, the Commission must consult the Scottish Ministers.
(5) The Commission must lay the code before the Scottish Parliament.
(6) The Commission must publish the code in such manner as they may determine.
(7) The following persons must have regard to the code in exercising any function or right conferred by section 17, 18, 19 or 20—
   (a) the Commission,
   (b) representatives of the Commission,
   (c) relevant officers.
(8) The Commission may at any time revise the code.
(9) Subsections (4) to (7) apply to a revision of the code as they apply to the code.
(10) In this section—
   “accredited observer” is to be construed in accordance with section 18,
   “accredited organisation” is to be construed in accordance with section 19, and
   “nominated member” is to be construed accordingly,
   “relevant officer” has the meaning given in section 20(4),
   “representative of the Commission” means a representative of the Electoral Commission within the meaning of section 17(4).

Information, guidance, advice and encouragement

21 Information for voters
The Electoral Commission must take such steps as they consider appropriate to promote public awareness and understanding in Scotland about—
   (a) the referendum,
   (b) the referendum question, and
   (c) voting in the referendum.

22 Guidance
(1) The Electoral Commission may issue guidance to the Chief Counting Officer about the exercise of the Chief Counting Officer’s functions under this Act.
(1A) The Chief Counting Officer may issue guidance to counting officers and registration officers about the exercise of their respective functions under this Act.
(2) The Electoral Commission may, with the consent of the Chief Counting Officer, issue guidance to counting officers about the exercise of their functions under this Act.
(3) The Electoral Commission may issue guidance to permitted participants and persons who may become permitted participants about the provisions set out in schedule 4 to this Act.
(4) Guidance issued under subsection (3) must include information on what may constitute a common plan or other arrangement for the purposes of paragraph 19 of schedule 4.
23 **Advice**

The Electoral Commission may, if asked to do so by any person, provide the person with advice about—

(a) the application of this Act,

(b) any other matter relating to the referendum.

23A **Encouraging participation**

(1) The Chief Counting Officer must take whatever steps the Chief Counting Officer considers appropriate to—

(a) encourage participation in the referendum, and

(b) facilitate co-operation among officers taking steps under this section.

(2) A counting officer must take whatever steps the counting officer considers appropriate to encourage participation in the referendum in the local government area for which the officer is appointed.

**Report on referendum**

24 **Report on the conduct of the referendum**

(1) As soon as reasonably practicable after the referendum, the Electoral Commission must prepare and lay before the Scottish Parliament a report on the conduct of the referendum.

(2) The report must include a summary of—

(a) how the Commission have carried out their functions under this Act,

(b) the expenditure incurred by the Commission in carrying out those functions.

(3) The Chief Counting Officer must provide the Commission with such information as they may require for the purposes of the report.

(4) On laying the report, the Commission must publish the report in such manner as they may determine.

(5) In the 2000 Act, in Schedule 1, in paragraph 20(1) (report on Electoral Commission’s functions), the reference to the Commission’s functions does not include a reference to the Commission’s functions under this Act.

**Electoral Commission: administrative provision**

25 **Reimbursement of Commission’s costs**

(1) The SPCB must reimburse the Electoral Commission for any expenditure incurred by the Commission that is attributable to the carrying out of the Commission’s functions under this Act.

(2) In the 2000 Act, in Schedule 1, paragraph 14(1) (financing of the Electoral Commission) has effect as if paragraph (a) included a reference to expenditure reimbursed under subsection (1) of this section.

26 **Estimates of expenditure**

(1) The Electoral Commission must, before the start of each financial year—
(a) prepare an estimate of the Commission’s expenditure for the year that is attributable to the carrying out of their functions under this Act, and

(b) send the estimate to the SPCB for approval.

(2) The Commission may, in the course of a financial year, prepare a revised estimate for the remainder of the year and send it to the SPCB for approval.

(3) The period from the commencement of this Act until the following 31 March is treated, for the purposes of this section, as the first financial year.

(4) Subsection (1) has effect in relation to the first financial year as if the reference to the start of the financial year were a reference to the end of the period of one month beginning with the date of the commencement of this Act.

(5) In the 2000 Act, in Schedule 1, paragraph 14(2) (Commission to prepare estimates of income and expenditure) does not apply in relation to income and expenditure of the Commission that is attributable to the exercise of their functions under this Act.

27 Maladministration

In the Scottish Public Services Ombudsman Act 2002, in section 7 (restrictions on investigations), subsection (6D) does not prevent the investigation under that Act of action taken by or on behalf of the Electoral Commission in the exercise of the Commission’s functions under this Act.

Offences

28 Offences

Schedule 7 makes provision about offences in or in connection with the referendum.

29 Offences by bodies corporate etc.

(1) Subsection (2) applies where—

(a) an offence under this Act has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, a member,
(b) in relation to a limited liability partnership, a member,
(c) in relation to a Scottish partnership, a partner,
(d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

5

**Power to make supplementary etc. provision and modifications**

**30 Power to make supplementary etc. provision and modifications**

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) The power in subsection (1) includes power to make provision in consequence of, or in connection with, any modification or proposed modification, of any enactment relating to—
   (a) the conduct of any referendum or campaigning in any referendum,
   (b) the conduct of elections or campaigning in elections.

(3) An order under subsection (1) may—
   (a) modify any enactment (including this Act),
   (b) apply any provision of any enactment (either with or without modifications),
   (c) include supplementary, incidental, consequential, transitory or transitional provision or savings.

(4) An order under subsection (1) is subject to the affirmative procedure.

**Legal proceedings**

**31 Restriction on legal challenge to referendum result**

(1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast as certified by a counting officer or by the Chief Counting Officer under section 6(2)(b) or (as the case may be) (4) unless—
   (a) the proceedings are brought by way of a petition for judicial review, and
   (b) the petition is lodged before the end of the permitted period.

(2) In subsection (1)(b) “the permitted period” means the period of 6 weeks beginning with—
   (a) the day on which the officer in question makes the certification as to the number of ballot papers counted and votes cast in the referendum, or
   (b) if the officer makes more than one such certification, the day on which the last is made.

(3) In subsection (1), references to a petition for judicial review are references to an application to the supervisory jurisdiction of the Court of Session.
Final provisions

32 **Interpretation**
Schedule 8 provides definitions for words and expressions used in this Act.

33 **Commencement**
This Act comes into force on the day after Royal Assent.

34 **Short title**
The short title of this Act is the Scottish Independence Referendum Act 2013.
FORM OF BALLOT PAPER

Front of ballot paper

<table>
<thead>
<tr>
<th>BALLOT PAPER</th>
<th>[Official mark]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote (X) ONLY ONCE</td>
<td></td>
</tr>
<tr>
<td>Should Scotland be an independent country?</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td></td>
</tr>
<tr>
<td>NO</td>
<td></td>
</tr>
</tbody>
</table>

Back of ballot paper

[Unique identifying number]

Area of [insert council name].

Referendum on 18 September 2014.

Directions as to printing the ballot paper

1. Nothing is to be printed on the ballot paper except as set out in this schedule.
2. So far as practicable, the instructions specified in paragraphs 3 to 6 must be observed in printing the ballot paper.
3. Words printed on the ballot paper must be printed—
   (a) in a sans serif font (for example, Arial), and
   (b) in characters of at least 14 point size.
4. The direction to “VOTE (X) ONLY ONCE” and the “YES” and “NO” options must be printed in bold capital letters.
5. The ballot paper must be at least 180mm wide.
6 The voting boxes where the vote is to be marked must each be 21mm square.

SCHEDULE 2
(introduced by section 3)

FURTHER PROVISION ABOUT VOTING IN THE REFERENDUM

PART 1

MANNER OF VOTING

Manner of voting

1 (1) This paragraph applies to determine the manner of voting of a voter.

(2) A voter may vote in person at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules unless the voter is entitled to an absent vote in the referendum.

(3) A voter may vote by post if the voter is entitled to vote by post in the referendum.

(4) If a voter is entitled to vote by proxy in the referendum, the voter may so vote unless, before a ballot paper is issued for the voter to vote by proxy, the voter applies at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules for a ballot paper for the purpose of voting in person, in which case the voter may vote in person there.

(5) If a voter—

(a) is not entitled to an absent vote in the referendum, and

(b) cannot reasonably be expected to go in person to the polling station allotted to the voter under rule 9(1)(b) of the conduct rules because of the particular circumstances of the voter’s employment, either as a constable or by the counting officer, on the date of the referendum for a purpose connected with the referendum,

the voter may vote in person at any polling station in the local government area in which the polling station allotted to the voter is situated.

(6) Nothing in the preceding provisions of this paragraph applies to—

(a) a voter to whom section 7 of the 1983 Act (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, whether the voter is registered by virtue of that provision or not, and such a voter may vote—

(i) in person at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules (if granted permission to be absent from the hospital and voting in person does not breach any condition attached to the permission), or

(ii) by post or by proxy (if entitled so to vote in the referendum), or

(b) a voter to whom section 7A of that Act (person remanded in custody) applies, whether the voter is registered by virtue of that provision or not, and such a voter may only vote by post or by proxy (if entitled so to vote in the referendum).
(7) Sub-paragraph (2) does not prevent a voter, at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules, marking a tendered ballot paper in pursuance of rule 24 of those rules.

(8) For the purposes of this Act—

(a) references to a voter being entitled to an absent vote in the referendum are references to the voter being entitled to vote by post or by proxy in the referendum, and

(b) a voter is entitled to vote—

(i) by post in the referendum if the voter is shown in the postal voters list (see paragraph 4(2)) for the referendum as so entitled,

(ii) by proxy in the referendum if the voter is shown in the list of proxies (see paragraph 4(3)) for the referendum as so entitled.

Existing absent voters

2 (1) A person is taken to have been granted a vote by post in the referendum if, at the cut-off date, the person is—

(a) shown in the record maintained under paragraph 3(4) of Schedule 4 to the Representation of the People Act 2000 as voting by post at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained under article 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by post at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

(2) Such a person is referred to in this schedule as an “existing postal voter”.

(3) A person is taken to have been granted a vote by proxy in the referendum if, at the cut-off date, the person is—

(a) shown in the record maintained under paragraph 3(4) of Schedule 4 to the Representation of the People Act 2000 as voting by proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained under article 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

(4) Such a person is referred to in this schedule as an “existing proxy voter”.

(5) Sub-paragraph (1) does not apply to a person if the person is granted a vote by proxy by virtue of an application under paragraph 3.

(6) Sub-paragraph (3) does not apply to a person if the person is granted a vote by post by virtue of an application under paragraph 3.
Applications for absent vote

3 (1) Where a person applies to the registration officer to vote by post in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum, and

(b) the application meets the requirements set out in paragraph 7.

(2) Where a person applies to the registration officer to vote by proxy at the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted, or likely to be allotted, to the applicant under rule 9(1)(b) of the conduct rules,

(b) the registration officer is satisfied that the applicant is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum, and

(c) the application meets the requirements set out in paragraph 7.

(3) Where a person who has an anonymous entry in the register of electors maintained by a registration officer applies to the registration officer to vote by proxy in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(4) Sub-paragraphs (1) and (2) do not apply to a person who is an existing postal voter or an existing proxy voter.

(5) If an existing postal voter applies to the appropriate registration officer for the person’s ballot paper to be sent to a different address from that shown in the record referred to in paragraph 2(1) in relation to that existing postal voter, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(6) If an existing postal voter applies to the appropriate registration officer to vote by proxy in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the person cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the person under rule 9(1)(b) of the conduct rules, and

(b) the application meets the requirements set out in paragraph 7.

(7) If an existing proxy voter applies to the appropriate registration officer to vote by post in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(8) In sub-paragraphs (5) to (7), “appropriate registration officer” means, in relation to an existing postal voter or an existing proxy voter, the registration officer responsible for keeping the record mentioned in paragraph 2(1) or (3) by virtue of which the person is such a voter.
Absent voters lists

4 (1) Each registration officer must keep the 2 lists mentioned in sub-paragraphs (2) and (3).

(2) The first list (the “postal voters list”) is a list of—
   (a) those who are existing postal voters by reason of an entry in a record mentioned in paragraph 2(1) kept by the registration officer, together with the addresses—
      (i) shown in the record mentioned in that paragraph, or
      (ii) provided in any application by them under paragraph 3(5),
      as the addresses to which their ballot papers are to be sent, and
   (b) those granted a vote by post in the referendum by the registration officer by virtue of an application under paragraph 3 together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(3) The second list (the “list of proxies”) is a list of—
   (a) those who are existing proxy voters by reason of an entry in a record mentioned in paragraph 2(3) kept by the registration officer, and
   (b) those granted a vote by proxy in the referendum by the registration officer by virtue of an application under paragraph 3, together (in each case) with the names and addresses of those appointed as their proxies.

(4) In the case of a person who has an anonymous entry in the register of electors, any entry in the postal voters list or list of proxies must show in relation to the person only the person’s voter number.

(5) Where a person is removed from the postal voters list or the list of proxies, the registration officer must, where practicable, notify the person of the removal and the reason for it.

Proxies

5 (1) Subject to the provisions of this paragraph, any person is capable of being appointed as proxy to vote for another in the referendum and may vote in pursuance of the appointment.

(2) A person (“A”) cannot have more than one person at a time appointed as proxy to vote for A in the referendum.

(3) A person is not capable of being appointed to vote, or of voting, as proxy at the referendum—
   (a) if the person is subject to any legal incapacity (age apart) to vote in the referendum, or
   (b) if the person is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union.

(4) A person is not capable of voting as a proxy in the referendum unless, on the date of the referendum, the person is of voting age.

(5) A person is not entitled to vote as proxy in the referendum on behalf of more than 2 others of whom that person is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
(6) If there is an existing proxy for an existing proxy voter, the existing proxy is taken to have been appointed as proxy to vote for the existing proxy voter in the referendum.

(7) In sub-paragraph (6), “existing proxy” means, in relation to an existing proxy voter—
(a) a person appointed under paragraph 6(7) of Schedule 4 to the Representation of the People Act 2000 as proxy to vote for the existing proxy voter at local government elections, or
(b) if there is no such person, a person appointed under article 10(6) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as proxy to vote for the existing proxy voter at Scottish parliamentary elections.

(8) Where a person applies to the registration officer for the appointment of a proxy to vote for the person in the referendum, the registration officer must make the appointment if—
(a) the registration officer is satisfied that the applicant is or will be—
(i) registered in the register of electors maintained by the officer, and
(ii) entitled to vote by proxy in the referendum by virtue of paragraph 2(3) or an application under paragraph 3,
(b) the registration officer is satisfied that the proxy is capable of being and willing to be appointed, and
(c) the application meets the requirements in paragraph 7.

(9) The appointment of a proxy under this paragraph is to be made by means of a proxy paper issued by the registration officer.

(10) The appointment of a proxy to vote for a person (“A”) in the referendum—
(a) may be cancelled by A by giving notice to the registration officer, and
(b) ceases to have effect on the issue of a proxy paper appointing a different person to vote for A in the referendum.

Voting as proxy

6 (1) A person entitled to vote as proxy for another (“A”) in the referendum may do so in person at the polling station allotted to A under rule 9(1)(b) of the conduct rules unless the person is entitled to vote by post as proxy in the referendum, in which case the person may vote by post.

(2) Where a person is entitled to vote by post as proxy for another (“A”) in the referendum, A may not apply for a ballot paper for the purpose of voting in person at the referendum.

(3) For the purposes of this schedule, a person entitled to vote as proxy for another in the referendum is entitled so to vote by post if the person is included in the proxy postal voters list (see sub-paragraph (7)).

(4) An existing proxy is taken to have been granted a vote by post as proxy if the existing proxy is, at the cut-off date—
(a) shown in the record kept under paragraph 7(6) of Schedule 4 to the Representation of the People Act 2000 as voting by post as proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or
(b) shown in the record kept under article 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by post as proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

5 (5) In sub-paragraph (4), “existing proxy” means a person who is taken to have been appointed as proxy by virtue of paragraph 5(6).

6 (6) Where a person applies to the registration officer to vote by post as proxy for another (“A”) in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that A is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum,

(b) there is in force an appointment of the applicant as A’s proxy to vote for A in the referendum, and

(c) the application meets the requirements in paragraph 7.

7 (7) The registration officer must keep a special list (the “proxy postal voters list”) of—

(a) those taken to have been granted a vote by post as proxy by virtue of sub-paragraph (4) by reason of an entry in a record mentioned in that sub-paragraph kept by the registration officer, together with the addresses shown in the record as the addresses to which their ballot papers are to be sent, and

(b) those whose applications under sub-paragraph (6) have been granted by the registration officer, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

8 (8) Where a person to be included in the proxy postal voters list applies to the registration officer for the person’s ballot paper to be sent to a different address, the registration officer must grant the application if it meets the requirements in paragraph 7.

9 (9) In the case of a person who has an anonymous entry in the register of electors, the proxy postal voters list must contain only the person’s voter number.

10 (10) The registration officer must keep a record in relation to those whose applications under sub-paragraph (6) have been granted showing—

(a) their dates of birth, and

(b) except in cases where the registration officer in pursuance of paragraph 7(5) (or other provision to like effect) has dispensed with the requirement to provide a signature, their signatures.

11 (11) The registration officer must retain the record kept under sub-paragraph (10) for the period of one year following the date of the referendum.

12 (12) Sub-paragraph (2) does not prevent a person (“A”), at the polling station allotted to A under rule 9(1)(b) of the conduct rules, from marking a tendered ballot paper in pursuance of rule 24 of those rules.

Requirements as to applications

7 (1) This paragraph applies in relation to applications under paragraph 3, 5(8) or 6(6) or (8).

(2) An application must—
(a) be made in writing,
(b) state the date on which it is made, and
(c) be made before the cut-off date.

(3) An application to vote by post (including an application to vote by post as a proxy) must contain—

(a) the applicant’s full name and date of birth,
(b) the applicant’s signature, and
(c) the address to which the ballot paper is to be sent.

(4) An application to vote by proxy must contain—

(a) the applicant’s full name and date of birth,
(b) the applicant’s signature,
(c) a statement of the reasons why the applicant’s circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant under rule 9(1)(b) of the conduct rules, and
(d) an application under paragraph 5(8) for the appointment of a proxy.

(4A) An application to vote by proxy made as described in sub-paragraph (8)(a) must also meet any applicable additional requirements set out in paragraph 7A.

(5) The registration officer may, in relation to any application to which sub-paragraph (3) or (4) applies, dispense with the requirement to include the applicant’s signature if the officer is satisfied that the applicant is unable—

(a) to provide a signature because—
   (i) of any disability that the applicant has, or
   (ii) the applicant is unable to read or write, or

(b) to sign in a consistent and distinctive way because of any such disability or inability.

(6) For the purposes of sub-paragraphs (3)(a) and (b) and (4)(a) and (b), the applicant’s date of birth and signature must be set out in a manner that is sufficiently clear and unambiguous as to be capable of electronic scanning and, in particular—

(a) the date of birth must be set out numerically in the sequence day, month, year (for example, the date 30 July 1965 must be set out 30071965),

(b) the signature—
   (i) must be written within an area of white, unlined paper no smaller than 5 centimetres by 2 centimetres,
   (ii) must not exceed 5 centimetres by 2 centimetres.

(7) An application for the appointment of a proxy must state the full name and address of the person whom the applicant wishes to appoint as proxy, together with that person’s family relationship, if any, with the applicant and—
(a) if the application is signed only by the applicant, the application must contain a statement signed by the applicant that the applicant has consulted the person so named and that that person is capable of being and willing to be appointed to vote as the applicant’s proxy, or

(b) if the application is signed also by the person to be appointed as proxy, must contain a statement by that person that the person is capable of being and willing to be appointed to vote as the applicant’s proxy.

(8) Sub-paragraph (9) applies in relation to an application to vote by proxy (and an application under paragraph 5(8) for the appointment of a proxy contained in such an application to vote by proxy)—

(a) made after the cut-off date and on the grounds that the applicant cannot reasonably be expected to vote in person at the polling station allotted under rule 9(1)(b) of the conduct rules because—

(i) of a disability suffered after that date,

(ii) the applicant will be, or is likely to be, unavoidably absent from the applicant’s qualifying address on the date of the referendum and the applicant only became aware of that fact after the cut-off date,

(iii) of reasons relating to the applicant’s occupation, service or employment, of which the applicant only became aware after the cut-off date,

(b) by a person to whom paragraph 1(6)(a) applies.

(9) Sub-paragraph (2)(c) does not apply in relation to the application and instead the application must be made before 5pm on the date of the referendum.

(10) Sub-paragraph (11) applies in relation to an application under paragraph 3(5) or 6(8) for the person’s ballot paper to be sent to a different address.

(11) Subject to sub-paragraph (12), the application must set out why the applicant’s circumstances will be or are likely to be such that the applicant requires the ballot paper to be sent to that address.

(12) The requirement in sub-paragraph (11) does not apply where an applicant has, or has applied for, an anonymous entry.

Additional requirements as to certain applications to vote by proxy

7A(1) Sub-paragraphs (2) to (5) apply in relation to an application to vote by proxy made as described in paragraph 7(8)(a)(i) or (ii).

(2) The application must contain a statement of the date on which the applicant became aware of the reasons given in the statement required by paragraph 7(4)(c).

(3) The application must be signed by a person who—

(a) is aged 18 or over,

(b) knows the applicant, and

(c) is not related to the applicant.

(4) The person who signs the application in accordance with sub-paragraph (3) must certify in the application that the following information is true to the best of the person’s knowledge and belief—
(a) the information given in the statement required by sub-paragraph (2), and
(b) the reasons given in the statement required by paragraph 7(4)(c).

(5) That person must also state in the application—
(a) the person’s name and address,
(b) that the person—
   (i) is aged 18 or over,
   (ii) knows the applicant, and
   (iii) is not related to the applicant.

(6) Sub-paragraphs (8) to (11) apply in relation to an application to vote by proxy made
as described in paragraph 7(8)(a)(iii).

(7) But sub-paragraphs (9) to (11) do not apply if the applicant is or will be registered as a
service voter.

(8) The application must contain a statement of—
(a) where the applicant is an employee, the name of the applicant’s employer,
(b) where the applicant is not an employee, details of the applicant’s occupation or
   service,
(c) the date on which the applicant became aware of the reasons given in the
   statement required by paragraph 7(4)(c).

(9) The application must be signed—
(a) where the applicant is an employee, by—
   (i) the applicant’s employer, or
   (ii) another employee to whom this function is delegated by the employer,
(b) where the applicant is not an employee, by a person who—
   (i) is aged 18 or over,
   (ii) knows the applicant, and
   (iii) is not related to the applicant.

(10) The person who signs the application in accordance with sub-paragraph (9) must certify
in the application that the following information is true to the best of the person’s
knowledge and belief—
(a) the information given in the statement required by sub-paragraph (8), and
(b) the reasons given in the statement required by paragraph 7(4)(c).

(11) That person must also state in the application—
(a) the person’s name and address,
(b) if the applicant is an employee, either (as the case may be)—
   (i) that the person is the applicant’s employer, or
   (ii) the position that the person holds in the employment of the applicant’s
       employer,
(c) if the applicant is not an employee, that the person—

(i) is aged 18 or over,
(ii) knows the applicant, and
(iii) is not related to the applicant.

(12) For the purposes of this paragraph—

(a) a person (“A”) is related to another person (“B”) if A is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of B,

(b) a person is registered as a service voter if the person has made a service declaration under section 15 of the 1983 Act and is registered in the register of electors in pursuance of it.

Grant or refusal of applications

8 (1) This paragraph applies in relation to applications under paragraph 3, 5(8) or 6(6) or (8).

(2) Where the registration officer grants an application, the officer must notify the applicant.

(3) Where the registration officer refuses an application, the officer must notify the applicant of the decision and of the reason for it.

(4) Where an application under paragraphs 3(2) and 5(8) is granted, the registration officer must, where practicable, notify the voter of—

(a) the appointment of the proxy, and
(b) the name and address of the proxy.

Forms

9 (1) The registration officer must provide free of charge to any person who satisfies the officer of the person’s intention to use the forms in connection with the referendum as many forms for use in connection with—

(a) applications to register as a voter at the referendum, and

(b) applications for an absent vote at the referendum,

as appear to the registration officer to be reasonable in the circumstances.

(2) The forms provided under sub-paragraph (1) are to be in the form prescribed.

Personal identifiers record

10 (1) Each registration officer must keep a record in relation to persons granted applications to which paragraph 7(3) or (4) applies showing—

(a) their dates of birth, and

(b) except in cases where the officer has under paragraph 7(5) dispensed with the requirement for a signature, their signatures.

(2) The registration officer must, as soon as possible after the cut-off date, either—

(a) provide the relevant counting officer with a copy of the information contained in the record, or
(b) give the relevant counting officer access to the information.

(3) A registration officer may disclose information contained in the record to any other registration officer if the registration officer disclosing it thinks that to do so would assist the other registration officer in the carrying out of the other officer’s functions.

(4) A counting officer may disclose information contained in the record to any other person if the counting officer thinks that to do so would assist the other person in ascertaining whether postal ballot papers have been returned in accordance with rule 30(4) of the conduct rules.

Marked lists for polling stations

10 To indicate that a voter or a voter’s proxy is entitled to vote by post and is for that reason not entitled to vote in person, the letter “A” is to be placed against the entry of that voter in any list of voters (or any part of a list) provided for a polling station.

Appeals

12 (1) Where appeal under section 56 of the 1983 Act (registration appeals) is pending when notice of the referendum is given—

(a) the appeal does not prejudice the operation as respects the referendum of the decision appealed against, and

(b) anything done in pursuance of the decision is as good as if no such appeal had been brought and is not affected by the decision on the appeal.

(2) Where, as a result of the decision on an appeal under section 56 of the 1983 Act, an alteration in the register of electors is made which takes effect under section 13(5), 13A(2), 13B(3) or (3B) or 13BB(4) or (5) of the 1983 Act on or before the date of the referendum, sub-paragraph (1) does not apply to the appeal.

PART 2

REGISTRATION

Effect of register

13 (1) A person registered in the register of electors or entered in the list of proxies is not to be excluded from voting in the referendum on any of the grounds set out in sub-paragraph (2), but this does not affect the person’s liability to any penalty for voting.

(2) The grounds referred to in sub-paragraph (1) are—

(a) that the person is not of voting age,

(b) that the person is not or was not at any particular time—

(i) a Commonwealth citizen,

(ii) a citizen of the Republic of Ireland, or

(iii) a relevant citizen of the European Union,

(c) that the person is or was at any particular time otherwise subject to any other legal incapacity to vote in the referendum.
Effect of misdescription

14 No misnomer or inaccurate description of any person or place named—

(a) in the register of electors, or

(b) in any list, proxy paper, ballot paper, notice or other document required for the
purposes of this Act,

affects the full operation of the document with respect to that person or place in any case
where the description of the person or place is such as to be commonly understood.

Carrying out of registration functions

15 (1) A registration officer must carry out the registration officer’s functions under this Act in
accordance with any directions given by the Chief Counting Officer.

(2) The Chief Counting Officer must not give a direction that is inconsistent with this Act or
any other enactment under which a registration officer exercises functions.

(3) Any of the functions of a registration officer under this Act may be carried out by a
deputy for the time being approved by the council which appointed the registration
officer, and the provisions of this Act apply to any such deputy so far as respects any
functions to be carried out by the deputy as they apply to the registration officer.

(4) Each council must assign such officers to assist the registration officer appointed by the
council as may be required for carrying out the registration officer’s functions under this
Act.

Alterations in the register of electors

16 (1) An alteration in the register of electors under section 13A(2) (alteration of registers) or
56 (registration appeals) of the 1983 Act which is to take effect after the fifth day before
the date of the referendum does not have effect for the purposes of the referendum.

(2) For the purposes of sub-paragraph (1), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial
Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

(3) Section 13B(2) to (6) of the 1983 Act applies in relation to the referendum as it applies
in relation to an election to which that section applies but as if—

(a) any reference to the appropriate publication date were a reference to the fifth day
before the date of the referendum,

(b) any reference to the date of the poll at such an election were a reference to the
date of the referendum,

(c) any reference to the relevant election area were a reference to the area for which
the registration officer acts,

(d) any reference to the prescribed time on the day of the poll were a reference to 9pm
on the date of the referendum,
Schedule 2—Further provision about voting in the referendum
Part 2—Registration

(c) any reference to the issuing of a notice in the prescribed manner were a reference to the issuing of the notice in such manner and form as the registration officer may determine.

(4) Section 13BB of the 1983 Act applies in relation to the referendum as it applies in relation to an election mentioned in subsection (1)(b) of that section but as if—

(a) any reference to notice of such an election were a reference to notice of the referendum,

(b) any reference to the appropriate publication date for such an election were a reference to the fifth day before the date of the referendum,

(c) any reference to the issuing of a notice in the prescribed manner were a reference to the issuing of the notice in such manner and form as the registration officer may determine,

(d) subsection (2)(c) were omitted.

Preparation of the Polling List

(1) Each registration officer must prepare, in accordance with this paragraph, a list merging all of the entries contained in—

(a) the register of local government electors for the registration officer’s area, and

(b) the register of young voters for that area.

(2) The list is referred to in this Act as the “Polling List”.

(3) The entries in the Polling List must be arranged in such a way that it is not possible from reading the List to distinguish between those entries that are drawn from the register of local government electors, on the one hand, and those drawn from the register of young voters on the other.

(4) Each entry in the Polling List is to contain the same information as the entry in the register from which it is drawn, except that any dates of birth are to be omitted.

(5) No person to whom this sub-paragraph applies may—

(a) supply to any person a copy of the Polling List, or

(b) disclose any information contained in the List (that is not also contained in the edited version of the register of local government electors), otherwise than in accordance with this Act.

(6) Sub-paragraph (5) applies to—

(a) a registration officer, and

(b) any person appointed to assist a registration officer, or who in the course of the person’s employment is assigned to assist a registration officer, in the officer’s registration functions.

(7) Nothing in sub-paragraph (5) applies to the supply or disclosure by a person to whom that sub-paragraph applies to another such person in the connection with the person’s registration functions for the purposes of the referendum.
(8) The registration officer must ensure that the Polling List is securely destroyed no later than one year after the date of the referendum, unless otherwise directed by an order of the Court of Session or a sheriff principal.

The cut-off date

18 (1) In this Act, the cut-off date means 5pm on the eleventh day before the date of the referendum.

(2) For the purpose of ascertaining the cut-off date, the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

Part 3

Postal voting: issue and receipt of ballot papers

Persons entitled to be present at issue and receipt of postal ballot papers

19 (1) Without prejudice to sections 17 to 19, no person may be present at the proceedings on the issue of postal ballot papers other than the counting officer and the counting officer’s staff.

(2) Without prejudice to sections 17 to 19, no person may be present at the proceedings on the receipt of postal ballot papers other than—

(a) the counting officer and the counting officer’s staff,

(b) a referendum agent or any person appointed by a referendum agent to attend in such referendum agent’s place,

(c) any agents appointed under sub-paragraph (3).

(3) Each referendum agent may appoint one or more agents to attend the proceedings on the receipt of the postal ballot papers (“postal ballot agents”).

(4) The number of postal ballot agents that may be appointed under sub-paragraph (3)—

(a) is to be determined by the counting officer, and

(b) is to be the same for each referendum agent.

(5) A referendum agent who appoints postal ballot agents must give the counting officer notice of the appointment no later than the time fixed for the opening of the postal voters box.

(6) If a postal ballot agent dies or becomes unable to perform the agent’s functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.

(7) A notice under sub-paragraph (5) or (6)—

(a) must be given in writing, and
(b) must give the names and addresses of the persons appointed.

(8) In this Part of this schedule, references to postal ballot agents are to agents appointed under sub-paragraph (3) or (6)—

(a) whose appointments have been duly made and notified, and

(b) who are within the number authorised by the counting officer.

(9) Where in this Part of this schedule anything is required or authorised to be done in the presence of postal ballot agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

Notification of requirement of secrecy

The counting officer must make such arrangements as are reasonably practicable to ensure that every person attending the proceedings in connection with the issue or receipt of postal ballot papers has been given a copy of sub-paragraphs (6), (8) and (9) of paragraph 7 of schedule 7.

Time when postal ballot papers are to be issued

The counting officer is to issue postal ballot papers (and postal voting statements) as soon as it is practicable to do so.

Issue of postal ballot papers

The number of the voter as stated in the Polling List must be marked on the corresponding number list, next to the unique identifying number of the ballot paper issued to that voter.

A mark is to be placed in the postal voters list or the proxy postal voters list against the number of the voter to denote that a ballot paper has been issued to the voter or the voter’s proxy, but without showing the particular ballot paper issued.

The number of a postal ballot paper must be marked on the postal voting statement sent with that paper.

Subject to sub-paragraph (5), the address to which the postal ballot paper, postal voting statement and the envelopes referred to in paragraph 24 are to be sent is—

(a) in the case of a voter, the address shown in the postal voters list,

(b) in the case of a proxy, the address shown in the proxy postal voters list.

Where a person has an anonymous entry in the register of electors, the items specified in sub-paragraph (4) are to be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry to the address to which postal ballot papers should be sent—

(a) as shown in the record of anonymous entries, or

(b) as given in pursuance of an application made under paragraph 3(1) or (5) or 6(6) or (8).
Refusal to issue postal ballot paper

23 Where a counting officer is satisfied that two or more entries in the postal voters list, or the proxy postal voters list or in each of those lists relate to the same voter, the counting officer may not issue more than one ballot paper in respect of that voter.

Envelopes

24 (1) The envelope which the counting officer is required by rule 8(1) of the conduct rules to issue to a postal voter is to be marked with the letter “B”.

(2) The counting officer must also issue to a postal voter a smaller envelope which is to be marked with—

(a) the letter “A”,

(b) the words “ballot paper envelope”, and

(c) the number of the ballot paper.

Sealing up of completed corresponding number lists and security of special lists

25 (1) As soon as practicable after the issue of each batch of postal ballot papers, the counting officer must make up into a packet the completed corresponding number lists for those ballot papers which have been issued and must seal that packet.

(2) Until the counting officer has sealed the packet as described in paragraph 33(11), the counting officer must take proper precautions for the security of the marked copy of the postal voters list and the proxy postal voters list.

Payment of postage on postal ballot papers

26 (1) Where ballot papers are posted to postal voters, postage must be prepaid.

(2) Return postage must be prepaid where the address provided by the postal voter for the receipt of the postal ballot paper is within the United Kingdom.

Spoilt postal ballot papers

27 (1) If a postal voter has inadvertently dealt with a postal ballot paper or postal voting statement in such manner that it cannot be conveniently used as a ballot paper (a “spoilt ballot paper”) or a postal voting statement (a “spoilt postal voting statement”) the postal voter may return the spoilt ballot paper or (as the case may be) the spoilt postal voting statement to the counting officer (either by hand or by post).

(2) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter must also return—

(a) the postal ballot paper or (as the case may be) the postal voting statement (whether spoilt or not), and

(b) the envelopes supplied for their return.

(3) Subject to sub-paragraph (4), on receipt of the documents referred to in sub-paragraphs (1) and (2), the counting officer must issue another postal ballot paper except where those documents are received after 5pm on the date of the referendum.
(4) Where the counting officer receives the documents referred to in sub-paragraphs (1) and (2) after 5pm on the day before the date of the referendum, the counting officer may only issue another postal ballot paper if the postal voter returns the documents by hand.

(5) The following provisions apply in relation to a replacement postal ballot paper under sub-paragraph (3) as they apply in relation to a ballot paper—

(a) paragraph 22 (except sub-paragraph (2)),

(b) paragraphs 24 and 25, and

(c) subject to sub-paragraph (8), paragraph 26.

(6) Any postal ballot paper or postal voting statement (whether spoilt or not) returned in accordance with sub-paragraphs (1) and (2) must be immediately cancelled.

(7) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (6), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(8) Where a postal voter applies in person after 5pm on the day before the date of the referendum, the counting officer may only issue a replacement postal ballot paper by handing it to the postal voter.

(9) The counting officer must enter in a list kept for the purpose (“the list of spoilt postal ballot papers”)—

(a) the name and number of the postal voter as stated in the Polling List (or, in the case of a postal voter who has an anonymous entry, that person’s voter number alone),

(b) the number of the postal ballot paper (or papers) issued under this paragraph, and

(c) where the postal voter whose ballot paper is spoilt is a proxy, the name and address of the proxy.

Lost postal ballot papers

28 (1) Where a postal voter claims either to have lost or not to have received—

(a) the postal ballot paper (a “lost postal ballot paper”),

(b) the postal voting statement, or

(c) one or more of the envelopes supplied for their return,

by the fourth day before the date of the referendum, the postal voter may apply (whether or not in person) to the counting officer for a replacement ballot paper.

(2) For the purposes of sub-paragraph (1), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(3) An application under sub-paragraph (1) must include evidence of the postal voter’s identity.
(4) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter must return any of the documents referred to in sub-paragraph (1)(a) to (c) which the postal voter has received and which have not been lost.

(5) Any postal ballot paper or postal voting statement returned in accordance with sub-paragraph (4) must be immediately cancelled.

(6) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (5), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(7) Subject to sub-paragraph (8), where the application referred to in sub-paragraph (1) is received by the counting officer before 5pm on the date of the referendum and the counting officer—

(a) is satisfied as to the postal voter’s identity, and

(b) has no reason to doubt that the postal voter has either lost or has not received a document referred to in sub-paragraph (1)(a) to (c),

the counting officer may issue another postal ballot paper.

(8) Where the application referred to in sub-paragraph (1) is received by the counting officer after 5pm on the day before the date of the referendum, the counting officer may only issue another postal ballot paper if the postal voter applies in person.

(9) The counting officer must enter in a list kept for the purpose (“the list of lost postal ballot papers”)—

(a) the name and number of the postal voter as stated in the Polling List (or, in the case of a postal voter who has an anonymous entry, that person’s voter number alone),

(b) the number of the lost postal ballot paper and of its replacement issued under this paragraph, and

(c) where the postal voter is a proxy, the name and address of the proxy.

(10) The following provisions apply in relation to a replacement postal ballot paper under sub-paragraph (7) as they apply in relation to a ballot paper—

(a) paragraph 22 (except sub-paragraph (2)),

(b) paragraphs 24 and 25, and

(c) subject to sub-paragraph (11), paragraph 26.

(11) Where a postal voter applies in person after 5pm on the day before the date of the referendum, the counting officer may only issue a replacement postal ballot paper by handing it to the postal voter.

(12) Where the counting officer issues another postal ballot paper under sub-paragraph (7), the lost postal ballot paper is void and of no effect.

Superseded postal ballot papers

28A(1) This paragraph applies where—

(a) an application under paragraph 3(2) or (6) is granted, and
(b) the documents mentioned in sub-paragraph (2) have previously been issued to the applicant.

(2) The documents are—

(a) a postal ballot paper (a “superseded postal ballot paper”),

(b) a postal voting statement,

(c) the envelopes supplied for their return.

(3) The superseded postal ballot paper is void and of no effect.

(4) The applicant must return the documents.

(5) Any postal ballot paper or postal voting statement returned in accordance with sub-paragraph (4) must be immediately cancelled.

(6) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (5), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(7) The counting officer must enter in a list kept for the purpose (“the list of superseded postal ballot papers”—

(a) the name and number of the applicant as stated in the Polling List (or, in the case of an applicant who has an anonymous entry, the applicant’s voter number alone), and

(b) the number of the superseded postal ballot paper.

Notice of opening of postal ballot paper envelopes

29 (1) The counting officer must give to each of the referendum agents appointed for the area not less than 48 hours’ notice in writing of each occasion on which a postal voters’ box and the envelopes contained in it are to be opened.

(2) That notice must specify—

(a) the time and place at which such an opening is to take place, and

(b) the number of postal ballot agents that may be appointed to attend each opening.

Boxes and receptacles

30 (1) The counting officer must provide a separate box for the reception of—

(a) the covering envelopes when returned by the postal voters, and

(b) postal ballot papers.

(2) Each such box must be marked “postal voters box” or “postal ballot box” (as the case may be) and with the name of the local government area.

(3) The postal ballot box must be shown as being empty to any postal ballot agents present on the occasion of opening the first postal voters box.

(4) The counting officer must then—

(a) lock the postal ballot box,
(b) apply the counting officer’s seal in such manner as to prevent the box being opened without breaking the seal, and

(c) allow any postal ballot agent present who wishes to affix the agent’s seal to do so.

(5) The counting officer must provide separate receptacles for—

(a) rejected votes,
(b) postal voting statements,
(c) ballot paper envelopes,
(d) rejected ballot paper envelopes,
(e) rejected votes (verification procedure), and
(f) postal voting statements (verification procedure).

(6) The counting officer must take proper precautions for the safe custody of every box and receptacle referred to in this paragraph.

Receipt of covering envelopes and collection of postal votes

(1) The counting officer must, immediately on receipt (whether by hand or by post) of a covering envelope (or an envelope which is stated to include a postal vote) before the close of the poll, place it unopened in a postal voters box.

(2) Where an envelope, other than a covering envelope issued by the counting officer—

(a) has been opened, and
(b) contains a ballot paper envelope, postal voting statement or ballot paper,

the envelope, together with its contents, is to be placed in a postal voters box.

(3) The counting officer may collect (or arrange to be collected) any postal ballot paper or postal voting statement which by virtue of rule 28(2)(g) of the conduct rules the presiding officer of a polling station would otherwise be required to deliver (or arrange to be delivered) to the counting officer.

(4) Where the counting officer collects (or arranges to be collected) any postal ballot paper or postal voting statement in accordance with sub-paragraph (3), the presiding officer must first make it (or them) up into a packet (or packets) sealed with the presiding officer’s seal and the seal of any polling agent present who wishes to affix the agent’s seal.

Opening of postal voters box

(1) Each postal voters box must be opened by the counting officer in the presence of any postal ballot agents who are present.

(2) So long as the counting officer ensures that there is at least one sealed postal voters box for the reception of covering envelopes up to the time of the close of the poll, the other postal voters boxes may be opened by the counting officer.

(3) The last postal voters box and the postal ballot box must be opened at the counting of the votes under rule 30 of the conduct rules.
Opening of covering envelopes

33 (1) When a postal voters box is opened, the counting officer must count and record the number of covering envelopes (including any envelope which is stated to include a postal vote and any envelope described in paragraph 31(2)).

(2) The counting officer must set aside for personal identifier verification not less than 20 percent of the envelopes recorded on that occasion.

(3) The counting officer must open separately each covering envelope that is not set aside (including an envelope described in paragraph 31(2)).

(4) The procedure in paragraph 35 or 36 applies where a covering envelope (including an envelope to which paragraph 31(2) applies) contains both—

(a) a postal voting statement, and

(b) a ballot paper envelope, or if there is no ballot paper envelope, a ballot paper.

(5) Where the covering envelope does not contain the postal voting statement separately, the counting officer must open the ballot paper envelope to ascertain whether the postal voting statement is inside.

(6) Where a covering envelope does not contain both—

(a) a postal voting statement (whether separately or not), and

(b) a ballot paper envelope or, if there is no ballot paper envelope, a ballot paper,

the counting officer must mark the covering envelope “provisionally rejected”, attach its contents (if any) and place it in the receptacle for rejected votes.

(7) Where—

(a) an envelope contains the postal voting statement of a voter with an anonymous entry, and

(b) sub-paragraph (6) does not apply,

the counting officer must set aside that envelope and its contents for personal identifier verification in accordance with paragraph 36.

(8) In carrying out the procedures in this paragraph and paragraphs 35 to 41, the counting officer—

(a) must keep the ballot papers face downwards and must take proper precautions for preventing any person from seeing the votes made on the ballot papers, and

(b) must not be permitted to view the corresponding number list used at the issue of postal ballot papers.

(9) Where an envelope opened in accordance with sub-paragraph (3) contains a postal voting statement, the counting officer must place a mark in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned.

(10) A mark made under sub-paragraph (9) must be distinguishable from and must not obscure the mark made under paragraph 22(2).
(11) As soon as practicable after the last covering envelope has been opened, the counting officer must make up into a packet the copy of the marked postal voters list and proxy postal voters list that have been marked in accordance with sub-paragraph (9) and must seal that packet.

Confirmation of receipt of postal voting statement

34 (1) A voter or a voter’s proxy who is shown in the postal voters list or proxy postal voters list may make a request, at any time between the first issue of postal ballots under paragraph 22 and the close of the poll, that the counting officer confirm—

(a) whether a mark is shown in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned, and

(b) whether the number of the ballot paper issued to the voter or the voter’s proxy has been recorded on either of the lists of provisionally rejected postal ballot papers kept by the counting officer under sub-paragraphs (2) and (3) of paragraph 40.

(2) Where a request is received in accordance with sub-paragraph (1) the counting officer must, if satisfied that the request has been made by the voter or the voter’s proxy, provide confirmation of the matters mentioned in sub-paragraph (1).

Procedure in relation to postal voting statements

35 (1) This paragraph applies to any postal voting statement contained in an envelope that has not been set aside for personal identifier verification in accordance with paragraph 33(2) or (7).

(2) The counting officer must determine whether the postal voting statement is duly completed.

(3) Where the counting officer determines that the postal voting statement is not duly completed, the counting officer must mark the statement “rejected”, attach to it the ballot paper envelope, or if there is no such envelope, the ballot paper, and, subject to sub-paragraph (4), place it in the receptacle for rejected votes.

(4) Before placing the statement in the receptacle for rejected votes, the counting officer must—

(a) show it to the postal ballot agents, and

(b) if any agent objects to the counting officer’s decision, add the words “rejection objected to”.

(5) The counting officer must then examine the number on the postal voting statement against the number on the ballot paper envelope and, where they are the same, must place the statement and the ballot paper envelope respectively in the receptacle for postal voting statements and the receptacle for ballot paper envelopes.

(6) Where—

(a) the number on a valid postal voting statement is not the same as the number on the ballot paper envelope, or

(b) that envelope has no number on it,

the counting officer must open the envelope.
(7) Sub-paragraph (8) applies where—
   (a) there is a valid postal voting statement but no ballot paper envelope, or
   (b) the ballot paper envelope has been opened under paragraph 33(5) or sub-
   paragraph (6).

(8) The counting officer must place—
   (a) in the postal ballot box, any postal ballot paper the number on which is the same
   as the number on the valid postal voting statement,
   (b) in the receptacle for rejected votes, any other postal ballot paper, with the valid
   postal voting statement attached and marked “provisionally rejected”,
   (c) in the receptacle for rejected votes, any valid postal voting statement marked
   “provisionally rejected” where there is no postal ballot paper, and
   (d) in the receptacle for postal voting statements, any valid statement not disposed of
   under sub-paragraph (b) or (c).

Procedure in relation to postal voting statements: personal identifier verification

36 (1) This paragraph applies to any postal voting statement contained in an envelope that has
been set aside for personal identifier verification in accordance with paragraph 33(2) or
(7).

(2) The counting officer must open the envelope and determine whether the postal voting
statement is duly completed and, as part of that process, must compare the date of birth
and the signature on the postal voting statement against the date of birth and the
signature contained in the personal identifiers record relating to the person to whom the
postal ballot paper was addressed.

(3) Where the counting officer determines that the statement is not duly completed, the
counting officer must mark the statement “rejected”, attach it to the ballot paper
envelope, or if there is no such envelope, the ballot paper, and, subject to sub-paragraph
(4), place it in the receptacle for rejected votes (verification procedure).

(4) Before placing a postal voting statement in the receptacle for rejected votes (verification
procedure), the counting officer must—
   (a) show it to the postal ballot agents,
   (b) permit the agents to view the entries in the personal identifiers record relating to
   the person to whom the postal ballot paper was addressed, and
   (c) if any agent objects to the counting officer’s decision, add the words “rejection
   objected to”.

(5) The counting officer must then examine the number on the postal voting statement
against the number on the ballot paper envelope and, where they are the same, the
counting officer must place the statement and the ballot paper envelope respectively in
the receptacle for postal voting statements (verification procedure) and the receptacle for
ballot paper envelopes.

(6) Where—
   (a) the number on a valid postal voting statement is not the same as the number on the
ballot paper envelope, or
(b) that envelope has no number on it,
the counting officer must open the envelope.

(7) Sub-paragraph (8) applies where—
(a) there is a valid postal voting statement but no ballot paper envelope, or
(b) the ballot paper envelope has been opened under paragraph 33(5) or sub-
paragraph (6).

(8) The counting officer must place—
(a) in the postal ballot box, any postal ballot paper the number on which is the same
as the number on the valid postal voting statement,
(b) in the receptacle for rejected votes (verification procedure), any other ballot paper,
with the valid postal voting statement attached and marked “provisionally
rejected”,
(c) in the receptacle for rejected votes (verification procedure), any valid postal
voting statement marked “provisionally rejected” where there is no postal ballot
paper, and
(d) in the receptacle for postal voting statements (verification procedure), any valid
statement not disposed of under sub-paragraph (b) or (c).

Postal voting statements: additional personal identifier verification

37 (1) A counting officer may on any occasion on which a postal voters box is opened in
accordance with paragraph 32 undertake verification of the personal identifiers on any
postal voting statement that has on a prior occasion been placed in the receptacle for
postal voting statements.

(2) Where a counting officer undertakes additional verification of personal identifiers, the
officer must—
(a) remove as many postal voting statements from the receptacle for postal voting
statements as the officer wishes to subject to additional verification, and
(b) compare the date of birth and the signature on each such postal voting statement
against the date of birth and the signature contained in the personal identifiers
record relating to the person to whom the postal ballot paper was addressed.

(3) Where the counting officer is no longer satisfied that the postal voting statement has
been duly completed, the officer must mark the statement “rejected” and, before placing
the postal voting statement in the receptacle for rejected votes (verification procedure),
must—
(a) show it to the postal ballot agents and permit them to view the entries in the
personal identifiers record which relate to the person to whom the postal ballot
paper was addressed, and, if any agent objects to the counting officer’s decision,
add the words “rejection objected to”,
(b) open any postal ballot box and retrieve the ballot paper corresponding to the ballot
paper number on the postal voting statement,
(c) show the ballot paper number on the retrieved ballot paper to the agents, and
(d) attach the ballot paper to the postal voting statement.
(4) Following the removal of a postal ballot paper from a postal ballot box the counting officer must lock and reseal the postal ballot box in the presence of the postal ballot agents.

(5) Whilst retrieving a ballot paper in accordance with sub-paragraph (3), the counting officer and the counting officer’s staff—

(a) must keep the ballot papers face downwards and take proper precautions for preventing any person from seeing the votes made on the ballot papers, and

(b) must not look at the corresponding number list used at the issue of postal ballot papers.

Opening of ballot paper envelopes

38 (1) The counting officer must open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

(2) The counting officer must place—

(a) in the postal ballot box, any postal ballot paper the number on which is the same as the number on the ballot paper envelope,

(b) in the receptacle for rejected votes, any other postal ballot paper, which is to be marked “provisionally rejected” and to which is to be attached the ballot paper envelope, and

(c) in the receptacle for rejected ballot paper envelopes, any ballot paper envelope which is to be marked “provisionally rejected” because it does not contain a postal ballot paper.

Retrieval of cancelled postal ballot papers

39 (1) Where it appears to the counting officer that a cancelled postal ballot paper has been placed—

(a) in a postal voters box,

(b) in the receptacle for ballot paper envelopes, or

(c) in a postal ballot box,

the counting officer must proceed as set out in sub-paragraphs (2) and (3).

(2) The counting officer must on the next occasion on which a postal voters box is opened in accordance with paragraph 32, also open any postal ballot box and the receptacle for ballot paper envelopes and—

(a) retrieve the cancelled postal ballot paper,

(b) show the ballot paper number on the cancelled postal ballot paper to the postal ballot agents,

(c) retrieve the postal voting statement that relates to a cancelled paper from the receptacle for postal voting statements,

(d) attach any cancelled postal ballot paper to the postal voting statement to which it relates,
(c) place the cancelled documents in a separate packet and deal with that packet in the manner provided for in paragraph 27(7), and

(f) unless the postal ballot box has been opened for the purposes of the counting of votes under rule 30 of the conduct rules, seal the postal ballot box in the presence of the agents.

(3) Whilst retrieving a cancelled postal ballot paper in accordance with sub-paragraph (2), the counting officer and the counting officer’s staff—

(a) must keep the ballot papers face downwards and take proper precautions for preventing any person from seeing the votes made on the ballot papers, and

(b) must not look at the corresponding number list used at the issue of postal ballot papers.

**Lists of provisionally rejected postal ballot papers**

40 (1) The counting officer must keep two separate lists of provisionally rejected postal ballot papers.

(2) In the first list, the counting officer must record the ballot paper number of any postal ballot paper for which no valid postal voting statement was received with it.

(3) In the second list, the counting officer must record the ballot paper number of any postal ballot paper which is entered on a valid postal voting statement where that postal ballot paper is not received with the postal voting statement.

**Checking of lists kept under paragraph 40**

41 (1) Where the counting officer receives a valid postal voting statement without the postal ballot paper to which it relates, the counting officer may, at any time prior to the close of the poll, check the list kept under paragraph 40(2) to see whether the number of any postal ballot paper to which the statement relates is entered in the list.

(2) Where the counting officer receives a postal ballot paper without the postal voting statement to which it relates, the counting officer may, at any time prior to the close of the poll, check the list kept under paragraph 40(3) to see whether the number of the postal ballot paper is entered in the list.

(3) The counting officer must conduct the checks required by sub-paragraphs (1) and (2) as soon as practicable after the receipt, under rule 28(1)(c) of the conduct rules, of packets from every polling station in the local government area.

(4) Where the ballot paper number in the list matches that number on a valid postal voting statement or (as the case may be) the postal ballot paper, the counting officer must retrieve that statement or paper.

(5) The counting officer must then take the appropriate steps under this Part of this schedule as though any document earlier marked “provisionally rejected” had not been so marked and must amend the document accordingly.

**Sealing of receptacles**

42 (1) As soon as practicable after the completion of the procedure under paragraph 41(3) and (4), the counting officer must make up into separate packets the contents of—
(a) the receptacle for rejected votes,
(b) the receptacle for postal voting statements,
(c) the receptacle for rejected ballot paper envelopes,
(d) the lists of spoilt, lost and superseded postal ballot papers,
(e) the receptacle for rejected votes (verification procedure), and
(f) the receptacle for postal voting statements (verification procedure),
and must seal up such packets.

(2) Any document in those packets marked “provisionally rejected” is to be deemed to be marked “rejected”.

10 Forwarding of documents

43 (1) The counting officer must, at the same time as sending the documents mentioned in rule 37 of the conduct rules, send to the proper officer—

(a) any packets referred to in paragraphs 25, 27(7), 28(6), 33(11) and 42, endorsing on each packet a description of its contents and the date of the referendum, and
(b) a completed statement giving details of postal ballot papers issued, received, counted and rejected in the form prescribed.

(2) Where—

(a) any covering envelopes are received by the counting officer after the close of the poll (apart from those delivered in accordance with the provisions of rule 28 of the conduct rules),
(b) any envelopes addressed to postal voters are returned as undelivered too late to be re-addressed, or
(c) any spoilt postal ballot papers are returned too late to enable other postal ballot papers to be issued,
the counting officer must put them unopened in a separate packet, seal up that packet and endorse and send it at a subsequent date in the manner described in sub-paragraph (1).

(3) Rules 38 and 40 of the conduct rules apply to any packet or document sent under this paragraph as they apply for the purposes of the documents referred to in those rules.

(4) A copy of the statement referred to in sub-paragraph (1)(b) is to be provided by the counting officer to the Electoral Commission.

Power of Chief Counting Officer to prescribe

44 (1) In paragraphs 9(2) and 43(1)(b), “prescribed” means prescribed by the Chief Counting Officer.

(2) Where a form is prescribed under sub-paragraph (1), the form may be used with such variations as the circumstances may require.
Interpretation of Part

45 In this Part—

“postal ballot paper” means a ballot paper issued to a postal voter,
“postal voter” means a voter or a voter’s proxy who is entitled to vote by post.

PART 4

SUPPLY OF POLLING LIST ETC.

Supply of free copy of Polling List etc. to counting officers

46 (1) Each registration officer must, at the request of the relevant counting officer, supply free of charge to the counting officer as many printed copies of—

(a) the latest version of the Polling List,
(b) any notice setting out an alteration to the register of electors issued under—
   (i) section 13A(2) of the 1983 Act,
   (ii) section 13B(3), (3B) or (3D) of that Act, or
   (iii) section 13BB(4) or (5) of that Act, and
(c) any record of anonymous entries,
as the counting officer may reasonably require for the purposes of the referendum.

(2) Each registration officer must, as soon as practicable, supply free of charge to the relevant counting officer as many printed copies of—

(a) the postal voters list,
(b) the list of proxies, and
(c) the proxy postal voters list,
as the counting officer may reasonably require for the purposes of the referendum.

(3) If, after supplying copies of the Polling List and notices in accordance with sub-paragraph (1), any further notices of the kind referred to in paragraph (b) of that sub-paragraph are issued by a registration officer, the registration officer must, as soon as reasonably practicable after issuing the notices, supply the relevant counting officer with as many printed copies as the counting officer may reasonably require for the purposes of the referendum.

(4) The duty under sub-paragraph (1) to supply as many printed copies of the Polling List and notices as the counting officer may reasonably require includes a duty to supply one copy in data form.

(5) No person to whom a copy of a document has been supplied under this paragraph may, except for the purposes of the referendum—

(a) supply a copy of the document,
(b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or
(c) make use of any such information.
Supply of free copy of Polling List etc. to Electoral Commission

47 (1) Each registration officer must supply free of charge to the Electoral Commission one copy of—

(a) the Polling List,

(b) any notice setting out an alteration of the register of electors issued under—

(i) section 13A(2) of the 1983 Act,

(ii) section 13B(3), (3B) or (3D) of that Act, or

(iii) section 13BB(4) or (5) of that Act,

(c) the postal voters list,

(d) the list of proxies, and

(e) the proxy postal voters list.

(2) The duty to supply under sub-paragraph (1) is a duty to supply in data form unless the Commission have, prior to the supply, requested in writing a printed copy instead.

(3) Neither an Electoral Commissioner nor any person employed by the Commission may—

(a) supply a copy of any document supplied under sub-paragraph (1) otherwise than to another Electoral Commissioner or another such person,

(b) disclose any information contained in any such document otherwise than in accordance with sub-paragraph (5) below,

(c) make use of any such information otherwise than in connection with the Commissioner’s or the person’s functions under, or by virtue of, this Act.

(4) In sub-paragraph (3), “Electoral Commissioner” includes a Deputy Electoral Commissioner and an Assistant Electoral Commissioner.

(5) A document supplied under sub-paragraph (1), or any information contained in it, may not be disclosed otherwise than—

(a) where necessary to carry out the Commission’s functions under this Act in relation to permissible donors,

(b) by publishing information about voters which does not include the name or address of any voter.

Supply of free copy of edited Polling List etc. to designated organisations

48 (1) If a designated organisation so requests, the registration officer must supply free of charge to the organisation one copy of an edited version of—

(a) the Polling List,

(b) any notice setting out an alteration of the register of electors issued under—

(i) section 13A(2) of the 1983 Act,

(ii) section 13B(3), (3B) or (3D) of that Act, or

(iii) section 13BB(4) or (5) of that Act,

(c) the postal voters list,
(d) the list of proxies, and
  (e) the proxy postal voters list.

(2) For the purposes of this paragraph, an “edited version” of a document is a version of the document with—
  (a) all voter numbers removed, and
  (b) all anonymous entries removed.

(3) A request under sub-paragraph (1) must—
  (a) be made in writing,
  (b) specify the documents requested,
  (c) state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any further documents issued, and
  (d) state whether a printed copy of any of the documents is requested instead of a version in data form.

(4) Unless a request has been made in advance of supply under sub-paragraph (3)(d), the copy of a document supplied under sub-paragraph (1) is to be in data form.

(5) No person employed by, or assisting (whether or not for reward) a designated organisation to which a document has been supplied under this paragraph may, except for a purpose set out in sub-paragraph (6)—
  (a) supply a copy of the document to any person,
  (b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or
  (c) make use of any such information.

(6) The purposes are—
  (a) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the organisation under paragraph 2 of schedule 4, and
  (b) the purposes of complying with the controls on donations and regulated transactions in that schedule.

Supply of free copy of register of local government electors etc. to permitted participants

49 (1) If a permitted participant so requests, the registration officer must supply free of charge to the participant one copy of—
  (a) the full, latest version of the register of local government electors published under section 13(1) or (3) of the 1983 Act,
  (b) any notice setting out an alteration of that version of the register issued under—
      (i) section 13A(2) of the 1983 Act,
      (ii) section 13B(3), (3B) or (3D) of that Act, or
      (iii) section 13BB(4) or (5) of that Act,
(c) the postal voters list kept by the officer under paragraph 5(2) of Schedule 4 (absent voting at parliamentary and local government elections) to the Representation of the People Act 2000,

(d) the list of proxies kept by the officer under paragraph 5(3) of that Schedule, and

(e) the proxy postal voters list kept by the officer under paragraph 7(8) of that Schedule.

(2) A request under sub-paragraph (1) must—

(a) be made in writing,

(b) specify the documents requested,

(c) state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any further documents issued, and

(d) state whether a printed copy of any of the documents is requested instead of a version in data form.

(3) Unless a request has been made in advance of supply under sub-paragraph (2)(d), the copy of a document supplied under sub-paragraph (1) is to be in data form.

(4) No person employed by, or assisting (whether or not for reward) a permitted participant to which a document has been supplied under this paragraph may, except for a purpose set out in sub-paragraph (5)—

(a) supply a copy of the document to any person,

(b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or

(c) make use of any such information.

(5) The purposes are—

(a) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the permitted participant under paragraph 2 of schedule 4, and

(b) the purposes of complying with the controls on donations and regulated transactions in that schedule.

Supply of data

50 A duty of a registration officer to supply data under this Part of this schedule is a duty only to supply the data in the form in which the officer holds it.

General restriction on use of registration documents and information contained in them

51 (1) This paragraph applies to—

(a) any person to whom a copy of a registration document is supplied under any enactment other than paragraphs 46 to 49,

(b) any person to whom information contained in a registration document has been disclosed,

(c) any person to whom a person referred to in paragraph (a) or (b) has supplied a copy of a registration document or information contained in it, and
(d) any person who has obtained access to a copy of a registration document or information contained in it by any other means.

(2) No person to whom this paragraph applies may, except for the purposes of the referendum—

(a) supply a copy of a registration document,

(b) disclose any information contained in a registration document (that is not also contained in the edited version of the register of local government electors), or

(c) make use of any such information.

(3) In this paragraph, “registration document” means a document referred to in paragraphs 46(1) and (2) and 48(1).

Offence in relation to disclosure of registration documents

52 (1) A person (“A”) commits an offence—

(a) if A contravenes any of paragraphs 17(5), 46(5), 47(3) or (5), 48(5), 49(4) or 51(2), or

(b) if A is an appropriate supervisor of another person (“B”) who contravenes any of those paragraphs and A failed to take appropriate steps.

(2) B does not commit an offence under sub-paragraph (1) if—

(a) B has an appropriate supervisor, and

(b) B complied with all the requirements imposed on B by the appropriate supervisor.

(3) A does not commit an offence under sub-paragraph (1) if—

(a) A is not, and does not have, an appropriate supervisor, and

(b) A took all reasonable steps to ensure that A did not contravene a provision specified in sub-paragraph (1)(a).

(4) In this paragraph—

“appropriate supervisor” means a person who is a director of a company, or concerned in the management of an organisation, in which B is employed or under whose direction or control B is,

“appropriate steps” are such steps as it was reasonable for the appropriate supervisor to take to secure the operation of procedures designed to prevent, so far as reasonably practicable, any contravention of a provision specified in sub-paragraph (1)(a).

(5) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Destruction of copies of the Polling List etc.

53 (1) This paragraph applies to any person holding a copy of a document supplied under paragraph 46(1) or (2), 48(1) or 49(1).

(2) The person must ensure that the document is securely destroyed no later than one year after the date of the referendum, unless otherwise directed by an order of the Court of Session or a sheriff principal.
A person who fails to comply with sub-paragraph (2) commits an offence.

A person who commits an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 5

Supply of marked Polling List etc. to designated organisations

54 (1) A designated organisation may request that a counting officer supply the organisation with copies of—

(a) the marked copy of the Polling List,

(b) the marked copy of any notice setting out an alteration of the register of electors issued under—

(i) section 13B(3B) or (3D) of the 1983 Act, or

(ii) section 13BB(4) of that Act,

(c) the marked copy of the postal voters list,

(d) the marked copy of the list of proxies, and

(e) the marked copy of proxy postal voters list.

(2) A request under sub-paragraph (1) must—

(a) be made in writing,

(b) specify the documents requested,

(c) state whether a printed copy of the documents is requested or a copy in data form, and

(d) state the purposes for which the documents will be used and why the supply of the unmarked copies of the documents would not be sufficient to achieve those purposes.

(3) Where a request is duly made by a designated organisation under sub-paragraph (1), the counting officer must supply the documents requested if—

(a) the officer is satisfied that the organisation needs to see the marks on the marked copies of the documents in order to achieve the purpose for which they are requested, and

(b) the officer has received payment of a fee calculated in accordance with paragraph 55.

(4) A designated organisation that obtains a copy of any document referred to in sub-paragraph (1) may use it—

(a) only for—

(i) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the organisation under paragraph 2 of schedule 4, or

(ii) the purposes of complying with the controls on donations and regulated transactions in that schedule, and
(b) subject to any conditions that would apply to the use of the unmarked copies of the documents by virtue of paragraph 48.

(5) Where a person (“A”) has been supplied with a copy of a document referred to in sub-paragraph (1), or information contained in such a document, by a person (“B”) to whom paragraph 48(5) applies, the restrictions in that paragraph also apply to A as they apply to B.

(6) A designated organisation may—

(a) supply a copy of a document referred to in sub-paragraph (1) to a processor for the purpose of processing the information contained in it, or

(b) procure that a processor processes and supplies to the organisation any copy of the information in such a document that the processor has obtained under this paragraph, for use in respect of the purposes for which the designated organisation is entitled to obtain such document or information.

(7) A duty of a counting officer to supply data under this paragraph is a duty only to supply the data in the form in which the officer holds it.

(8) Paragraph 53 applies to a person holding a copy of a document supplied under this paragraph as it applies to a person holding a copy of any registration document (and the reference in paragraph 53(2) to the document is to be construed accordingly).

(9) In sub-paragraph (6) “processor” means a person who provides a service which consists of putting information into data form and includes an employee of such a person.

(10) In this Act, “marked copy” means—

(a) in relation to the Polling List, the copy marked as mentioned in rule 21(2)(c) of the conduct rules,

(b) in relation to a notice issued under section 13B(3B) or (3D) or 13BB(4), the copy marked as mentioned in that rule as modified by rule 21(4),

(c) in relation to the list of proxies, the copy marked as mentioned in rule 21(2)(d),

(d) in relation to the postal voters list or proxy postal voters list, the copy marked as mentioned in paragraph 22(2) of this schedule.

Fee for supply of marked Polling List etc.

55 (1) The fee to be paid in accordance with sub-paragraph (3)(b) of paragraph 54 by a designated organisation requesting the supply of a document referred to in sub-paragraph (1) of that paragraph is set out in sub-paragraph (2).

(2) The fee is £10 plus—

(a) for a copy in printed form, £2 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request,

(b) for a copy in data form, £1 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request.

(3) For the purposes of this paragraph, a request for a copy of the whole or the same part of a document in both printed and data form may be treated as two separate requests.
SCHEDULE 3

(introduced by section 9)

CONDUCT RULES

Publication of notice of the referendum

5

1 (1) The counting officer must publish notice of the referendum not later than the twenty-fifth day before the date of the referendum.

(2) For the purposes of paragraph (1), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

30

2 (4) The notice must also state the day by which—

(a) applications to register to vote,

(b) applications to vote by post or by proxy,

(c) other applications and notices about postal or proxy voting,

must reach the registration officer in order that they may be effective for the referendum.

30

5 (5) As soon as practicable after publishing the notice under paragraph (1), the counting officer must give a copy of it to each of the referendum agents appointed for the area.

Hours of polling

2 The hours of polling are between 7am and 10pm.

3 The ballot

3 (1) The votes at the referendum are to be given by ballot.

(2) The ballot of every voter consists of a ballot paper.

(3) The ballot paper is to be of the prescribed colour.
Printing of ballot papers

4 The counting officer must arrange for the printing of the ballot papers for the counting officer’s area unless the Chief Counting Officer takes responsibility for doing so.

The corresponding number list

5 (1) The counting officer must prepare a list (the “corresponding number list”) which complies with paragraph (2).

(2) The corresponding number list must—
(a) contain the unique identifying numbers of all ballot papers to be issued in accordance with rule 8(1) or provided in accordance with rule 13(1), and
(b) be in the form prescribed.

Security marking

6 (1) Every ballot paper must bear or contain—
(za) an official mark on the front of the ballot paper, and
(a) a unique identifying number on the back of the ballot paper.

15 (2) The counting officer may use a different official mark for ballot papers issued for the purpose of voting by post from the official mark used for ballot papers issued for the purpose of voting in person.

(3) The counting officer may use a different official mark for different purposes.

(4) The official mark must be kept secret.

Use of schools and public rooms for polling and counting votes

7 (1) The counting officer may use, free of charge, for the purpose of taking the poll or counting the votes—
(a) a suitable room in the premises of a school to which this rule applies in accordance with paragraph (2), and
(b) any meeting room to which this rule applies in accordance with paragraph (3).

25 (2) This rule applies to any school maintained by an education authority.

(3) This rule applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—
(a) the Scottish Ministers or any other part of the Scottish Administration, or
(b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

30 (4) The counting officer—
(a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and restoring the room to its usual condition after use for the referendum, and
(b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises by reason of its being used for the purposes of taking the poll or counting the votes.

(5) For the purposes of this rule (except those of paragraph (4)(b)), the premises of a school are not to be taken to include any private dwelling.

(6) In this rule—

“dwelling” includes any part of a building where that part is occupied separately as a dwelling,

“meeting room” means any room which it is the practice to let for public meetings, and

“room” includes a hall, gallery or gymnasium.

Postal ballot papers

8 (1) The counting officer must issue to those entitled to vote by post—

(a) a ballot paper,
(b) a postal voting statement in the form prescribed, and
(c) an envelope for their return.

(2) The counting officer must also, as soon as reasonably practicable, issue to those entitled to vote by post information about how to obtain—

(a) translations into languages other than English of any directions to or guidance for voters sent with the ballot paper,
(b) a translation into Braille of such directions or guidance,
(c) a graphical representation of such directions or guidance, and
(d) the directions or guidance in any other form (including in audible form).

Provision of polling stations

9 (1) The counting officer must—

(a) provide a sufficient number of polling stations, and
(b) allot the voters to the polling stations.

(2) One or more polling stations may be provided in the same room.

(3) The counting officer must provide each polling station with such number of compartments as may be necessary in which the voters can mark their votes screened from observation.

Appointment of presiding officers and clerks

10 (1) The counting officer must appoint and pay—

(a) a presiding officer to attend at each polling station, and
(b) such clerks as may be necessary for the purposes of the referendum.

(2) The counting officer may not appoint any person who is or has been involved in campaigning for a particular outcome in the referendum.
(3) The counting officer may preside at a polling station and the provisions of these rules relating to a presiding officer apply to a counting officer who so presides with the necessary modifications as to things done by the counting officer to the presiding officer or by the presiding officer to the counting officer.

(4) A presiding officer may authorise a clerk appointed under paragraph (1)(b) to do any act which the presiding officer is required or authorised by these rules to do at a polling station, except ordering the removal and exclusion of any person from the polling station.

Issue of poll cards

(1) The counting officer must, as soon as reasonably practicable after publishing the notice of the referendum under rule 1, send to voters whichever of the following is appropriate—

(a) an official poll card,

(b) an official postal poll card,

(c) an official poll card issued to the proxy of a voter, or

(d) an official postal poll card issued to the proxy of a voter.

(2) A voter’s official poll card is to be sent or delivered to the voter’s qualifying address.

(3) A voter’s official postal poll card is to be sent or delivered to the address to which the voter has stated that the ballot paper is to be sent.

(4) A proxy’s official poll card or official postal poll card is to be sent or delivered to the proxy’s address as shown in the list of proxies.

(5) The cards mentioned in paragraph (1) are to be in the form prescribed.

(6) The cards must set out—

(a) the voter’s name, qualifying address and number in the Polling List (unless the voter has an anonymous entry),

(b) the date of the referendum,

(c) the hours of polling, and

(d) the situation of the polling station allotted to the voter under rule 9(1)(b) (in the case of the cards mentioned in paragraph (1)(a) and (c)).

(7) Where a poll card is sent to a voter who has appointed a proxy, the card must also notify the voter of the appointment of the proxy.

(8) In the case of a voter who has an anonymous entry, the card must be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry.

Loan of equipment for referendum

(1) A council must, if requested to do so by a counting officer, loan to the counting officer any ballot boxes, fittings and compartments provided by or belonging to the council.

(2) Paragraph (1) does not apply if the council requires the equipment for immediate use by that council.
(3) A loan under paragraph (1) is to be on such terms and conditions as the council and the counting officer may agree.

**Equipment of polling stations**

13 (1) The counting officer must provide each presiding officer with such number of ballot boxes and ballot papers as the counting officer considers necessary.

(2) Each ballot box is to be constructed so that the ballot papers can be put in, but cannot be withdrawn from it, without the box being opened.

(3) The counting officer must provide each polling station with—

(a) materials to enable voters to mark the ballot papers,

(b) copies of the Polling List or such part of it as contains the entries relating to the voters allotted to the station,

(c) the parts of any lists of persons entitled to vote by post or by proxy prepared for the referendum corresponding to the Polling List or the part of it provided under sub-paragraph (b),

(d) copies of forms of declarations and other documents required for the purpose of the poll, and

(e) the part of the corresponding number list which contains the numbers corresponding to those on the ballot papers provided to the presiding officer of the polling station.

(4) The reference in paragraph (3)(b) to the copies of the Polling List includes a reference to copies of any notices issued under section 13B(3B) or (3D) or 13BB(4) or (5) of the 1983 Act in respect of alterations to the register of electors.

(5) A notice giving directions for the guidance of voters in voting is to be displayed—

(a) inside and outside every polling station, and

(b) in every compartment of every polling station.

(6) The notice under paragraph (5) is to be in the form prescribed.

(7) The counting officer must also provide each polling station with—

(a) an enlarged hand-held sample copy of the ballot paper for the assistance of voters who are partially-sighted, and

(b) a device for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion.

(8) The counting officer may cause to be displayed at every polling station an enlarged sample copy of the ballot paper and may include a translation of it into such other languages as the counting officer considers appropriate.

(9) The sample copy mentioned in paragraphs (7)(a) and (8) must be clearly marked as a specimen provided only for the guidance of voters in voting.

**Appointment of polling and counting agents**

14 (1) A referendum agent may appoint—

(a) polling agents to attend at polling stations for the purpose of detecting personation,
(b) counting agents to attend at the counting of the votes.

(2) The counting officer may limit the number of counting agents that may be appointed, so long as—

(a) the number that may be appointed by each referendum agent is the same, and

(b) the number that may be appointed by each referendum agent is not less than the number obtained by dividing the number of clerks employed on the counting by the number of referendum agents.

(3) For the purposes of paragraph (2)(b), a counting agent appointed by more than one referendum agent is to be treated as a separate agent for each of them.

(4) A referendum agent who appoints a polling or counting agent must give the counting officer notice of the appointment no later than the fifth day before the date of the referendum.

(5) For the purposes of paragraph (4), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

(6) If a polling agent or counting agent dies or becomes unable to perform the agent’s functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.

(7) A notice under paragraph (4) or (6)—

(a) must be given in writing,

(b) must give the name and address of the person appointed,

(c) in the case of a polling agent, must set out which polling stations the agent may attend,

(d) in the case of a counting agent, must set out which counts the agent may attend.

(8) In schedule 2 and these conduct rules, references to polling agents and counting agents are to agents appointed under paragraph (1) or (6)—

(a) whose appointments have been duly made and notified, and

(b) where the number of agents is restricted, who are within the permitted numbers.

(9) Any notice required to be given to a counting agent by the counting officer may be delivered at, or sent by post to, the address stated in the notice under paragraph (4) or (6).

(10) A referendum agent may do (or assist in doing) anything that a polling or counting agent appointed by that referendum agent is authorised to do.

(11) Anything required or authorised by schedule 2 or these conduct rules to be done in the presence of polling or counting agents may be done instead in the presence of the referendum agent who appointed the polling or counting agents.
(12) Where in schedule 2 or these conduct rules anything is required or authorised to be done in the presence of polling or counting agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

5

Admission to polling station

15 (1) No person other than the presiding officer and the persons mentioned in paragraph (2) may attend a polling station.

(2) Those persons are—

(a) voters,
(b) persons under the age of 16 accompanying voters,
(c) the companions of voters with disabilities,
(d) the Member of Parliament for the constituency in which the polling station is situated,
(e) the member of the Scottish Parliament for the constituency in which the polling station is situated,
(f) members of the Scottish Parliament for the region in which the polling station is situated,
(g) members of the council for the electoral ward in which the polling station is situated,
(h) members of the European Parliament for the electoral region of Scotland,
(i) the clerks appointed to attend at the polling station,
(j) the Chief Counting Officer and members of the Chief Counting Officer’s staff,
(k) the counting officer and members of the counting officer’s staff,
(l) constables on duty,
(m) persons entitled to attend by virtue of section 17, 18 or 19,
(n) referendum agents,
(o) polling agents appointed to attend at the polling station, and
(p) any other person the presiding officer permits to attend.

(3) In paragraph (2)(g), “electoral ward” has the meaning given by section 1 of the Local Governance (Scotland) Act 2004.

(4) The presiding officer may regulate the total number of voters and persons under the age of 16 accompanying voters who may be admitted to the polling station at the same time.

(5) Not more than one polling agent is to be admitted at the same time to a polling station on behalf of the same permitted participant.

(6) A constable or a member of the counting officer’s staff may only be admitted to vote in person elsewhere than at the polling station allotted under rule 9(1)(b), in accordance with paragraph 1(5) of schedule 2, on production of a certificate which satisfies the requirements set out in paragraph (7).

(7) A certificate must—
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(a) be signed by—

(i) in the case of a constable, an officer of police of the rank of inspector or above, or

(ii) in the case of a member of the counting officer’s staff, the counting officer, and

5 (b) be in the form prescribed.

8 (8) A certificate produced under paragraph (6) must be immediately cancelled.

Notification of requirement of secrecy

16 (1) The counting officer must make such arrangements as are reasonably practicable to ensure that—

(a) every person attending at a polling station has been given a copy of the provisions of sub-paragraphs (1), (3), (5), (7), (8) and (9) of paragraph 7 of schedule 7,

(b) every person attending at the counting of the votes has been given a copy of sub-

paragraphs (4), (8) and (9) of that paragraph.

15 (2) Paragraph (1) does not require the provision of that information to—

(a) a person attending the polling station for the purpose of voting,

(b) a person under the age of 16 accompanying a voter,

(c) a companion of a voter with disabilities, or

(d) a constable on duty at a polling station or at the count.

Keeping of order in polling station

17 (1) The presiding officer must keep order at the polling station.

(2) If a person—

(a) obstructs the operation of the polling station,

(b) obstructs any voter in polling, or

25 (c) does anything else which the presiding officer considers may adversely affect proceedings at the polling station,

the presiding officer may order the person to be removed immediately from the polling station.

(3) A person may be removed—

30 (a) by a constable, or

(b) by the presiding officer.

(4) A person removed under paragraph (2) must not enter the polling station again during that day without the presiding officer’s permission.

(5) A person removed under paragraph (2) may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a constable for an offence without a warrant.
(6) The power to remove a person from the polling station is not to be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Sealing of ballot boxes

18 (1) Immediately before the commencement of the poll, the presiding officer must—

(a) show each ballot box proposed to be used for the purposes of the poll to such persons (if any) who are present in the polling station so that they may see that each box is empty,

(b) place the presiding officer’s seal on each box in such a manner as to prevent it being opened without breaking the seal, and

(c) place each box in the presiding officer’s view for the receipt of ballot papers.

(2) The presiding officer must ensure that each box remains sealed until the close of the poll.

Questions to be put to voters

19 (1) At the time a voter applies for a ballot paper (but not afterwards), the presiding officer—

(a) must put the questions mentioned in paragraph (2) to the voter if required to do so by a referendum agent or polling agent,

(b) may put the questions mentioned in paragraph (2) to the voter if the presiding officer considers it appropriate to do so.

(2) The questions referred to in paragraph (1) are—

<table>
<thead>
<tr>
<th>Type of person applying for ballot paper</th>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A person applying as a voter</td>
<td>(a)“Are you the person named in the Polling List as follows?” <em>(read the whole entry from the Polling List)</em></td>
</tr>
<tr>
<td></td>
<td>(b)“Have you already voted in this referendum otherwise than as proxy for some other person?”</td>
</tr>
<tr>
<td>2. A person applying as proxy</td>
<td>(a)“Are you the person whose name appears as A.B. in the list of proxies for this referendum as entitled to vote as proxy on behalf of C.D.?”</td>
</tr>
<tr>
<td></td>
<td>(b)“Have you already voted in this referendum as proxy on behalf of C.D.?”</td>
</tr>
<tr>
<td></td>
<td>(c)“Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of C.D.?”</td>
</tr>
<tr>
<td>3. A person applying as proxy for a voter with an anonymous entry (instead of the questions in entry 2)</td>
<td>(a)“Are you the person entitled to vote as proxy on behalf of the voter whose number on the Polling List is <em>(read out the number from the Polling List)</em>?”</td>
</tr>
<tr>
<td></td>
<td>(b)“Have you already voted in this referendum</td>
</tr>
<tr>
<td>Type of person applying for ballot paper</td>
<td>Questions</td>
</tr>
<tr>
<td>----------------------------------------</td>
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</tr>
<tr>
<td>as proxy on behalf of the voter whose number on the Polling List is <em>(read out the number from the Polling List)</em>?&quot;</td>
<td></td>
</tr>
<tr>
<td>as proxy on behalf of the voter whose number on the Polling List is <em>(read out the number from the Polling List)</em>?&quot;</td>
<td></td>
</tr>
<tr>
<td>Have you already voted in this referendum on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild?&quot;</td>
<td></td>
</tr>
<tr>
<td>Have you already voted in this referendum on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild?&quot;</td>
<td></td>
</tr>
<tr>
<td>Did you apply to vote by post?&quot;</td>
<td></td>
</tr>
<tr>
<td>Did you apply to vote by post as proxy?&quot;</td>
<td></td>
</tr>
<tr>
<td>(a) Did you apply to vote by post?&quot;</td>
<td></td>
</tr>
<tr>
<td>(a) Did you apply to vote by post as proxy?&quot;</td>
<td></td>
</tr>
<tr>
<td>(b) Why have you not voted by post?&quot;</td>
<td></td>
</tr>
<tr>
<td>(b) Why have you not voted by post as proxy?&quot;</td>
<td></td>
</tr>
</tbody>
</table>

(3) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, the reference in the question in entry 1(a) to reading from the Polling List is to be read as a reference to reading from the notice issued under that section.

(4) A ballot paper must not be delivered to any person required to answer a question under this rule unless the person answers the question satisfactorily.

(5) Except as authorised by this rule, no enquiry is permitted as to the right of any person to vote.

**Challenge of voter**

20 (1) A person is not to be prevented from voting by reason only that—

(a) a referendum agent or polling agent—

(i) has reasonable cause to believe that the person has committed an offence of personation, and

(ii) the agent makes a declaration to that effect, or

(b) the person is arrested on the grounds of being suspected of committing or of being about to commit such an offence.

(2) Paragraph (1) does not affect the person’s liability to any penalty for voting.

**Voting procedure**

21 (1) Subject to rule 19(4), a ballot paper must be delivered to a voter who applies for one.

(2) Immediately before delivering the ballot paper to the voter—
(a) the number and (unless paragraph (3) applies) name of the voter as stated in the Polling List is to be called out,

(b) the number of the voter is to be marked on the list mentioned in rule 13(3)(e) beside the number of the ballot paper to be delivered to the voter,

(c) a mark is to be placed in the Polling List against the number of the voter to note that a ballot paper has been received but without showing the particular ballot paper which has been received, and

(d) in the case of a person applying for a ballot paper as proxy, a mark is also to be placed against that person’s name in the list of proxies.

(3) In the case of a voter who has an anonymous entry, the voter’s official poll card must be shown to the presiding officer and only the voter’s number is to be called out in pursuance of paragraph (2)(a).

(4) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (2) is modified as follows—

(a) in sub-paragraph (a), for “Polling List” substitute “copy of the notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”,

(b) in sub-paragraph (c), for “in the Polling List” substitute “on the copy of the notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

(5) On receiving the ballot paper, the voter must without delay—

(a) proceed into a compartment in the polling station,

(b) there secretly mark the voter’s ballot paper,

(c) show the unique identifying number on the ballot paper to the presiding officer, and

(d) put the ballot paper into the ballot box in the presiding officer’s presence.

(6) Where—

(a) a voter attends the polling station before 10pm, and

(b) the voter is still waiting to vote at 10pm,

the presiding officer must permit the voter to vote without delay after 10pm and must close the poll immediately after the last such voter has voted.

(7) The voter must leave the polling station as soon as the voter has put the ballot paper into the ballot box.

Votes marked by presiding officer

(1) On the application of a voter—

(a) who is incapacitated by blindness or other disability from voting in the manner required by rule 21, or

(b) who declares orally an inability to read,

the presiding officer must, in the presence of any polling agents, cause the voter’s vote to be marked on a ballot paper in the manner directed by the voter and the ballot paper to be put into the ballot box.
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(2) The name and number in the Polling List of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, is to be entered on a list (the “marked votes list”) and in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.

(3) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (2) applies as if for “in the Polling List of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

Voting by persons with disabilities

23 (1) If a voter applies to the presiding officer to be allowed to vote with the assistance of another person by whom the voter is accompanied (the “companion”), on the ground of—

(a) blindness or other physical disability, or

(b) inability to read,

the presiding officer must require the voter to declare (orally or in writing) whether the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance.

(2) The presiding officer must grant the application if the presiding officer—

(a) is satisfied that the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance, and

(b) is also satisfied, by a declaration made by the companion (a “companion declaration”) which complies with paragraph (3), that the companion—

(i) meets the requirements set out in paragraph (3)(c)(i) or (ii), and

(ii) has not previously assisted more than one voter with disabilities to vote at the referendum.

(3) A companion declaration must—

(a) be in the form prescribed,

(b) be made before the presiding officer at the time when the voter applies to vote with the assistance of the companion, and

(c) state that the companion—

(i) is a person who is entitled to vote as a voter at the referendum, or

(ii) is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the voter with disabilities, and has attained the age of 16.

(4) The presiding officer must sign the companion declaration and keep it.

(5) No fee or other payment may be charged in respect of the declaration.

(6) A person is a “voter with disabilities” for the purposes of paragraph (2)(b)(ii) if the person has made a declaration mentioned in paragraph (1).

(7) Where an application is granted under paragraph (2), anything which is required by these rules to be done to or by the voter in connection with the giving of that voter’s vote may be done to, or by, or with the assistance of, the companion.
(8) The name and number in the Polling List of every voter whose vote is given in accordance with this rule and the name and address of the companion is to be entered on a list (the “assisted voters list”) and, in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.

(9) Where the voter being assisted by a companion has an anonymous entry, only the voter’s number in the Polling List is to be entered on the assisted voters list.

(10) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (8) applies as if for “in the Polling List of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

Tendered ballot papers

24 (1) Paragraph (6) applies if any of situations A to D exist.

(2) Situation A exists if a person, claiming to be—

(a) a particular voter named on the Polling List and not named in the postal voters list or the list of proxies, or

(b) a particular person named in the list of proxies as proxy for a voter and not entitled to vote by post as proxy,

applies for a ballot paper after another person has voted in person either as the voter or the voter’s proxy.

(3) Situation B exists if—

(a) a person applies for a ballot paper claiming that the person is a particular voter named on the Polling List,

(b) the person is also named in the postal voters list, and

(c) the person claims that—

(i) no application to vote by post in the referendum was made by that person, or

(ii) the person is not an existing postal voter within the meaning of paragraph 2(2) of schedule 2.

(4) Situation C exists if—

(a) a person applies for a ballot paper claiming that the person is a particular person named as a proxy in the list of proxies,

(b) the person is also named in the proxy postal voters list, and

(c) the person claims that—

(i) no application to vote by post as proxy was made by that person, or

(ii) the person is not an existing proxy to whom paragraph 6(4) of schedule 2 applies.

(5) Situation D exists if, before the close of the poll but after the last time at which a person may apply for a replacement postal ballot paper—

(a) a person claims that the person is—
(i) a particular voter named on the Polling List who is also named in the postal voters list, or

(ii) a particular person named as proxy in the list of proxies who is also named in the proxy postal voters list, and

(b) the person claims that the person has lost or has not received a postal ballot paper.

Where this paragraph applies, the person is entitled, on satisfactorily answering the questions permitted by rule 19 to be asked at the poll, to mark a tendered ballot paper in the same manner as any other voter.

A tendered ballot paper must—

(a) be of a prescribed colour differing from that of the ballot paper issued in accordance with rule 8(1) or provided in accordance with rule 13(1),

(b) instead of being put into the ballot box, be given to the presiding officer and endorsed by the presiding officer with the name of the voter and the voter’s number in the Polling List, and

(c) be set aside in a separate packet.

The name of the voter and the voter’s number in the Polling List is to be entered on a list (the “tendered votes list”).

In the case of a person voting as proxy for a voter, the number to be endorsed or entered is to be the voter’s number.

This rule applies to a voter who has an anonymous entry subject to the following modifications—

(a) in paragraphs (7)(b) and (8), the references to the voter’s name are to be ignored, and

(b) otherwise, a reference to a person named on the Polling List or other list is to be construed as a reference to a person whose number appears on the Polling List or other list (as the case may be).

This rule applies in the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act as if—

(a) in paragraphs (2)(a), (3)(a) or (5)(a)(i), for “named on the Polling List” there were substituted “in respect of whom a notice under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act has been issued”, and

(b) in paragraphs (7)(b) and (8), for “the voter’s number in the Polling List” there were substituted “the number relating to that person on a notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

**Spoilt ballot papers**

A voter who has inadvertently dealt with a ballot paper in such manner that it cannot be conveniently used as a ballot paper may—

(a) by returning it to the presiding officer, and

(b) proving to the presiding officer’s satisfaction the fact of the inadvertence,

obtain another ballot paper in the place of the returned ballot paper (the “spoilt ballot paper”).
(2) The spoilt ballot paper must be immediately cancelled.

Correction of errors on polling day

26 (1) The presiding officer must keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13B(3B) or (3D) or 13BB(4) of the 1983 Act which takes effect on the date of the referendum.

(2) The list kept under paragraph (1) is referred to as the “polling day alterations list”.

Adjournment of poll in case of riot

27 (1) Where the proceedings at any polling station are interrupted by riot or open violence, the presiding officer must—

(a) adjourn the proceedings until the following day, and

(b) inform the counting officer without delay.

(2) If the counting officer is informed under paragraph (1)(b), the counting officer must inform the Chief Counting Officer without delay.

(3) Where the poll is adjourned at any polling station—

(a) the hours of polling on the day to which it is adjourned are to be the same as for the original day, and

(b) references in these rules to the close of the poll are to be construed accordingly.

Procedure on close of poll

28 (1) As soon as reasonably practicable after the close of the poll, the presiding officer must—

(a) in the presence of any polling agents, seal each ballot box in use at the station so as to prevent the introduction of additional ballot papers,

(b) separate and make up into separate sealed packets the papers mentioned in paragraph (2), and

(c) deliver the sealed ballot boxes and packets (or arrange for them to be delivered) to the counting officer to be taken charge of by the counting officer.

(2) The papers referred to in paragraph (1) are—

(a) the unused and spoilt ballot papers (as a single packet),

(b) the tendered ballot papers,

(c) the marked copies of the Polling List (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and of the list of proxies (as a single packet),

(d) any certificates produced under rule 15(6),

(e) the corresponding number list completed in accordance with rule 21(2)(b) (the “completed corresponding number list”),

(f) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations list and the companion declarations (as a single packet),

(g) any postal ballot papers or postal voting statements returned to the station.
(3) The marked copies of the Polling List and of the list of proxies are to be in one packet but must not be in the same packet as the certificates mentioned in paragraph (2)(d) or the lists mentioned in paragraph (2)(e).

(4) The packets must be accompanied by a statement (the “ballot paper account”) made by the presiding officer, showing the number of ballot papers entrusted to the presiding officer and accounting for them under the following heads—

(a) ballot papers issued and not otherwise accounted for,
(b) unused ballot papers,
(c) spoilt ballot papers, and
(d) tendered ballot papers.

(5) If the sealed ballot boxes and packets are not delivered to the counting officer by the presiding officer personally, the arrangements for their delivery require the counting officer’s approval.

(6) In paragraph (1), references to “sealing” mean sealing using—

(a) the presiding officer’s seal, and
(b) the seals of any polling agents who wish to affix their own seals.

Attendance at counting of votes

29 (1) The counting officer must make arrangements for counting of the votes as soon as reasonably practicable after the close of the poll.

(2) The counting officer must give notice in writing to the Chief Counting Officer, each of the referendum agents appointed for the area and any counting agents appointed to attend at the count of the time and place at which the counting officer will begin to count the votes.

(3) The counting officer must take proper precautions for the security of the ballot boxes and packets in the period between taking charge of them and the beginning of the count.

(4) No person other than the persons mentioned in paragraph (5) may attend the counting of the votes.

(5) Those persons are—

(a) the Member of Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,
(b) the member of the Scottish Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,
(c) members of the Scottish Parliament for any region which contains all or part of the area in which the votes being counted have been cast,
(d) members of the council for any local government area which contains all or part of the area in which the votes being counted have been cast,
(e) members of the European Parliament for the electoral region of Scotland,
(f) the Chief Counting Officer and members of the Chief Counting Officer’s staff,
(g) a counting officer and members of a counting officer’s staff,
(h) constables on duty,
(i) persons entitled to attend by virtue of section 17,
(j) persons entitled to attend by virtue of section 18 or 19,
(k) referendum agents,
(l) counting agents appointed to attend at the count, and
(m) any other person the counting officer permits to attend.

(6) The counting officer may exclude persons from the counting of the votes if the counting officer considers that the efficient counting of the votes would be impeded.

(7) Paragraph (6) does not permit the counting officer to exclude the persons mentioned in paragraph (5)(f) or (i).

(8) The counting officer may limit the number of counting agents who are permitted to be present at the counting of the votes on behalf of a permitted participant, but the same limit is to apply to each permitted participant.

(9) The counting officer must give any counting agents such reasonable facilities for overseeing the proceedings and such information with respect to the proceedings as the counting officer can give consistently with the orderly conduct of the proceedings and the carrying out of the counting officer’s functions in connection with them.

(10) In particular, where the votes are counted by sorting the ballot papers according to the answer for which the vote is given and then counting the number of ballot papers for each answer, the counting agents are entitled to satisfy themselves that the ballot papers are correctly sorted.

The count

30 (1) The counting officer must—
(a) in the presence of the counting agents, open each ballot box and count and record the number of ballot papers in it, checking the number against the ballot paper account,
(b) verify each ballot paper account in the presence of any referendum agents, and
(c) count such of the postal ballot papers as have been duly returned and record the number counted.

(2) For the purposes of paragraph (1)(b), a counting officer must—
(a) verify the ballot paper account by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the counting officer’s possession and the tendered votes list (opening and resealing the packets containing the unused and spoilt ballot papers and the tendered votes list), and
(b) prepare a statement as to the result of the verification (the “verification statement”).

(3) Any counting agent present at the verification may copy the verification statement.

(4) For the purposes of paragraph (1)(c), a postal ballot paper is not to be considered as having been duly returned unless it—
(a) is returned—
(i) by hand to a polling station in the same local government area, or
(ii) by hand or post to the counting officer,
before the close of the poll, and
(b) is accompanied by a postal voting statement which—
   (i) is duly signed (unless the requirement for signature has been dispensed with in accordance with paragraph 7(5) of schedule 2), and
   (ii) states the date of birth of the voter or the voter’s proxy.

(5) The counting officer must not count the votes given on any ballot papers until—
(a) in the case of postal ballot papers, they have been mixed with ballot papers from at least one ballot box, and
(b) in the case of ballot papers from a ballot box, they have been mixed with ballot papers from at least one other ballot box.

(6) The counting officer must not count any tendered ballot paper.

(7) The counting officer must not count any postal ballot paper if, having taken steps to verify the signature and date of birth of the voter or the voter’s proxy, the counting officer is not satisfied that the postal voting statement has been properly completed.

(8) The counting officer, while counting and recording the number of ballot papers and counting the votes, must take all proper precautions for preventing any person from identifying the voter who cast the vote.

(9) The counting officer must, so far as reasonably practicable, proceed continuously with counting the votes, allowing only time for refreshment, but the counting officer may suspend counting between 7pm on any day following the date of the referendum and 9am on the following morning.

(10) During any period when counting is suspended, the counting officer must take proper precautions for the security of the papers.

Rejected ballot papers

31 (1) Any ballot paper to which paragraph (2) applies is void and is not to be counted, subject to paragraph (3).

(2) This paragraph applies to a ballot paper—
   (a) which does not bear the official mark,
   (b) which indicates a vote in favour of both answers to the referendum question,
   (c) on which anything is written or marked by which the voter can be identified (other than by the unique identifying number), or
   (d) which is unmarked or void for uncertainty.

(3) A ballot paper on which the vote is marked—
   (a) elsewhere than in the proper place,
   (b) otherwise than by means of a cross, or
   (c) by more than one mark,

is not for such reason to be considered to be void by reason only of indicating a vote by means of figures or words (or any other mark) instead of a cross if, in the counting officer’s opinion, the mark clearly indicates the voter’s intention.

(4) Paragraph (3) does not apply if—
(a) the way in which the ballot paper is marked identifies the voter, or
(b) it can be shown that the voter can be identified from it.

(5) The counting officer must—

(a) endorse the word “rejected” on any ballot paper which falls not to be counted
under this rule, and
(b) if any counting agent objects to the counting officer’s decision, add to the
endorsement the words “rejection objected to”.

(6) The counting officer must prepare a statement showing the number of ballot papers
rejected under each of sub-paragraphs (a) to (d) of paragraph (2).

Counting the votes

The counting officer must count the votes in favour of each answer to the referendum
question.

Decisions on ballot papers

The decision of the counting officer on any question arising in respect of a ballot paper
is subject to any judicial review in accordance with section 31.

Re-counts

(1) The counting officer may have the votes re-counted (or again re-counted) if the counting
officer considers it appropriate to do so.

(2) The Chief Counting Officer may require the counting officer to have the votes re-
counted (or again re-counted).

Declaration of result

(1) After making the certification under section 6(2)(b) (results for the counting officer’s
area), the counting officer must, without delay, give to the Chief Counting Officer—

(a) notice of the matters certified,
(b) details of the information contained in the verification statements prepared under
rule 30, and
(c) notice of the number of rejected ballot papers under each head shown in the
statement of rejected ballot papers prepared under rule 31.

(2) When authorised to do so by the Chief Counting Officer, the counting officer must—

(a) make a declaration of the matters certified under section 6(2)(b), and
(b) as soon as practicable, give public notice of those matters together with the
number of rejected ballot papers under each head shown in the statement of rejected ballot papers.

(3) After making the certification under section 6(4) (results for the whole of Scotland), the
Chief Counting Officer must—

(a) make a declaration of the matters certified, and
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(b) as soon as practicable, give public notice of those matters together with the total number of rejected ballot papers for the whole of Scotland under each head shown in the statements of rejected ballot papers.

Sealing up of ballot papers

36 (1) On the completion of the counting, the counting officer must seal up in separate packets—

(a) the counted ballot papers, and
(b) the rejected ballot papers.

(2) The counting officer must not open the sealed packets of—

(a) tendered ballot papers,
(b) the completed corresponding number lists,
(c) the certificates mentioned in rule 15(6), or
(d) marked copies of the Polling List (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and lists of proxies.

Delivery of papers

37 (1) After sealing the papers in accordance with rule 36, the counting officer must send the papers mentioned in paragraph (2) to the proper officer of the council for the local government area in which the votes being counted have been cast, endorsing on each packet a description of its contents and the date of the referendum.

(2) Those papers are—

(a) the packets of ballot papers in the counting officer’s possession,
(b) the ballot paper accounts, the statements of rejected ballot papers and the verification statements,
(c) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations lists and the companion declarations,
(d) the packets of the completed corresponding numbers lists,
(e) the packets of the certificates mentioned in rule 15(6), and
(f) the packets containing marked copies of the Polling List (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and of the postal voters list, of lists of proxies and of the proxy postal voters list.

Retention and public inspection of papers

38 (1) The proper officer of the council must retain for one year all papers received by virtue of rule 37.

(2) Those papers, except ballot papers, completed corresponding number lists and the certificates mentioned in rule 15(6), are to be made available for public inspection at such times and in such manner as the proper officer may determine.

(3) A person inspecting marked copies of the Polling List may not—

(a) make copies of any part of them, or
(b) record any particulars included in them,
otherwise than by means of hand-written notes.

(4) A person who makes a copy of marked copies of the Polling List, or records any
particulars included in them, otherwise than by means of hand-written notes commits an
offence and is liable on summary conviction to a fine not exceeding level 5 on the
standard scale.

(5) After the expiry of one year, the proper officer must ensure that the papers are securely
destroyed, unless otherwise directed by an order of the Court of Session or a sheriff
principal.

Retention and public inspection of certifications

39 (1) The Chief Counting Officer must retain for one year—

(a) certifications made by counting officers under section 6(2)(b), and

(b) certifications made by the Chief Counting Officer under section 6(4).

(2) Those certifications are to be made available for public inspection at such times and in
such manner as the Chief Counting Officer may determine.

Orders for production of documents

40 (1) The Court of Session or a sheriff principal may make an order mentioned in paragraph
(2) if the Court or the sheriff principal is satisfied by evidence on oath that the order is
required for the purpose of—

(a) instituting or maintaining a prosecution for an offence in relation to ballot papers,
or

(b) proceedings brought as mentioned in section 31.

(2) An order referred to in paragraph (1) is an order for—

(a) the inspection or production of any rejected ballot papers in the custody of a
proper officer,

(b) the opening of a sealed packet of the completed corresponding number lists or of
the certificates mentioned in rule 15(6), or

(c) the inspection of any counted ballot papers in the proper officer’s custody.

(3) An order under this rule may be made subject to such conditions as to—

(a) persons,

(b) time,

(c) place and mode of inspection, and

(d) production or opening,
as the Court or the sheriff principal considers expedient.

(4) In making and carrying out an order mentioned in paragraph (2)(b) or (c), care must be
taken to ensure that the way in which the vote of any particular voter has been given will
not be disclosed until it is proved—

(a) that such vote was given, and
(b) that such vote has been declared by a competent court to be invalid.

(5) Any power given to the Court of Session or a sheriff principal under this rule may be exercised by any judge of the Court, or by the sheriff principal, otherwise than in open court.

(6) An appeal lies to the Court of Session from any order of a sheriff principal under this rule.

(7) Where an order is made for the production by a proper officer of any document in that officer’s custody relating to the referendum—

(a) the production by such officer or the officer’s agent of the document ordered in such manner as may be directed by that order is conclusive evidence that the document relates to the referendum, and

(b) any endorsement on any packet of ballot papers so produced is _prima facie_ evidence that the ballot papers are what they are stated to be by the endorsement.

(8) The production from the proper officer’s custody of—

(a) a ballot paper purporting to have been used at the referendum, and

(b) a completed corresponding number list with a number marked in writing beside the number of the ballot paper,

is _prima facie_ evidence that the voter whose vote was given by that ballot paper was the person whose entry in the Polling List (or on a notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) at the time of the referendum contained the same number as the number marked as mentioned in sub-paragraph (b).

(9) Except as provided by this rule, no person is to be allowed to—

(a) inspect any rejected or counted ballot papers in the custody of the proper officer, or

(b) open any sealed packet of the completed corresponding number list or of the certificates mentioned in rule 15(6).

**Power of Chief Counting Officer to prescribe**

41 (1) In this schedule, “prescribed” means prescribed by the Chief Counting Officer.

(2) Where a form is prescribed under paragraph (1), the form may be used with such variations as the circumstances may require.
“bequest” includes any form of testamentary disposition,
“body”, without more, includes a body corporate or any combination of persons or
other unincorporated associations,
“broadcaster” means—
(a) the holder of a licence under the Broadcasting Act 1990 or 1996, or
(b) the British Broadcasting Corporation,
“exempt trust donation” has the meaning given by section 162 of the 2000 Act,
“market value”, in relation to any property, means the price which might reasonably be expected to be paid for the property on a sale in the open market,
“property” includes any description of property, and references to the provision of property accordingly include the supply of goods,
“qualified auditor” has the meaning given by section 160 of the 2000 Act.
(2) For the purposes of this schedule, each of the following is a “permissible donor”—
(a) an individual registered in an electoral register,
(b) a company—
(i) registered under the Companies Act 2006,
(ii) incorporated within the United Kingdom or another member State, and
(iii) carrying on business in the United Kingdom,
(c) a registered party,
(d) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992 (S.I 1992/807),
(e) a building society (within the meaning of the Building Societies Act 1986),
(f) a limited liability partnership—
(i) registered under the Limited Liability Partnerships Act 2000, and
(ii) carrying on business in the United Kingdom,
(g) a friendly society registered under the Friendly Societies Act 1974 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, and
(h) any unincorporated association of two or more persons which—
(i) does not fall within any of the preceding paragraphs,
(ii) carries on business or other activities wholly or mainly in the United Kingdom, and
(iii) has its main office in the United Kingdom.
(3) In this schedule, “electoral register” means any of the following—
(a) a register of parliamentary or local government electors maintained under section 9 of the 1983 Act,
(b) a register of relevant citizens of the European Union prepared under the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (S.I. 2001/1184),

(c) a register of peers prepared under regulations under section 3 of the Representation of the People Act 1985.

(4) References in this schedule (in whatever terms) to payments out of public funds are references to any of the following—

(a) payments out of—
   (i) the Consolidated Fund of the United Kingdom, the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund, or
   (ii) money provided by Parliament or appropriated by Act of the Northern Ireland Assembly,

(b) payments by—
   (i) a Minister of the Crown, the Scottish Ministers, a Minister within the meaning of the Northern Ireland Act 1998 or the Welsh Ministers (including the First Minister for Wales or the Counsel General to the Welsh Assembly Government), or
   (ii) a government department (including a Northern Ireland department) or a part of the Scottish Administration,

(c) payments by the SPCB, the Northern Ireland Assembly Commission or the National Assembly for Wales Commission, and

(d) payments by the Electoral Commission.

(5) References in this schedule (in whatever terms) to expenses met, or things provided, out of public funds are references to expenses met, or things provided, by means of payments out of public funds.

**PART 2**

**PERMITTED PARTICIPANTS AND DESIGNATED ORGANISATIONS**

**Permitted participants**

2 (1) For the purposes of this schedule, a registered party, a qualifying individual or a qualifying body may make a declaration to the Electoral Commission in accordance with this paragraph and paragraph 3 identifying the outcome for which the party, individual or body proposes to campaign at the referendum.

(2) A party, individual or body which has made a declaration in accordance with this paragraph and paragraph 3 is referred to in this Act as a “permitted participant”.

(3) A “qualifying individual” is an individual who is—

(a) resident in the United Kingdom, or

(b) registered in—
   (i) an electoral register, or
   (ii) the register of young voters.
(4) A “qualifying body” is a body which is—

(a) a company—

(i) registered under the Companies Act 2006,

(ii) incorporated within the United Kingdom or another member State, and

(iii) carrying on business in the United Kingdom,

(b) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807),

(c) a building society within the meaning of the Building Societies Act 1986,

(d) a limited liability partnership—

(i) registered under the Limited Liability Partnerships Act 2000, and

(ii) carrying on business in the United Kingdom,

(e) a friendly society registered under the Friendly Societies Act 1974 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, or

(f) an unincorporated association of two or more persons which—

(i) does not fall within any of the preceding paragraphs,

(ii) carries on business or other activities wholly or mainly in the United Kingdom, and

(iii) has its main office in the United Kingdom.

Further provision about declarations under paragraph 2

3 (1) A declaration under paragraph 2 by a registered party—

(a) must be signed by the responsible officers of the party (within the meaning of section 64(7) of the 2000 Act), and

(b) if made by a minor party, must be accompanied by a notification which states the name of the person who will be responsible for compliance on the part of the party with the provisions of this schedule.

(2) A declaration under paragraph 2 by a qualifying individual must—

(a) state the individual’s full name and home address, and

(b) be signed by the individual.

(3) A declaration under paragraph 2 by a qualifying body must—

(a) state—

(i) all such details in respect of the body as are required by virtue of any of sub-paragraphs (4) and (6) to (10) of paragraph 2 of Schedule 6 to the 2000 Act to be given in respect of such a body as the donor of a recordable donation, and
Further provision about responsible persons

3A(1) A person who is the responsible person in relation to a permitted participant may not make a declaration under paragraph 2 as a qualifying individual or on behalf of a qualifying body.

(2) An individual who is a permitted participant ceases to be a permitted participant if the individual is the treasurer of a registered party (other than a minor party) that becomes a permitted participant.

(3) A declaration made or notification given by a minor party or a qualifying body does not comply with the requirement in paragraph 3(1)(b) or (3)(a)(ii) if the person whose name is stated—

(a) is already the responsible person in relation to a permitted participant,

(b) is an individual who makes a declaration under paragraph 2 at the same time, or

(c) is the person whose name is stated, in purported compliance with paragraph 3(1)(b) or (3)(a)(ii), in a declaration made or notification given at the same time by another minor party or qualifying body.

(4) Where a registered party (other than a minor party) makes a declaration under paragraph 2 and the treasurer of the party (“T”) is already the responsible person in relation to a permitted participant (“P”)—

(a) T ceases to be the responsible person in relation to P at the end of the period of 14 days beginning with the day on which (by reason of the declaration) T becomes the responsible person for the party,

(b) P must, before the end of that period, give a notice of alteration under paragraph 3(4) stating the name of the person who is to replace T as the responsible person in relation to P.

(5) In sub-paragraphs (3) and (4), “the person”, in relation to a qualifying body, is to be read as “the person or officer”.
Register of declarations under paragraph 2

4 (1) The Electoral Commission must maintain a register of all declarations made to them under paragraph 2.

(2) The register is to be maintained by the Commission in such form as the Commission may determine.

(3) The register must contain, in relation to each declaration, all of the information supplied to the Commission in connection with the declaration in accordance with paragraph 3.

(4) Where a declaration is made to the Commission under paragraph 2, the Commission must cause the information mentioned in sub-paragraph (3) to be entered in the register as soon as is reasonably practicable.

(5) Where a notification of alteration is given to the Commission under paragraph 3(4) the Commission must cause any change required as a consequence of the notification to be made in the register as soon as is reasonably practicable.

(6) The information to be entered in the register in respect of a permitted participant who is an individual must not include the individual’s home address.

Designated organisations

5 (1) The Electoral Commission may, in relation to each of the two possible outcomes in the referendum, designate under this paragraph one permitted participant as representing those campaigning for the outcome in question.

(2) The Commission may make a designation under this paragraph only on an application made under paragraph 6.

(3) The Commission may designate a permitted participant under this paragraph in relation to one of the possible outcomes whether or not a permitted participant is designated in relation to the other possible outcome.

(4) A permitted participant designated under this paragraph is referred to in this Act as a “designated organisation”.

Applications for designation under paragraph 5

6 (1) A permitted participant seeking to be designated under paragraph 5 must make an application for that purpose to the Electoral Commission.

(2) An application for designation must—

(a) be accompanied by information or statements designed to show that the applicant adequately represents those campaigning for the outcome in the referendum in relation to which the applicant seeks to be designated, and

(b) be made within the application period.

(3) Where an application for designation has been made to the Commission in accordance with this paragraph, the application must be determined by the Commission within the decision period.

(4) If there is only one application in relation to a particular outcome in the referendum, the Commission must designate the applicant unless they are not satisfied that the applicant adequately represents those campaigning for that outcome.
(5) If there is more than one application in relation to a particular outcome in the referendum, the Commission must designate whichever of the applicants appears to them to represent to the greatest extent those campaigning for that outcome unless they are not satisfied that any of the applicants adequately represents those campaigning for that outcome.

(6) In this paragraph—

“the application period” is the period of 28 days ending with the day before the first day of the decision period, and

“the decision period” is the period of 16 days ending with the 28th day before the first day of the referendum period.

Designated organisation’s right to use rooms for holding public meetings

7 (1) Subject to the provisions of this paragraph, persons authorised by a designated organisation are entitled, for the purpose of holding public meetings in furtherance of the organisation’s referendum campaign, to the use free of charge, at reasonable times during the relevant period, of—

(a) a suitable room in the premises of a school to which this paragraph applies in accordance with sub-paragraph (2), and

(b) any meeting room to which this paragraph applies in accordance with sub-paragraph (3).

For this purpose, “the relevant period” means the period of 28 days ending with the day before the date of the referendum.

(2) This paragraph applies to any school maintained by an education authority.

(3) This paragraph applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—

(a) the Scottish Ministers or any other part of the Scottish Administration, or

(b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(4) Where a room is used for a meeting in pursuance of the rights conferred by this paragraph, the person by whom or on whose behalf the meeting is convened—

(a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting, and

(b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.

(5) A person is not entitled to exercise the rights conferred by this paragraph except on reasonable notice; and this paragraph does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

(6) For the purposes of this paragraph (except those of paragraph (b) of sub-paragraph (4)), the premises of a school are not to be taken to include any private dwelling.

(7) In this paragraph—
“dwelling” includes any part of a building where that part is occupied separately as a dwelling.

“meeting room” means any room which it is the practice to let for public meetings, and

“room” includes a hall, gallery or gymnasium.

Supplementary provisions about use of rooms for public meetings

8 (1) This paragraph has effect with respect to the rights conferred by paragraph 7 and the arrangements to be made for their exercise.

(2) Any arrangement for the use of a room in school premises is to be made with the education authority maintaining the school.

(3) Any question as to the rooms in school premises which a person authorised by a designated organisation is entitled to use, or as to the times at which the person is entitled to use them, or as to the notice which is reasonable, is to be determined by the Scottish Ministers.

(4) Any person authorised by a designated organisation is entitled at all reasonable hours to inspect—

(a) any lists prepared in pursuance of paragraph 6 of Schedule 5 to the 1983 Act (use of rooms for parliamentary election meetings), or

(b) a copy of any such lists,

in connection with exercising the rights conferred by paragraph 7.

PART 3

REFERENDUM EXPENSES

Referendum expenses

9 (1) The following provisions have effect for the purposes of this schedule.

(2) “Referendum expenses” means expenses incurred by or on behalf of any individual or body which are—

(a) expenses falling within paragraph 10, and

(b) incurred for referendum purposes.

(3) Expenses are incurred for referendum purposes if they are incurred—

(a) in connection with the conduct or management of a referendum campaign, or

(b) otherwise in connection with promoting or procuring any particular outcome in the referendum.

Expenses qualifying where incurred for referendum purposes

10 (1) For the purposes of paragraph 9(2)(a) the expenses falling within this paragraph are expenses incurred in respect of any of the matters set out in the following list—

1. Referendum campaign broadcasts.
(Expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing and producing such broadcasts.)

2. Advertising of any nature (whatever the medium used.)

(Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.)

3. Unsolicited material addressed to voters (whether addressed to them by name or intended for delivery to households within any particular area or areas).

(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material (including the cost of postage).)

4. Any material to which paragraph 25 applies.

(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material.)

5. Market research or canvassing conducted for the purpose of ascertaining voting intentions.

6. The provision of any services or facilities in connection with press conferences or other dealings with the media.

7. Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with a referendum campaign.

(Expenses in respect of such transport include the costs of hiring a particular means of transport for the whole or part of the period during which the campaign is being conducted.)

8. Rallies and other events, including public meetings (but not annual or other party conferences) organised so as to obtain publicity in connection with a referendum campaign or for other purposes connected with a referendum campaign.

(Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.)

(2) Nothing in sub-paragraph (1) is to be taken as extending to—

(a) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds,

(b) any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise) of the campaign organiser,

(c) any expenses incurred in respect of an individual ("A") by way of travelling expenses (by any means of transport) or in providing for A’s accommodation or other personal needs to the extent that the expenses are paid by A from A’s own resources and are not reimbursed to A, or

(d) any expenses incurred in respect of the publication of any matter relating to the referendum (other than an advertisement) in—

(i) a newspaper or periodical,
(ii) a broadcast made by the British Broadcasting Corporation, or

(iii) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.

(3) The Electoral Commission may issue, and from time to time revise, a code of practice giving guidance as to the kinds of expenses which do, or do not, fall within this paragraph.

(4) As soon as practicable after issuing or revising a code of practice under sub-paragraph (3), the Commission must send a copy to the Scottish Ministers.

(5) The Scottish Ministers must lay before the Scottish Parliament a copy of the code or (as the case may be) the revised code.

Notional referendum expenses

11 (1) This paragraph applies where, in the case of any individual or body—

(a) either—

(i) property is transferred to the individual or body free of charge or at a discount of more than 10 per cent of its market value, or

(ii) property, services or facilities is or are provided for the use or benefit of the individual or body free of charge or at a discount of more than 10 per cent of the commercial rate for the use of the property or for the provision of the services or facilities, and

(b) the property, services or facilities is or are made use of by or on behalf of the individual or body in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the individual or body in respect of that use, they would be (or are) referendum expenses incurred by or on behalf of the individual or body.

(2) Where this paragraph applies, an amount of referendum expenses determined in accordance with this paragraph (“the appropriate amount”) is to be treated, for the purposes of this schedule, as incurred by the individual or body during the period for which the property, services or facilities is or are made use of as mentioned in sub-paragraph (1)(b).

(3) Sub-paragraph (2) is subject to sub-paragraph (13).

(4) Where sub-paragraph (1)(a)(i) applies, the appropriate amount is such proportion as is reasonably attributable to the use made of the property as mentioned in sub-paragraph (1)(b) of either—

(a) the market value of the property (where the property is transferred free of charge), or

(b) the difference between the market value of the property and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the property (where the property is transferred at a discount).

(5) Where sub-paragraph (1)(a)(ii) applies the appropriate amount is such proportion as is reasonably attributable to the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) of either—
(a) the commercial rate for the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided free of charge), or
(b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided at a discount).

(6) Sub-paragraph (7) applies where the services of an employee are made available by the employee’s employer for the use or benefit of an individual or body.

(7) For the purposes of this paragraph, the amount which is to be taken as constituting the commercial rate for the provision of those services is the amount of the remuneration or allowances payable to the employee by the employer in respect of the period for which the employee’s services are made available (but do not include any amount in respect of contributions or other payments for which the employer is liable in respect of the employee).

(8) Where an amount of referendum expenses is treated, by virtue of sub-paragraph (2), as incurred by or on behalf of an individual or body during any period the whole or part of which falls within the referendum period then—
(a) the amount mentioned in sub-paragraph (10) is to be treated as incurred by or on behalf of the individual or body during the referendum period, and
(b) if a return falls to be prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of the individual or body during that period, the responsible person must make a declaration of that amount.

(9) Sub-paragraph (8) does not apply if the amount referred to in sub-paragraph (8)(a) does not exceed £200.

(10) The amount referred to in sub-paragraph (8)(a) is such proportion of the appropriate amount (determined in accordance with sub-paragraph (4) or (5)) as reasonably represents the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) during the referendum period.

(11) A person commits an offence if the person knowingly or recklessly makes a false declaration under sub-paragraph (8)(b).

(12) A person who commits an offence under sub-paragraph (11) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(13) No amount of referendum expenses is to be regarded as incurred by virtue of sub-paragraph (2) in respect of—
(a) the transmission by a broadcaster of a referendum campaign broadcast,
(b) the provision of any rights conferred on a designated organisation (or persons authorised by such an organisation) by virtue of—
(i) paragraph 7 or 8, or
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(ii) paragraph 1 of Schedule 12 (right to send referendum address post free) to the 2000 Act (as applied by article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242)), or

(c) the provision by any individual of the individual’s own services which are provided voluntarily in the individual’s own time and free of charge.

(14) Paragraph 29(5) and (6)(a) applies with any necessary modifications for the purpose of determining, for the purposes of sub-paragraph (1), whether property is transferred to an individual or body.

Restriction on incurring referendum expenses

12 (1) No amount of referendum expenses is to be incurred by or on behalf of a permitted participant except with the authority of—

(a) the responsible person, or

(b) a person authorised in writing by the responsible person.

(2) A person commits an offence if, without reasonable excuse, the person incurs any expenses in contravention of sub-paragraph (1).

(3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where, in the case of a permitted participant that is a registered party, any expenses are incurred in contravention of sub-paragraph (1), the expenses do not count for the purposes of paragraphs 17 to 23 as referendum expenses incurred by or on behalf of the permitted participant.

Restriction on payments in respect of referendum expenses

13 (1) No payment (of whatever nature) may be made in respect of any referendum expenses incurred or to be incurred by or on behalf of a permitted participant except by—

(a) the responsible person, or

(b) a person authorised in writing by the responsible person.

(2) A payment made in respect of any such expenses by a person within paragraph (a) or (b) of sub-paragraph (1) must be supported by an invoice or a receipt unless the amount of the payment does not exceed £200.

(3) Where a person within paragraph (b) of sub-paragraph (1) makes a payment to which sub-paragraph (2) applies, the person must, as soon as possible after making the payment, deliver to the responsible person—

(a) notification that the payment has been made, and

(b) the supporting invoice or receipt.

(4) A person commits an offence if, without reasonable excuse, the person—

(a) makes a payment in contravention of sub-paragraph (1), or

(b) contravenes sub-paragraph (3).

(5) A person who commits an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
Restriction on making claims in respect of referendum expenses

14 (1) A claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant during the referendum period is not payable unless the claim is sent within the period of 30 days after the end of the referendum period to—

(a) the responsible person, or

(b) any other person authorised under paragraph 12 to incur the expenses.

(2) A claim sent in accordance with sub-paragraph (1) must be paid within the period of 60 days after the end of the referendum period.

(3) A person commits an offence if, without reasonable excuse, the person—

(a) pays a claim which by virtue of sub-paragraph (1) is not payable, or

(b) makes a payment in respect of a claim after the end of the period allowed under sub-paragraph (2).

(4) A person who commits an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In the case of a claim to which sub-paragraph (1) applies—

(a) the person making the claim, or

(b) the person with whose authority the expenses in question were incurred,

may apply to the Electoral Commission for leave for the claim to be paid although sent in after the end of the period mentioned in that sub-paragraph; and the Commission, if satisfied that it is appropriate to do so, may grant the leave.

(6) Nothing in sub-paragraph (1) or (2) applies in relation to any sum paid in pursuance of the leave granted by the Commission.

(7) Sub-paragraph (2) is without prejudice to any rights of a creditor of a permitted participant to obtain payment before the end of the period allowed under that sub-paragraph.

(8) Subsections (9) and (10) of section 77 of the 2000 Act apply for the purposes of this paragraph as if—

(a) any reference to subsection (1) or (2) of that section were a reference to sub-paragraph (1) or (2) above,

(b) any reference to campaign expenditure were a reference to referendum expenses, and

(c) any reference to the treasurer or deputy treasurer of the registered party were a reference to the responsible person in relation to the permitted participant.

Disputed claims

15 (1) This paragraph applies where—

(a) a claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant as mentioned in paragraph 14(1) is sent to—

(i) the responsible person, or
(ii) any other person with whose authority it is alleged that the expenses were incurred,

within the period allowed under that provision, and

(b) the responsible person or other person to whom the claim is sent fails or refuses to pay the claim within the period allowed under paragraph 14(2).

(2) A claim to which this paragraph applies is referred to in this paragraph as “the disputed claim”.

(3) The person by whom the disputed claim is made may bring an action for the disputed claim, and nothing in paragraph 14(2) applies in relation to any sum paid in pursuance of any judgment or order made by a court in the proceedings.

(4) For the purposes of this paragraph sub-paragraphs (5) and (6) of paragraph 14 apply in relation to an application made by the person mentioned in sub-paragraph (1)(b) above for leave to pay the disputed claim as they apply in relation to an application for leave to pay a claim (whether it is disputed or otherwise) which is sent in after the period allowed under paragraph 14(1).

Rights of creditors

16 Nothing in this schedule which prohibits—

(a) payments and contracts for payments,

(b) the payment or incurring of referendum expenses in excess of the maximum amount allowed by this schedule, or

(c) the incurring of expenses not authorised as mentioned in paragraph 12, affects the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of that contract or expense being in contravention of this schedule.

General restriction on referendum expenses

17 (1) This paragraph applies in relation to an individual or body that is not a permitted participant.

(2) The total referendum expenses incurred by or on behalf of an individual or a body to which this paragraph applies during the referendum period must not exceed £10,000.

(3) Where, during the referendum period, any referendum expenses are incurred by or on behalf of an individual to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), the individual commits an offence if the individual knew, or ought reasonably to have known, that the expenses were being incurred in excess of that limit.

(4) An individual who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
(5) Where, during the referendum period, any referendum expenses are incurred by or on behalf of a body to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), then—

(a) the body commits an offence, and

(b) any person who authorised the expenses to be incurred by or on behalf of the body also commits an offence if the person knew, or ought reasonably to have known, that the expenses would be incurred in excess of that limit.

(6) A body or person who commits an offence under sub-paragraph (5) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(7) It is a defence for an individual, body or other person charged with an offence under sub-paragraph (3) or (5) to show—

(a) that any code of practice for the time being issued under paragraph 10(3) was complied with in determining whether to incur any expenses, and

(b) that the limit would not have been exceeded on the basis of compliance with the code of practice as it had effect at that time.

(8) Sub-paragraph (9) applies where—

(a) before the beginning of the referendum period, any expenses are incurred by or on behalf of an individual or body to which this paragraph applies in respect of any property, services or facilities, and

(b) the property, services or facilities is or are made use of by or on behalf of the individual or body during the referendum period in circumstances such that, had any expenses been incurred in respect of that use during that period, they would by virtue of paragraph 9(2) have constituted referendum expenses incurred by or on behalf of the individual or body during that period.

(9) The appropriate proportion of the expenses mentioned in sub-paragraph (8)(a) is to be treated for the purposes of this paragraph as referendum expenses incurred by or on behalf of the individual or body during that period.

(10) For the purposes of sub-paragraph (9) the appropriate proportion of the expenses mentioned in paragraph (a) of sub-paragraph (8) is such proportion of those expenses as is reasonably attributable to the use made of the property, services or facilities as mentioned in paragraph (b) of that sub-paragraph.

Special restrictions on referendum expenses by permitted participants

18 (1) The total referendum expenses incurred by or on behalf of a permitted participant during the referendum period must not exceed—

(a) if the permitted participant is a designated organisation, £1,500,000,

(b) if the permitted participant is not a designated organisation but is a registered party and has a relevant percentage, whichever is the greater of—

(i) the sum calculated by multiplying the sum of £3,000,000 by the party’s relevant percentage, or
(ii) £150,000, or

(c) if the permitted participant is not a designated organisation nor such a registered party, £150,000.

(2) For the purposes of sub-paragraph (1)(b)—

(a) a registered party has a relevant percentage if, at the general election for membership of the Scottish Parliament held in 2011 (“the 2011 election”), constituency votes were cast for one or more candidates at the election authorised to use the party’s registered name and regional votes were cast for the party, and (b) a registered party’s relevant percentage is equal to the sum of—

(i) the total number of constituency votes cast at the 2011 election for the candidate or candidates mentioned in paragraph (a) expressed as a percentage of the total number of constituency votes cast at that election for all candidates, multiplied by 56.6% and rounded to one decimal place, and

(ii) the total number of regional votes cast at the 2011 election for the party expressed as a percentage of the total number of regional votes cast at that election for all registered parties and individual candidates, multiplied by 43.4% and rounded to one decimal place.

(3) Sub-paragraph (4) applies in the case where, at the 2011 election, a candidate stood for return as a constituency member in the name of more than one registered party.

(4) For the purposes of sub-paragraph (2)(b)(i), the number of constituency votes cast for the candidate is to be divided equally among each of the registered parties in whose name the candidate stood.

(5) In sub-paragraphs (2) to (4)—

“How constituency member” has the meaning given in section 126(1) of the Scotland Act 1998,

“How constituency vote” means a vote cast for a candidate standing for return as a constituency member,

“How regional vote” has the meaning given in section 6(2) of the Scotland Act 1998.

(6) Where any referendum expenses are incurred by or on behalf of a permitted participant during the referendum period in excess of the limit imposed by sub-paragraph (1), then—

(a) if the permitted participant is a registered party—

(i) the party commits an offence, and

(ii) the responsible person or any deputy treasurer of the party also commits an offence if the person or deputy treasurer authorised the expenses to be incurred by or on behalf of the party and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,

(b) if the permitted participant is an individual, that individual commits an offence if the individual knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,

(c) if the permitted participant is a body other than a registered party—

(i) the body commits an offence, and
(ii) the responsible person commits an offence if the person authorised the expenses to be incurred by or on behalf of the body and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit.

5 (7) A person who commits an offence under sub-paragraph (6) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

(8) It is a defence for a permitted participant or other person charged with an offence under sub-paragraph (6) to show—

(a) that any code of practice for the time being issued under paragraph 10(3) was complied with in determining the items and amounts of referendum expenses to be entered in the relevant return under paragraph 20, and

(b) that the limit would not have been exceeded on the basis of the items and amounts entered in that return.

10 (9) Sub-paragraphs (8) to (10) of paragraph 17 apply for the purposes of this paragraph and paragraphs 20 to 23 as they apply for the purposes of paragraph 17, but as if references in them to an individual or body to which that paragraph applies were references to a permitted participant.

15 (10) For the purposes of this paragraph and paragraphs 20 to 23 any reference to referendum expenses incurred by or on behalf of a permitted participant during the referendum period includes any referendum expenses so incurred at any time before the individual or body became a permitted participant.

Referendum expenses incurred as part of common plan

19 (1) This paragraph applies where—

(a) referendum expenses are incurred by or on behalf of an individual or body during the referendum period,

(b) the expenses are incurred as part of a common plan or other arrangement with one or more other individuals or bodies,

(c) the common plan or arrangement is one whereby referendum expenses are to be incurred by or on behalf of both or all of the individuals or bodies involved in the common plan or arrangement with a view to, or otherwise in connection with, promoting or procuring one particular outcome in the referendum, and

(d) there is a designated organisation in respect of each of the possible outcomes in the referendum.

25 (2) The expenses referred to in sub-paragraph (1)(a) are to be treated for the purposes of paragraphs 17 and 18 and 20 to 23 as having also been incurred by each of the other individuals or bodies involved in the common plan or arrangement.

30 (3) This paragraph applies whether or not any of the individuals or bodies involved in the common plan or arrangement is a permitted participant.

35 (4) But this paragraph does not treat any expenses incurred by or on behalf of a permitted participant that is a designated organisation as having been incurred also by or on behalf of any other individual or body.
Returns as to referendum expenses

20 (1) The responsible person in relation to a permitted participant must make a return under this paragraph in respect of any referendum expenses incurred by or on behalf of the permitted participant during the referendum period.

(2) A return under this paragraph must contain—

(a) a statement of all payments made in respect of referendum expenses incurred by or on behalf of the permitted participant during the referendum period,

(b) a statement of all disputed claims (within the meaning of paragraph 15),

(c) a statement of all the unpaid claims (if any) of which the responsible person is aware in respect of which an application has been made, or is about to be made, to the Electoral Commission under paragraph 14(5), and

(d) in a case where the permitted participant either is not a registered party or is a minor party—

(i) the statement required by paragraph 38, and

(ii) a statement of regulated transactions entered into in respect of the referendum which complies with the requirements of paragraphs 52 to 56.

(3) A return under this paragraph must be accompanied by—

(a) all invoices or receipts relating to the payments mentioned in sub-paragraph (2)(a), and

(b) in the case of any referendum expenses treated as incurred by virtue of paragraph 11, any declaration falling to be made with respect to those expenses in accordance with paragraph 11(8).

(4) Sub-paragraphs (2) and (3) do not apply to any referendum expenses incurred at any time before the individual or body became a permitted participant, but the return must be accompanied by a declaration made by the responsible person of the total amount of such expenses incurred at any such time.

(5) Sub-paragraph (6) applies where the responsible person in relation to a permitted participant makes a declaration that, to the best of the person’s knowledge and belief—

(a) no referendum expenses have been incurred by or on behalf of a permitted participant during the referendum period, or

(b) the total amount of such expenses incurred by or on behalf of a permitted participant during that period does not exceed £10,000.

(6) The responsible person in relation to the permitted participant—

(a) is not required to make a return under this paragraph, but

(b) must instead deliver the declaration referred to in sub-paragraph (5) to the Electoral Commission within the period of 3 months beginning with the end of the referendum period.

(7) The responsible person commits an offence if—

(a) without reasonable excuse, the person fails to comply with the requirements of sub-paragraph (6) in relation to a declaration, or
(b) the person knowingly or recklessly makes a false declaration under that sub-
paragraph.

(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary
conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or
to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months
or to a fine (or both).

(10) The Electoral Commission may issue guidance about the form of return to be used for
the purposes of this paragraph.

Auditor’s report on return

21 (1) Where the return prepared under paragraph 20 in respect of the referendum expenses
incurred by or on behalf of a permitted participant indicates that the expenses incurred
exceed £250,000, a report must be prepared by a qualified auditor on the return.

(4) An auditor appointed to carry out an audit under this paragraph—
(a) has a right of access at all reasonable times to such books, documents and other
records of the permitted participant as the auditor thinks necessary for purpose of
carrying out of the audit,
(b) is entitled to require from the responsible person in relation to the permitted
participant such information and explanations as the auditor thinks necessary for
that purpose.

(5) If a person fails to provide the auditor with any access, information or explanation to
which the auditor has a right or is entitled by virtue of sub-paragraph (4), the
Commission may give the person such written directions as they consider appropriate
for ensuring that the failure is remedied.

(6) If the person fails to comply with the directions, the Court of Session may, on the
application of the Commission, deal with the person as if the person had failed to
comply with an order of the Court.

(7) A person commits an offence if the person knowingly or recklessly makes to an auditor
appointed to carry out an audit under this paragraph a statement (whether written or
oral) which—
(a) conveys or purports to convey any information or explanation to which the auditor
is entitled by virtue of sub-paragraph (4), and
(b) is misleading, false or deceptive in a material particular.

(8) A person who commits an offence under sub-paragraph (7) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or
to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months
or to a fine (or both).
Delivery of returns to Electoral Commission

22 (1) Sub-paragraph (2) applies where—

(a) a return falls to be prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of a permitted participant, and

(b) an auditor’s report on it falls to be prepared under paragraph 21.

(2) The responsible person must deliver the return to the Electoral Commission, together with a copy of the auditor’s report, within the period of 6 months beginning with the end of the referendum period.

(3) In the case of any other return falling to be prepared under paragraph 20, the responsible person must deliver the return to the Commission within the period of 3 months beginning with the end of the referendum period.

(4) Where, after the date on which a return is delivered to the Commission under this paragraph, leave is given by the Commission under paragraph 14(5) for any claim to be paid, the responsible person must, within the period of 7 days after the payment, deliver to the Commission a return of any sums paid in pursuance of the leave.

(5) The responsible person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with the requirements of sub-paragraph (2) or (3) in relation to a return under paragraph 20,

(b) delivers a return which does not comply with the requirements of paragraph 20(2) or (3), or

(c) fails to comply with the requirements of sub-paragraph (4) in relation to a return under that sub-paragraph.

(6) A person who commits an offence under sub-paragraph (5)(a) or (c) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person who commits an offence under sub-paragraph (5)(b) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to return under paragraph 20

23 (1) Each return prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—

(a) that the responsible person has examined the return in question, and

(b) that to the best of the responsible person’s knowledge and belief—

(i) it is a complete and correct return as required by law, and

(ii) all expenses shown in it as paid have been paid by the responsible person or a person authorised by the responsible person.
(3) In a case where the permitted participant either is not a registered party or is a minor party, the declaration must also—

(a) in relation to all relevant donations recorded in the return as having been accepted by the permitted participant—

(i) state that they were all from permissible donors, or

(ii) state whether or not paragraph 34(3) was complied with in the case of each of those donations that was not from a permissible donor,

(b) in relation to all regulated transactions entered in the return as having been entered into by the permitted participant—

(i) state that none of the transactions was made void by paragraph 46(2) or (6), or

(ii) state whether or not paragraph 46(3)(a) was complied with in the case of each of the transactions that was made void by paragraph 46(2) or (6).

(4) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the return relates.

(5) A person who commits an offence under sub-paragraph (4) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(6) In this paragraph “relevant donation” has the same meaning as in paragraph 28.

Public inspection of returns under paragraph 20

24 (1) Where the Electoral Commission receive any return under paragraph 20 they must—

(a) as soon as reasonably practicable after receiving the return, make a copy of the return and of the documents accompanying it available for public inspection, and

(b) keep any such copy available for public inspection for the period for which the return or other document is kept by them.

(2) If the return contains a statement of relevant donations or a statement of regulated transactions in accordance with paragraph 20(2)(d) the Commission must secure that the copy of the statement made available for public inspection does not include—

(a) in the case of any donation by an individual, the donor’s address,

(b) in the case of a transaction entered into by the permitted participant with an individual, the individual’s address.

(3) At the end of the period of two years beginning with the date when any return or other document mentioned in sub-paragraph (1) is received by the Commission—

(a) they may cause the return or other document to be destroyed, but
(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the return or other document to be returned to that person.

**PART 4**

**PUBLICATIONS**

*Restriction on publication etc. of promotional material by central and local government etc.*

25 (1) This paragraph applies to any material which—

(a) provides general information about the referendum,

(b) deals with any of the issues raised by the referendum question,

(c) puts any arguments for or against any outcome, or

(d) is designed to encourage voting at the referendum.

(2) Subject to sub-paragraph (3), no material to which this paragraph applies is to be published during the relevant period by or on behalf of—

(a) the Scottish Ministers or any other part of the Scottish Administration,

(b) the SPCB, or

(c) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(3) Sub-paragraph (2) does not apply to—

(a) material made available to persons in response to specific requests for information or to persons specifically seeking access to it,

(aa) material published—

(i) in a report of a committee, the Business Bulletin or the Official Report of the Scottish Parliament, in accordance with the Parliament’s Standing Orders,

(ii) on the Scottish Parliament official website, or

(iii) in relation to any meeting, debate, discussion or other Parliamentary event authorised by the SPCB and held in accordance with the SPCB’s rules and policies applicable during the relevant period,

(b) anything done by or on behalf of—

(i) a designated organisation,

(ii) the Electoral Commission, or

(iii) the Chief Counting Officer or any other counting officer, or

(c) the publication of information relating to the holding of the poll.

(4) In this paragraph—

“publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means (and “publication” is to be construed accordingly),
“the relevant period” means the period of 28 days ending with the day before the date of the referendum.

Details to appear on referendum material

26 (1) No material wholly or mainly relating to the referendum is to be published during the referendum period unless—

(a) in the case of material which is, or is contained in, such a printed document as is mentioned in sub-paragraph (3), (4) or (5), the requirements of that sub-paragraph are complied with, or

(b) in the case of any other material, the requirements of sub-paragraph (6) are complied with.

(2) For the purposes of sub-paragraphs (3) to (5) the following details are “the relevant details” in the case of any material falling within sub-paragraph (1)(a), namely—

(a) the name and address of the printer of the document,

(b) the name and address of the promoter of the material, and

(c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(3) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.

(4) Where the material is a printed document other than one to which sub-paragraph (3) applies, the relevant details must appear on either the first or last page of the document.

(5) Where the material is an advertisement contained in a newspaper or periodical—

(a) the name and address of the printer of the newspaper or periodical must appear on either its first or last page, and

(b) the relevant details specified in sub-paragraph (2)(b) and (c) must be included in the advertisement.

(6) In the case of material falling within sub-paragraph (1)(b), the following details, namely—

(a) the name and address of the promoter of the material, and

(b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter),

must be included in the material unless it is not reasonably practicable to include the details.

(7) Where during the referendum period any material falling within sub-paragraph (1)(a) is published in contravention of sub-paragraph (1), then the following persons commit an offence, namely—

(a) the promoter of the material,

(b) any other person by whom the material is so published, and

(c) the printer of the document.
(8) Where during the referendum period any material falling within sub-paragraph (1)(b) is published in contravention of sub-paragraph (1), then the following persons commit an offence, namely—

(a) the promoter of the material, and

(b) any other person by whom the material is so published.

(9) A person who commits an offence under sub-paragraph (7) or (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) It is a defence for a person charged with an offence under sub-paragraph (7) or (8) to show—

(a) that the offence arose from circumstances beyond the person’s control, and

(b) that the person took all reasonable steps, and exercised all due diligence, to ensure that that an offence under this paragraph would not be committed.

(11) Sub-paragraph (1) does not apply to any material published for the purposes of the referendum if the publication is required under or by virtue of any enactment.

(12) In this paragraph—

“print” means print by whatever means, and “printer” is to be construed accordingly,

“the promoter”, in relation to any material falling within sub-paragraph (1), means the person causing the material to be published,

“publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means.

Display of advertisements

27 The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (SI 1984/467) have effect in relation to the display on any site in Scotland of an advertisement relating specifically to the referendum as they have effect in relation to the display of an advertisement relating specifically to a Parliamentary election.

PART 5

CONTROL OF DONATIONS

Operation and interpretation of this Part

28 (1) This Part has effect for controlling donations to permitted participants that either are not registered parties or are minor parties.

(2) The following provisions have effect for the purposes of this Part.

(3) In accordance with sub-paragraph (1) “permitted participant” does not include a permitted participant that is a registered party other than a minor party.

(4) “Relevant donation”, in relation to a permitted participant, means a donation to the permitted participant for the purpose of meeting referendum expenses incurred by or on behalf of the permitted participant.

(5) “Donation” is to be construed in accordance with paragraphs 29 to 31.
(6) In relation to donations received by a permitted participant other than a designated organisation, references to a permissible donor do not include a registered party.

(7) Where any provision of this Part refers to a donation for the purpose of meeting a particular kind of expenses incurred by or on behalf of a permitted participant—

(a) the reference includes a reference to a donation for the purpose of securing that any such expenses are not so incurred, and

(b) a donation is to be taken to be a donation for either of those purposes if, having regard to all the circumstances, it must reasonably be assumed to be such a donation.

(8) Sub-paragraphs (9) and (10) apply to any provision of this Part which provides, in relation to a permitted participant, that money spent (otherwise than by or on behalf of the permitted participant) in paying expenses incurred directly or indirectly by the permitted participant is to constitute a donation to the permitted participant.

(9) The reference in any such provision to money so spent is a reference to money so spent by a person, other than the permitted participant, out of the person’s own resources (with no right to reimbursement out of the resources of the permitted participant).

(10) Where by virtue of any such provision any amount of money so spent constitutes a donation to the permitted participant, the permitted participant is to be treated as receiving an equivalent amount on the date on which the money is paid to the creditor in respect of the expenses in question.

(11) For the purposes of this Part, it is immaterial whether a donation received by a permitted participant is so received in Scotland or elsewhere.

Donations: general rules

29 (1) “Donation”, in relation to a permitted participant, means (subject to paragraph 31)—

(a) a gift to the permitted participant of money or other property,

(b) any sponsorship provided in relation to the permitted participant (as defined by paragraph 30),

(c) any money spent (otherwise than by or on behalf of the permitted participant) in paying any referendum expenses incurred by or on behalf of the permitted participant,

(d) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the permitted participant (including the services of any person),

(e) in the case of a permitted participant other than an individual, any subscription or other fee paid for affiliation to, or membership of, the permitted participant.

(2) Where—

(a) any money or other property is transferred to a permitted participant pursuant to any transaction or arrangement involving the provision by or on behalf of the permitted participant of any property, services or facilities or other consideration of monetary value, and
(b) the total value in monetary terms of the consideration so provided by or on behalf of the permitted participant is less than the value of the money or (as the case may be) the market value of the property transferred,

the transfer of the money or property is (subject to sub-paragraph (4)) to be taken to be a gift to the permitted participant for the purposes of sub-paragraph (1)(a).

(3) In determining for the purposes of sub-paragraph (1)(d) whether any property, services or facilities provided for the use or benefit of a permitted participant is or are so provided otherwise than on commercial terms, regard must be had to the total value in monetary terms of the consideration provided by or on behalf of the permitted participant in respect of the provision of the property, services or facilities.

(4) Where (apart from this sub-paragraph) anything would be a donation both by virtue of sub-paragraph (1)(b) and by virtue of any other provision of this paragraph, sub-paragraph (1)(b) (together with paragraph 30) applies in relation to it to the exclusion of the other provision of this paragraph.

(5) Anything given or transferred to any officer, member, trustee or agent of a permitted participant in the officer’s, member’s, trustee’s or agent’s capacity as such (and not for the officer’s, member’s, trustee’s or agent’s own use or benefit) is to be regarded as given or transferred to the permitted participant (and references to donations received by a permitted participant accordingly include donations so given or transferred).

(6) In this paragraph—

(a) any reference to anything being given or transferred to a permitted participant or any other person is a reference to its being given or transferred either directly or indirectly through any third person,

(b) “gift” includes bequest.

Sponsorship

30 (1) For the purposes of this schedule sponsorship is provided in relation to a permitted participant if—

(a) any money or other property is transferred to the permitted participant or to any person for the benefit of the permitted participant, and

(b) the purpose (or one of the purposes) of the transfer is (or must, having regard to all the circumstances, reasonably be assumed to be)—

(i) to help the permitted participant with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the permitted participant, or

(ii) to secure that to any extent any such expenses are not so incurred.

(2) In sub-paragraph (1) “defined expenses” means expenses in connection with—

(a) any conference, meeting or other event organised by or on behalf of the permitted participant,

(b) the preparation, production or dissemination of any publication by or on behalf of the permitted participant,

(c) any study or research organised by or on behalf of the permitted participant.

(3) The following do not, however, constitute sponsorship by virtue of sub-paragraph (1)—
(a) the making of any payment in respect of—

(i) any charge for admission to any conference, meeting or other event, or

(ii) the purchase price of, or any other charge for access to, any publication,

(b) the making of any payment in respect of the inclusion of an advertisement in any publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in any such publication.

(4) In this paragraph “publication” means a publication made available in whatever form and by whatever means (whether or not to the public at large or any section of the public).

Payments etc. not to be regarded as donations

31 (1) None of the following is to be regarded as a donation—

(a) any grant provided out of public funds,

(b) the provision of any rights conferred on a designated organisation (or persons authorised by a designated organisation) by virtue of—

(i) paragraph 7 or 8, or

(ii) paragraph 1 of Schedule 12 (right to send referendum address post free) to the 2000 Act (as applied by article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242)),

(c) the transmission by a broadcaster of a referendum campaign broadcast,

(d) the provision by an individual of the individual’s own services which the individual provides voluntarily in the individual’s own time and free of charge, or

(e) any interest accruing to a permitted participant in respect of any donation which is dealt with by the permitted participant in accordance with paragraph 34(3)(a) or (b).

(2) Any donation the value of which (as determined in accordance with paragraph 32) does not exceed £500 is to be disregarded.

Value of donations

32 (1) The value of any donation falling within paragraph 29(1)(a) (other than money) is to be taken to be the market value of the property in question.

(2) Where, however, paragraph 29(1)(a) applies by virtue of paragraph 29(2), the value of the donation is to be taken to be the difference between—

(a) the value of the money, or (as the case may be) the market value of the property, in question, and

(b) the total value in monetary terms of the consideration provided by or on behalf of the permitted participant.

(3) The value of any donation falling within paragraph 29(1)(b) is to be taken to be the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 30(1) and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question is to be disregarded.
(4) The value of any donation falling within paragraph 29(1)(d) is to be taken to be the amount representing the difference between—

(a) the total value in monetary terms of the consideration that would have had to be provided by or on behalf of the permitted participant in respect of the provision of the property, services or facilities if the property, services or facilities had been provided on commercial terms, and

(b) the total value in monetary terms of the consideration (if any) actually so provided by or on behalf of the permitted participant.

(5) Where a donation such as is mentioned in sub-paragraph (4) confers an enduring benefit on the donee over a particular period, the value of the donation—

(a) is to be determined at the time when it is made, but

(b) is to be so determined by reference to the total benefit accruing to the donee over that period.

Prohibition on accepting donations from impermissible donors

33 (1) A relevant donation received by a permitted participant must not be accepted by the permitted participant if—

(a) the person by whom the donation would be made is not, at the time of its receipt by the permitted participant, a permissible donor, or

(b) the permitted participant is (whether because the donation is given anonymously or by reason of any deception or concealment or otherwise) unable to ascertain the identity of the person offering the donation.

(2) For the purposes of this schedule, any relevant donation received by a permitted participant which is an exempt trust donation is to be regarded as a relevant donation received by the permitted participant from a permissible donor.

(3) But, for the purposes of this schedule, any relevant donation received by a permitted participant from a trustee of any property (in the trustee’s capacity as such) which is not—

(a) an exempt trust donation, or

(b) a relevant donation transmitted by the trustee to the permitted participant on behalf of beneficiaries under the trust who are—

(i) persons who at the time of its receipt by the permitted participant are permissible donors, or

(ii) the members of an unincorporated association which at that time is a permissible donor,

is to be regarded as a relevant donation received by the permitted participant from a person who is not a permissible donor.

(4) Where any person (“the principal donor”) causes an amount (“the principal donation”) to be received by a permitted participant by way of a relevant donation—

(a) on behalf of the principal donor and one or more other persons, or

(b) on behalf of two or more other persons,
then for the purposes of this schedule each individual contribution by a person falling within paragraph (a) or (b) which exceeds £500 is to be treated as if it were a separate donation received from that person.

(5) In relation to each such separate donation, the principal donor must ensure that, at the time when the principal donation is received by the permitted participant, the responsible person is given—

(a) (except in the case of a donation which the principal donor is treated as making) all such details in respect of the person treated as making the donation as are required by virtue of paragraph 39(1)(c) to be given in respect of the donor of a donation to which that paragraph applies, and

(b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 39(1)(a).

(6) Where—

(a) any person (“the agent”) causes an amount to be received by a permitted participant by way of a donation on behalf of another person (“the donor”), and

(b) the amount of the donation exceeds £500,

the agent must ensure that, at the time when the donation is received by the permitted participant, the responsible person is given all such details in respect of the donor as are required by virtue of paragraph 39(1)(c) to be given in respect of the donor of a donation to which that paragraph applies.

(7) A person commits an offence if, without reasonable excuse, the person fails to comply with sub-paragraph (5) or (6).

(8) A person who commits an offence under sub-paragraph (7) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Acceptance or return of donations

34 (1) Sub-paragraph (2) applies where—

(a) a donation is received by a permitted participant, and

(b) it is not immediately decided that the permitted participant should (for whatever reason) refuse the donation.

(2) All reasonable steps must be taken without delay by or on behalf of the permitted participant to verify (or, so far as any of the following is not apparent, ascertain)—

(a) the identity of the donor,

(b) whether the donor is a permissible donor, and

(c) if it appears that the donor is a permissible donor, all such details in respect of the donor as are required by virtue of paragraph 39(1)(c) to be included in a statement under paragraph 38 in respect of a relevant donation.
(3) If a permitted participant receives a donation which the permitted participant is prohibited from accepting by virtue of paragraph 33(1), or which it is decided the permitted participant should refuse, then—

(a) unless the donation falls within paragraph 33(1)(b), the donation, or a payment of an equivalent amount, must be sent back to the person who made the donation or any person appearing to be acting on that person’s behalf;

(b) if the donation falls within that paragraph, the required steps (see paragraph 35(1)) must be taken in relation to the donation,

within the period of 30 days beginning with the date when the donation is received by the permitted participant.

(4) The permitted participant and the responsible person each commit an offence if—

(a) sub-paragraph (3)(a) applies in relation to a donation, and

(b) the donation is not dealt with in accordance with that sub-paragraph.

(5) It is a defence for a permitted participant or responsible person charged with an offence under sub-paragraph (4) to show that—

(a) all reasonable steps were taken by or on behalf of the permitted participant to verify (or ascertain) whether the donor was a permissible donor, and

(b) as a result, the responsible person believed the donor to be a permissible donor.

(6) The responsible person in relation to a permitted participant commits an offence if—

(a) sub-paragraph (3)(b) applies in relation to a donation, and

(b) the donation is not dealt with in accordance with that sub-paragraph.

(7) A person who commits an offence under sub-paragraph (4) or (6) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(8) For the purposes of this schedule, a donation received by a permitted participant is to be taken to have been accepted by the permitted participant unless—

(a) it is dealt with in accordance with sub-paragraph (3), and

(b) a record can be produced of the receipt of the donation and of its having been dealt in accordance with that sub-paragraph.

(9) Where a donation is received by a permitted participant in the form of an amount paid into an account held by the permitted participant with a financial institution, it is to be taken for the purposes of this schedule to have been received by the permitted participant at the time when the permitted participant is notified in the usual way of the payment into the account.

Return of donation where donor unidentifiable

35 (1) For the purposes of paragraph 34(3)(b), the required steps are—

(a) if the donation was transmitted by a person other than the donor and the identity of that person is apparent, to return the donation to that person,
(b) if paragraph (a) does not apply but it is apparent that the donor has, in connection with the donation, used any facility provided by an identifiable financial institution, to return the donation to that institution, or

(c) in any other case, to send the donation to the Electoral Commission.

(2) In sub-paragraph (1) any reference to returning or sending a donation to any person or body includes a reference to sending a payment of an equivalent amount to that person or body.

(3) Any amount sent to the Electoral Commission in pursuance of sub-paragraph (1)(c) is to be paid by the Commission into the Scottish Consolidated Fund.

Forfeiture of donations made by impermissible or unidentifiable donors

36 (1) This paragraph applies to any donation received by a permitted participant—

(a) which, by virtue of paragraph 33(1), the permitted participant is prohibited from accepting, but

(b) which has been accepted by the permitted participant.

(2) A sheriff may, on the application of the Electoral Commission, order the forfeiture by the permitted participant of an amount equal to the value of the donation.

(3) An order may be made under this paragraph whether or not proceedings are brought against any person for an offence connected with the donation.

(4) Proceedings on an application for an order under this paragraph are civil proceedings and, accordingly, the standard of proof that applies is that applicable in civil proceedings.

(5) The permitted participant may appeal to the Court of Session against an order made under this paragraph.

(6) Rules of court may make provision—

(a) with respect to applications and appeals under this paragraph,

(b) for the giving of notice of such applications or appeals to persons affected by them,

(c) for the sisting of such persons as parties,

(d) generally with respect to procedure in such applications or appeals.

(7) An amount forfeited by virtue of an order under this paragraph is to be paid into the Scottish Consolidated Fund.

(8) Sub-paragraph (7) does not apply—

(a) where an appeal is made under sub-paragraph (5), before the appeal is determined or otherwise disposed of, or

(b) in any other case, before the end of any period within which, in accordance with rules of court, an appeal under sub-paragraph (5) is to be made.

Evasion of restrictions on donations

37 (1) A person commits an offence if the person—
(a) knowingly enters into, or
(b) knowingly does any act in furtherance of,

any arrangement which facilitates or is likely to facilitate, whether by means of any concealment or disguise or otherwise, the making of relevant donations to a permitted participant by any person or body other than a permissible donor.

(2) A person commits an offence if the person—

(a) knowingly gives the responsible person in relation to a permitted participant any information relating to—

(i) the amount of any relevant donation made to the permitted participant, or

(ii) the person or body making such a donation, which is false in a material particular, or

(b) with intent to deceive, withholds from the responsible person in relation to a permitted participant any material information relating to a matter within paragraph (a)(i) or (ii).

(3) A person who commits an offence under this paragraph is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Statement of relevant donations

The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 20 a statement of relevant donations which complies with paragraphs 39 and 40.

Donations from permissible donors

The statement must record, in relation to each relevant donation falling within sub-paragraph (2) which is accepted by the permitted participant—

(a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32,

(b) the date when the donation was accepted by the permitted participant, and

(c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in donation reports by virtue of paragraph 2 of Schedule 6 to the 2000 Act.

(2) Sub-paragraph (1) applies to a relevant donation where—

(a) the value of the donation exceeds £7,500, or

(b) the value of it and any other relevant benefit or benefits exceeds that amount.

In paragraph (b) "relevant benefit" means any relevant donation or regulated transaction (with the meaning of paragraph 42(4)) made by or entered into with the person who made the donation.
(3) The statement must also record the total value of any relevant donations, other than those falling within sub-paragraph (2), which are accepted by the permitted participant.

(4) In the case of a donation made by an individual who has an anonymous entry in an electoral register if the statement states that the permitted participant has seen evidence that the individual has such an anonymous entry, the statement must be accompanied by a copy of the evidence.

Donations from impermissible or unidentifiable donors

40 (1) This paragraph applies to relevant donations falling within paragraph 33(1)(a) or (b).

(2) Where paragraph 33(1)(a) applies, the statement must record—

(a) the name and address of the donor,

(b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32, and

(c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with paragraph 34(3)(a).

(3) Where paragraph 33(1)(b) applies, the statement must record—

(a) details of the manner in which the donation was made,

(b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32, and

(c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with paragraph 34(3)(b).

Donation reports during referendum period

41 (1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—

(a) the period ending with the 28th day of the referendum period (including the time before the referendum period),

(b) each of the two succeeding periods of 4 weeks during the referendum period, and

(c) the period from the end of the second of the periods referred to in paragraph (b) until the end of the seventh day before the day by which the report is to be delivered to the Electoral Commission (“the final period”).

(2) The report for a period must record, in relation to each relevant donation of more than £7,500 which is received by the permitted participant during the period—

(a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32,

(b) the date when the donation was received by the permitted participant, and

(c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in weekly donation reports by virtue of paragraph 3 of Schedule 6 to the 2000 Act.
(3) If during any period no relevant donations of more than £7,500 were received by the permitted participant, the report for the period must contain a statement of that fact.

(3A) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—

(a) a separate report under this paragraph need not be prepared in respect of any preceding period, but

(b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.

(3B) Sub-paragraphs (2) and (3) apply to a relevant donation received by a permitted participant before the start of the referendum period only if the donation was for the purpose of meeting referendum expenses to be incurred by the permitted participant during the referendum period.

(3C) References in this paragraph and in paragraph 41A to a relevant donation received by a permitted participant include any donation received at a time before the individual or body concerned became a permitted participant, if the donation would have been a relevant donation had the individual or body been a permitted participant at that time.

(4) A report under this paragraph must be delivered by the responsible person to the Electoral Commission—

(a) in the case the report in respect of a period other than the final period, within the period of 7 days beginning with the end of the period to which the report relates,

(b) in the case of the report in respect of the final period, by the end of the fourth day before the date of the referendum.

(5) For the purpose of paragraph (4)(b), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(6) If, in relation to a donation made by an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.

(7) The responsible person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with the requirements of sub-paragraph (4) in relation to a report under this paragraph,

(b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (2), (3) or (6).

(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to donation reports under paragraph 41

41A(1) Each report prepared under paragraph 41 in respect of relevant donations received by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—

(a) that the responsible person has examined the report, and

(b) that to the best of the responsible person’s knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of donation reports under paragraph 41

41B(1) Where the Electoral Commission receive a report under paragraph 41 they must—

(a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and

(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any donation by an individual, the donor’s address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 41 or other document accompanying it is received by the Commission—

(a) they may cause the report or other document to be destroyed, or

(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.
PART 6
CONTROL OF LOANS AND CREDIT

Operation of Part

42 (1) This Part has effect for controlling regulated transactions entered into by permitted participants that either are not registered parties or are minor parties.

(2) The following provisions have effect for the purposes of this Part.

(3) In accordance with sub-paragraph (1), “permitted participant” does not include a permitted participant which is a registered party other than a minor party.

(4) “Regulated transaction” has the meaning given by paragraph 43.

(5) In relation to transactions entered into by a permitted participant other than a designated organisation, the reference in paragraph 45(2) to a permissible donor does not include a registered party.

Regulated transactions

43 (1) An agreement between a permitted participant and another person by which the other person makes a loan of money to the permitted participant is a regulated transaction if the use condition is satisfied.

(2) An agreement between a permitted participant and another person by which the other person provides a credit facility to the permitted participant is a regulated transaction if the use condition is satisfied.

(3) Where—

(a) a permitted participant and another person (“A”) enter into a regulated transaction of a description mentioned in sub-paragraph (1) or (2), or a transaction under which any property, services or facilities are provided for the use or benefit of the permitted participant (including the services of any person),

(b) A also enters into an arrangement whereby another person (“B”) gives any form of security (whether real or personal) for a sum owed to A by the permitted participant under the transaction mentioned in paragraph (a), and

(c) the use condition is satisfied,

the arrangement is a regulated transaction.

(4) An agreement or arrangement is also a regulated transaction if—

(a) the terms of the agreement or arrangement as first entered into do not constitute a regulated transaction by virtue of sub-paragraph (1), (2) or (3), but

(b) the terms are subsequently varied in such a way that the agreement or arrangement becomes a regulated transaction.

(5) The use condition is that the permitted participant intends at the time of entering into a transaction mentioned in sub-paragraph (1), (2) or (3)(a) to use any money or benefit obtained in consequence of the transaction for meeting referendum expenses incurred by or on behalf of the permitted participant.
(6) For the purposes of sub-paragraph (5), it is immaterial that only part of the money or benefit is intended to be used for meeting referendum expenses incurred by or on behalf of the permitted participant.

(7) References in sub-paragraphs (1) and (2) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if that person makes the agreement as such.

(8) References in sub-paragraph (3) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if the property, services or facilities are provided to that person as such, or the sum is owed by that person as such.

(9) A reference to a connected transaction is a reference to the transaction mentioned in sub-paragraph (3)(b).

(10) In this paragraph a reference to anything being done by or in relation to a permitted participant or a person includes a reference to its being done directly or indirectly through a third person.

(11) A credit facility is an agreement whereby a permitted participant is enabled to receive from time to time from another party to the agreement a loan of money not exceeding such amount (taking account of any repayments made by the permitted participant) as is specified in or determined in accordance with the agreement.

(12) An agreement or arrangement is not a regulated transaction—

(a) to the extent that a payment made in pursuance of the agreement or arrangement falls, by virtue of paragraph 38, to be included in a return under paragraph 20, or

(b) if its value does not exceed £500.

Valuation of regulated transaction

44 (1) The value of a regulated transaction which is a loan is the value of the total amount to be lent under the loan agreement.

(2) The value of a regulated transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.

(3) The value of a regulated transaction which is an arrangement by which any form of security is given is the contingent liability under the security provided.

(4) For the purposes of sub-paragraphs (1) and (2), no account is to be taken of the effect of any provision contained in a loan agreement or an agreement for a credit facility at the time it is entered into which enables outstanding interest to be added to any sum for the time being owed in respect of the loan or credit facility, whether or not any such interest has been so added.

Authorised participants

45 (1) A permitted participant must not—

(a) be a party to a regulated transaction to which any of the other parties is not an authorised participant,

(b) derive a benefit in consequence of a connected transaction if any of the parties to that transaction is not an authorised participant.
In this Part, an authorised participant is a person who is a permissible donor.

Regulated transaction involving unauthorised participant

46 (1) This paragraph applies if a permitted participant is a party to a regulated transaction to which another party is not an authorised participant.

(2) The transaction is void.

(3) Despite sub-paragraph (2)—
   (a) any money received by the permitted participant by virtue of the transaction must be repaid by the responsible person to the person from whom it was received, along with interest at the rate referred to in section 71I(3)(a) of the 2000 Act,
   (b) the person from whom it was received is entitled to recover the money, along with such interest.

(4) If—
   (a) the money is not (for whatever reason) repaid as mentioned in sub-paragraph (3)(a), or
   (b) the person entitled to recover the money refuses or fails to do so,

the Commission may apply to a sheriff to make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.

(5) An order under sub-paragraph (4) may in particular—
   (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),
   (b) where any form of security is given for a sum owed under the transaction, require that security to be discharged.

(6) In the case of a regulated transaction where a party other than a permitted participant—
   (a) at the time the permitted participant enters into the transaction, is an authorised participant, but
   (b) subsequently, for whatever reason, ceases to be an authorised participant,

the transaction is void and sub-paragraphs (3) to (5) apply with effect from the time when the other party ceased to be an authorised participant.

Guarantees and securities: unauthorised participant

47 (1) This paragraph applies if—
   (a) a permitted participant and another person (“A”) enter into a transaction of a description mentioned in paragraph 43(3)(a),
   (b) A is party to a regulated transaction of a description mentioned in paragraph 43(3)(b) (“the connected transaction”) with another person (“B”), and
   (c) B is not an authorised participant.

(2) Paragraph 46(2) to (5) applies to the transaction mentioned in sub-paragraph (1)(a).
The connected transaction is void.

Sub-paragraph (5) applies if (but only if) A is unable to recover from the permitted participant the whole of the money mentioned in paragraph 46(3)(a) (as applied by sub-paragraph (2) above), along with such interest as is there mentioned.

Despite sub-paragraph (3), A is entitled to recover from B any part of that money (and such interest) that is not recovered from the permitted participant.

Sub-paragraph (5) does not entitle A to recover more than the contingent liability under the security provided by virtue of the connected transaction.

In the case of a connected transaction where B—

(a) at the time A enters into the transaction, is an authorised participant, but
(b) subsequently, for whatever reason, ceases to be an authorised participant,
sub-paragraphs (2) to (6) apply with effect from the time when B ceased to be an authorised participant.

If the transaction mentioned in paragraph 43(3)(a) is not a regulated transaction of a description mentioned in paragraph 43(1) or (2), references in this paragraph and paragraph 46(2) to (5) (as applied by sub-paragraph (2) above) to the repayment or recovery of money are to be construed as references to (as the case may be)—

(a) the return or recovery of any property provided under the transaction,
(b) to the extent that such property is incapable of being returned or recovered or its market value has diminished since the time the transaction was entered into, the repayment or recovery of the market value at that time, or
(c) the market value (at that time) of any facilities or services provided under the transaction.

Transfer to unauthorised participant invalid

If an authorised participant purports to transfer the participant’s interest in a regulated transaction to a person who is not an authorised participant the purported transfer is of no effect.

Offences

An individual who is a permitted participant commits an offence if—

(a) the individual enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and
(b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).

A permitted participant that is not an individual commits an offence if—

(a) it enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and
(b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).
(3) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
   (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and
   (b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(4) An individual who is a permitted participant commits an offence if—
   (a) the individual enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,
   (b) the individual neither knew nor ought reasonably to have known that the other party is not an authorised participant, and
   (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the individual the individual fails to take all reasonable steps to repay any money which the individual has received by virtue of the transaction.

(5) A permitted participant that is not an individual commits an offence if—
   (a) it enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,
   (b) no officer of the permitted participant knew or ought reasonably to have known that the other party is not an authorised participant, and
   (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the responsible person the responsible person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.

(6) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
   (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,
   (b) sub-paragraph (3)(b) does not apply to the person, and
   (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the person the person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.

(7) An individual who is a permitted participant commits an offence if—
   (a) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
   (b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(8) A permitted participant that is not an individual commits an offence if—
   (a) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
(b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(9) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—

(a) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and

(b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(10) An individual who is a permitted participant commits an offence if—

(a) the individual is a party to a transaction of a description mentioned in paragraph 43(3)(a),

(b) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,

(c) the individual neither knew nor ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and

(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the individual the individual fails to take all reasonable steps to pay to any person who has provided the individual with any benefit in consequence of the connected transaction the value of the benefit.

(11) A permitted participant that is not an individual commits an offence if—

(a) it is a party to a transaction of a description mentioned in paragraph 43(3)(a),

(b) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,

(c) no officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and

(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the responsible person the responsible person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.

(12) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—

(a) the permitted participant is a party to a transaction of a description mentioned in paragraph 43(3)(a),

(b) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,

(c) sub-paragraph (9)(b) does not apply to the person, and

(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the person the person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.
(13) A person commits an offence if the person—
   (a) knowingly enters into, or
   (b) knowingly does any act in furtherance of,
any arrangement which facilitates or is likely to facilitate, whether by means of
concealment or disguise or otherwise, the participation by a permitted participant in a
regulated transaction with a person other than an authorised participant.

(14) It is a defence for a person charged with an offence under sub-paragraph (3) to prove
that the person took all reasonable steps to prevent the permitted participant entering
into the transaction.

(15) It is a defence for a person charged with an offence under sub-paragraph (9) to prove
that the person took all reasonable steps to prevent the permitted participant benefiting
in consequence of the connected transaction.

(16) A reference to a permitted participant entering into a regulated transaction includes a
reference to any circumstances in which the terms of a regulated transaction are varied
so as to increase the amount of money to which the permitted participant is entitled in
consequence of the transaction.

(17) A reference to a permitted participant entering into a transaction to which another party
is not an authorised participant includes a reference to any circumstances in which
another party to the transaction who is an authorised participant ceases (for whatever
reason) to be an authorised participant.

Penalties

50 (1) A person who commits an offence under sub-paragraph (1), (2), (4), (7), (8) or (10) of
paragraph 49 is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum,
   (b) on conviction on indictment, to a fine.

(2) A person who commits an offence under sub-paragraph (3), (5), (6), (9), (11), (12) or
(13) of paragraph 49 is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or
to a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months
or to a fine (or both).

Statement of regulated transactions

51 (1) The responsible person in relation to a permitted participant must include in any return
required to be prepared under paragraph 20 a statement of regulated transactions entered
into by the permitted participant.

(2) The statement must comply with paragraphs 52 to 56.

(3) For the purposes of those paragraphs a regulated transaction is a recordable
transaction—
   (a) if the value of the transaction does not exceed £7,500, or
(b) if the aggregate value of it and any other relevant benefit or benefits does not exceed that amount.

In paragraph (b) “relevant benefit” means any relevant donation (within the meaning of paragraph 28(4)) or regulated transaction made by, or entered into with, the person with whom the regulated transaction was entered into.

**Identity of authorised participants**

52 The statement must record, in relation to each recordable transaction to which an authorised participant was a party, the information about the authorised participant which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 2 of Schedule 6A to the 2000 Act.

**Identity of unauthorised participants**

53 The statement must record, in relation to each recordable transaction to which a person other than an authorised participant was a party—

(a) the name and address of the person,

(b) the date when, and the manner in which, the transaction was dealt with in accordance with sub-paragraphs (3) to (5) of paragraph 46 or those sub-paragraphs as applied by paragraph 46(6) or 47(2).

**Details of transaction**

54 (1) The statement must record, in relation to each recordable transaction, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 5(2), (3) and (4) of Schedule 6A to the 2000 Act (read with any necessary modifications).

(2) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 43(1) or (2) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 6 of Schedule 6A to the 2000 Act.

(3) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 43(3)(a) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 7(2)(b), (3) and (4) of Schedule 6A to the 2000 Act.

**Changes**

55 (1) Where another authorised participant has become a party to a regulated transaction (whether in place of or in addition to any existing participant), or there has been any other change in any of the information that is required by paragraphs 52 to 54 to be included in the statement, the statement must record—

(a) the information as it was both before and after the change,

(b) the date of the change.

(2) Where a recordable transaction has come to an end, the statement must—
(a) record that fact,
(b) record the date when it happened,
(c) in the case of a loan, state how the loan has come to an end.

(3) For the purposes of sub-paragraph (2), a loan comes to an end if—

(a) the whole debt (or all the remaining debt) is repaid,
(b) the creditor releases the whole debt.

**Total value of non-recordable transactions**

The statement must record the total value of any regulated transactions that are not recordable transactions.

**Transaction reports during referendum period**

(1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—

(a) the period ending with the 28th day of the referendum period (including the time before the referendum period),
(b) each of the two succeeding periods of 4 weeks during the referendum period, and
(c) the period from the end of the second of the periods referred to in paragraph (b) until the end of the seventh day before the day by which the report is to be delivered to the Electoral Commission (“the final period”).

(2) The report for any period must record, in relation to each regulated transaction having a value exceeding £7,500 which is entered into by the permitted participant during the period—

(a) the same information about the transaction as would be required, by virtue of paragraph 54, to be recorded in the statement referred to in paragraph 51(1),
(b) in relation to a transaction to which an authorised participant is a party, the information about each authorised participant which is, in connection with recordable transactions entered into by registered parties, required to be recorded in weekly transaction reports by virtue of paragraph 3 of Schedule 6A to the 2000 Act, and
(c) in relation to a transaction to which a person who is not an authorised participant is a party, the information referred to in paragraph 53.

(3) If during any period no regulated transactions having a value exceeding £7,500 were entered into by the permitted participant, the report for the period must contain a statement of that fact.

(3A) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”—

(a) a separate report under this paragraph need not be prepared for any preceding period, but
(b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs are to be read accordingly.
(3B) Sub-paragraphs (2) and (3) apply to a regulated transaction entered into by a permitted participant before the start of the referendum period only if any money or benefit obtained in consequence of the transaction is to be used for meeting referendum expenses to be incurred by the permitted participant during the referendum period.

(3C) References in this paragraph and in paragraph 57A to a regulated transaction entered into by a permitted participant include any transaction entered into at a time before the individual or body concerned became a permitted participant, if the transaction would have been a regulated transaction had the individual or body been a permitted participant at that time.

(4) A report under this paragraph must be delivered by the responsible person to the Electoral Commission—

(a) in the case of the report in respect of a period other than the final period, within the period of 7 days beginning with the end of the period to which the report relates,

(b) in the case of the report in respect of the final period, by the end of the fourth day before the date of the referendum.

(5) For the purpose of paragraph (4)(b), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(6) If, in relation to a regulated transaction entered into with an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.

(7) The responsible person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with the requirements of sub-paragraph (4) in relation to a report under this paragraph,

(b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (2), (3) or (6).

(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to transaction reports under paragraph 57

57A(1) Each report prepared under paragraph 57 in respect of regulated transactions entered into by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.
(2) The declaration must state—

(a) that the responsible person has examined the report, and
(b) that to the best of the responsible person’s knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of transaction reports under paragraph 57

57B(1) Where the Electoral Commission receive a report under paragraph 57 they must—

(a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and

(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any transaction entered into by the permitted participant with an individual, the individual’s address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 57 or other document accompanying it is received by the Commission—

(a) they may cause the report or other document to be destroyed, or

(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

Non-disclosure with intent to conceal

58 (1) This paragraph applies where, on an application made by the Commission, a sheriff is satisfied that any failure to comply with a requirement of paragraphs 51 to 57 in relation to—

(a) any transaction entered into by the permitted participant, or

(b) any change made to a transaction to which the permitted participant is a party, was attributable to an intention on the part of any person to conceal the existence or true value of the transaction.
(2) The sheriff may make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.

(3) An order under this paragraph may in particular—

(a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),

(b) where any form of security is given for a sum owed under the transaction, or the transaction is an arrangement by which any form of security is given, require that the security be discharged.

Proceedings under paragraphs 46 and 58

59 (1) This paragraph has effect in relation to proceedings on an application under paragraph 46(4) or 58.

(2) The proceedings are civil proceedings and, accordingly, the standard of proof that applies is that applicable to civil proceedings.

(3) An order may be made whether or not proceedings are brought against any person for an offence under paragraph 23 or paragraph 49.

(4) An appeal against an order made by the sheriff may be made to the Court of Session.

(5) Rules of court may make provision—

(a) with respect to applications or appeals from proceedings on such applications,

(b) for the giving of notice of such applications or appeals to persons affected,

(c) for the sisting of such persons as parties,

(d) generally with respect to procedure in such applications or appeals.

(6) Sub-paragraph (5) does not affect any existing power to make rules.

Interpretation

60 (1) In this Part—

“authorised participant” is to be construed in accordance with paragraph 45 (and see paragraph 42(5)),

“connected transaction” has the meaning given by paragraph 43(9),

“credit facility” has the meaning given by paragraph 43(11),

“permitted participant” is to be construed in accordance with paragraph 42,

“regulated transaction” is to be construed in accordance with paragraph 43.

(2) For the purposes of any provision relating to the reporting of transactions, anything required to be done by a permitted participant in consequence of its being a party to a regulated transaction must also be done by it, if it is a party to a transaction of a description mentioned in paragraph 43(3)(a), as if it were a party to the connected transaction.
SCHEDULE 5
(introduced by section 11(4))

CAMPAIGN RULES: INVESTIGATORY POWERS OF THE ELECTORAL COMMISSION

Power to require disclosure

1 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.

(2) The Electoral Commission may give a disclosure notice to a person who—

(a) is, or has been at any time in the period of 5 years ending with the day on which the notice is given, the treasurer or another officer of an organisation to which this paragraph applies, or

(b) is an individual to whom this paragraph applies.

(3) A disclosure notice is a notice requiring the person to whom it is given—

(a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents which—

(i) relate to income and expenditure of the organisation or individual in question, and

(ii) are reasonably required by the Commission for the purposes of carrying out their functions under section 11 and schedule 4, or

(b) to provide the Commission, or a person authorised by the Commission, with any information or explanation which relates to that income and expenditure and is reasonably required by the Commission for those purposes.

(4) A person to whom a disclosure notice is given must comply with the notice within such reasonable time as is specified in the notice.

Inspection warrants

2 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.

(2) A sheriff or a justice of the peace may, on the application of the Electoral Commission, issue an inspection warrant in relation to any premises occupied by an organisation or individual to whom this paragraph applies if satisfied that—

(a) there are reasonable grounds for believing that on those premises there are documents relating to the income and expenditure of the organisation or individual,

(b) the Commission need to inspect the documents for the purposes of carrying out their functions under section 11 and schedule 4 (other than their investigatory functions), and

(c) permission to inspect the documents on the premises has been requested by the Commission and has been unreasonably refused.

(3) An inspection warrant is a warrant authorising a member of the Commission’s staff—

(a) at any reasonable time to enter the premises specified in the warrant, and

(b) having entered the premises, to inspect any documents within sub-paragraph (2)(a).
An inspection warrant also authorises the person who executes the warrant to be accompanied by any other persons who the Commission consider are needed to assist in executing it.

The person executing an inspection warrant must, if required to do so, produce—

(a) the warrant, and

(b) documentary evidence that the person is a member of the Commission’s staff,

for inspection by the occupier of the premises that are specified in the warrant or by anyone acting on the occupier’s behalf.

An inspection warrant continues in force until the end of the period of one month beginning with the day on which it is issued.

An inspection warrant may not be used for the purposes of carrying out investigatory functions.

In this paragraph, “investigatory functions” means functions of investigating—

(a) suspected campaign offences, or

(b) suspected contraventions of restrictions or requirements imposed by schedule 4.

Powers in relation to suspected offences or contraventions

This paragraph applies where the Electoral Commission have reasonable grounds to suspect that—

(a) a person has committed a campaign offence, or

(b) a person has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 4.

In this paragraph, “the suspected offence or contravention” means the offence or contravention referred to in sub-paragraph (1).

The Commission may by notice require any person (including an organisation or individual to whom paragraph 1 applies)—

(a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents that they reasonably require for the purposes of investigating the suspected offence or contravention,

(b) to provide the Commission, or a person authorised by the Commission, with any information or explanation that they reasonably require for those purposes.

A person to whom a notice is given under sub-paragraph (3) must comply with the notice within such reasonable time as is specified in the notice.

A person authorised by the Commission (“the investigator”) may require—

(a) the person mentioned in sub-paragraph (1) (if that person is an individual), or

(b) an individual who the investigator reasonably believes has relevant information,

to attend before the investigator at a specified time and place and answer any questions that the investigator reasonably considers to be relevant.

The time specified must be a reasonable time.

In sub-paragraph (5), “relevant” means relevant to an investigation by the Commission of the suspected offence or contravention.
Court order for delivery of documents or provision of information etc.

4 (1) This paragraph applies where the Electoral Commission have given a notice under paragraph 3 requiring documents to be produced.

(2) The Court of Session may, on the application of the Commission, make a document disclosure order against a person (“the respondent”) if satisfied that—

(a) there are reasonable grounds to suspect that a person (whether or not the respondent) has committed a campaign offence or has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 4, and

(b) there are documents referred to in the notice under paragraph 3 which—

(i) have not been produced as required by the notice (either within the time specified in the notice for compliance or subsequently),

(ii) are reasonably required by the Commission for the purposes of investigating the offence or contravention referred to in paragraph (a), and

(iii) are in the custody or under the control of the respondent.

(3) A document disclosure order is an order requiring the respondent to deliver to the Commission, within such time as is specified in the order, such documents falling within sub-paragraph (2)(b) as are identified in the order (either specifically or by reference to any category or description of document).

(4) For the purposes of sub-paragraph (2)(b)(iii) a document is under a person’s control if it is in the person’s possession or if the person has a right to possession of it.

(5) A person who fails to comply with a document disclosure order may not, in respect of that failure, be both punished for contempt of court and convicted of an offence under paragraph 12(1).

5 (1) This paragraph applies where the Electoral Commission have given a notice under paragraph 3 requiring any information or explanation to be provided.

(2) The Court of Session may, on the application of the Commission, make an information disclosure order against a person (“the respondent”) if satisfied that—

(a) there are reasonable grounds to suspect that a person (whether or not the respondent) has committed a campaign offence or has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 4, and

(b) there is any information or explanation referred to in the notice under paragraph 3 which—

(i) has not been provided as required by the notice (either within the time specified in the notice for compliance or subsequently),

(ii) is reasonably required by the Commission for the purposes of investigating the offence or contravention referred to in paragraph (a), and

(iii) the respondent is able to provide.

(3) An information disclosure order is an order requiring the respondent to provide to the Commission, within such time as is specified in the order, such information or explanation falling within sub-paragraph (2)(b) as is identified in the order.
A person who fails to comply with an information disclosure order may not, in respect of that failure, be both punished for contempt of court and convicted of an offence under paragraph 12(1).

**Retention of documents delivered under paragraph 4**

1. The Electoral Commission may retain any documents delivered to them in compliance with an order under paragraph 4 for a period of 3 months (or for longer if any of sub-paragraphs (3) to (8) applies).

2. In this paragraph, “the documents” and “the 3 month period” mean the documents and the period mentioned in sub-paragraph (1).

3. If within the 3 month period proceedings to which the documents are relevant are commenced against any person for any criminal offence, the documents may be retained until the conclusion of the proceedings.

4. If within the 3 month period the Commission serve a notice under paragraph 2(1) of schedule 6 of a proposal to impose a fixed monetary penalty on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—
   - until liability for the penalty is discharged as mentioned in paragraph 2(2) of that schedule (if it is),
   - until the Commission decide not to impose a fixed monetary penalty (if that is what they decide),
   - until the end of the period given by sub-paragraph (6) (if they do impose a fixed monetary penalty).

5. If within the 3 month period the Commission serve a notice under paragraph 6(1) of schedule 6 of a proposal to impose a discretionary requirement on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—
   - until the Commission decide not to impose a discretionary requirement (if that is what they decide),
   - until the end of the period given by sub-paragraph (6) (if they do impose a discretionary requirement).

6. If within the 3 month period—
   - a notice is served imposing a fixed monetary penalty on any person under paragraph 2(4) of schedule 6 and the documents are relevant to the decision to impose the penalty, or
   - a notice is served imposing a discretionary requirement on any person under paragraph 6(5) of that schedule and the documents are relevant to the decision to impose the requirement,

the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

7. If within the 3 month period—
   - a stop notice is served on any person under paragraph 10 of schedule 6, and
   - the documents are relevant to the decision to serve the notice,
the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

(8) If within the 3 month period or the period given by sub-paragraph (7) (or, if applicable, by sub-paragraph (5) or (6)(b))—

(a) the Commission, having served a stop notice on any person under paragraph 10 of schedule 6, decide not to issue a completion certificate under paragraph 12 of that schedule in relation to the stop notice, and

(b) the documents are relevant to the decision not to issue the certificate,

the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

Power to make copies and records

7 The Electoral Commission or a person authorised by the Commission—

(a) may make copies or records of any information contained in—

(i) any documents produced or inspected under this schedule,

(ii) any documents delivered to them in compliance with an order under paragraph 4,

(b) may make copies or records of any information or explanation provided under this schedule.

Authorisation to be in writing

8 An authorisation of a person by the Electoral Commission under this schedule must be in writing.

Documents in electronic form

9 (1) In the case of documents kept in electronic form—

(a) a power of the Electoral Commission under this schedule to require documents to be produced for inspection includes power to require a copy of the documents to be made available for inspection in legible form,

(b) a power of a person (“the inspector”) under this schedule to inspect documents includes power to require any person on the premises in question to give any assistance that the inspector reasonably requires to enable the inspector—

(i) to inspect and make copies of the documents in legible form or to make records of information contained in them, or

(ii) to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the documents.

(2) Paragraph 7(a) applies in relation to any copy made available as mentioned in sub-paragraph (1)(a) above.
Legal professional privilege

10 Nothing in this schedule requires a person to produce or provide, or authorises a person to inspect or take possession of, anything in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.

Admissibility of statements

11 (1) A statement made by a person ("P") in compliance with a requirement imposed under this schedule is admissible in evidence in any proceedings (as long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question).

10 (2) But in criminal proceedings in which P is charged with an offence other than one to which sub-paragraph (3) applies or in proceedings within sub-paragraph (4) to which both the Electoral Commission and P are parties—

(a) no evidence relating to the statement is admissible against P, and

(b) no question relating to the statement may be asked on behalf of the prosecution or (as the case may be) the Commission in cross-examination of P,

unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of P.

15 (3) This sub-paragraph applies to—

(a) an offence under paragraph 12(3),

(b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath).

(4) Proceedings are within this sub-paragraph if they arise out of the exercise by the Commission of any of their powers under schedule 6 other than powers in relation to an offence under paragraph 12(3) below.

Offences

12 (1) A person who fails, without reasonable excuse, to comply with any requirement imposed under or by virtue of this schedule commits an offence.

(2) A person who intentionally obstructs a person authorised by or by virtue of this schedule in the carrying out of that person’s functions under the authorisation commits an offence.

30 (3) A person who knowingly or recklessly provides false information in purported compliance with a requirement imposed under or by virtue of this schedule commits an offence.

(4) A person who commits an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

35 (5) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
Guidance by Commission

13A(1) Guidance (and revised guidance) published by the Electoral Commission under paragraph 14 of Schedule 19B (investigatory powers of the Commission) to the 2000 Act has effect, with any necessary modifications, for the purposes of this schedule as it has effect for the purposes of that Schedule.

(2) The Commission may publish additional guidance in relation to the application of this schedule.

(3) Where appropriate, the Commission must revise guidance published under sub-paragraph (2) and publish the revised guidance.

(4) The Commission must have regard to the guidance and revised guidance referred to in sub-paragraph (1) and any guidance or revised guidance published under sub-paragraph (2) or (3) in exercising their functions under this Act.

Information about use of investigatory powers in Commission’s report

14 (1) The Electoral Commission must, in accordance with this paragraph, make a report about the use made by the Commission of their powers under this schedule.

(2) The report must, in particular, specify—

(a) the cases in which a notice was given under paragraph 1 or 3(3),
(b) the cases in which premises were entered under a warrant issued under paragraph 2,
(c) the cases in which a requirement was imposed under paragraph 3(5),
(d) the cases in which an order under paragraph 4 or 5—
   (i) was applied for,
   (ii) was made.

(3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—

(a) would or might be unlawful, or
(b) might adversely affect any current investigation or proceedings.

(4) The report may be made—

(a) in the report by the Commission under section 24,
(b) in a separate report made as soon as reasonably practicable after the report under section 24 is published, or
(c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(5) The Commission must—

(a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and
(b) after laying, publish the report in such manner as they may determine.

Interpretation

15 In this schedule—
“contravention” includes a failure to comply, and related expressions are to be construed accordingly,
“documents” includes any books or records,
“restriction” includes prohibition.

SCHEDULE 6
(introduced by section 11(5))

CAMPAIGN RULES: CIVIL SANCTIONS

PART 1

FIXED MONETARY PENALTIES

Imposition of fixed monetary penalties

1 (1) The Electoral Commission may by notice impose a fixed monetary penalty on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 8.

(2) The Commission may by notice impose a fixed monetary penalty on a permitted participant if satisfied beyond reasonable doubt that the responsible person—

(a) has committed a campaign offence listed in Part 8, or

(b) has failed to comply with a requirement imposed by paragraph 22(2), (3) or (4) of schedule 4.

(3) For the purposes of this schedule a “fixed monetary penalty” is a requirement to pay to the Commission a penalty of £200.

Representations and appeals etc.

2 (1) Where the Electoral Commission propose to impose a fixed monetary penalty on a person, they must serve on the person a notice of what is proposed.

(2) A notice under sub-paragraph (1) must offer the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of £200.

The following provisions of this paragraph apply if the person does not do so.

(3) The person may make written representations and objections to the Commission in relation to the proposed imposition of the fixed monetary penalty.

(4) After the end of the period for making such representations and objections (see paragraph 3(2)) the Commission must decide whether to impose the fixed monetary penalty.

If they decide to do so they must serve on the person a notice imposing the penalty.

(5) The Commission may not impose a fixed monetary penalty on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 1(1) or (2) (as applicable).

(6) A person on whom a fixed monetary penalty is imposed may appeal against the decision to impose the penalty on the ground that—
(a) it was based on an error of fact,
(b) it was wrong in law, or
(c) it was unreasonable.

(7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (4) is received.
(8) Where an appeal under sub-paragraph (6) is made, the fixed monetary penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Information to be included in notices under paragraph 2

(1) A notice under paragraph 2(1) must include information as to—
(a) the grounds for the proposal to impose the fixed monetary penalty,
(b) the effect of payment of the sum referred to in paragraph 2(2),
(c) the right to make representations and objections,
(d) the circumstances in which the Commission may not impose the fixed monetary penalty.

(2) Such a notice must also specify—
(a) the period within which liability for the fixed monetary penalty may be discharged, and
(b) the period within which representations and objections may be made.

Neither period may be more than 28 days beginning with the day on which the notice is received.

(3) A notice under paragraph 2(4) must include information as to—
(a) the grounds for imposing the fixed monetary penalty,
(b) how payment may be made,
(c) the period within which payment may be made,
(d) any early payment discounts or late payment penalties,
(e) rights of appeal,
(f) the consequences of non-payment.

Late payment

(1) A fixed monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 2(4) is received.
(2) If the penalty is not paid within that period the amount payable is increased by 25%.
(3) If the penalty (as increased by sub-paragraph (2)) is not paid within the period of 56 days beginning with the day on which the notice under paragraph 2(4) is received, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.
(4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or because the appeal was withdrawn, is payable within the period of 28 days beginning with the day of determination or withdrawal of the appeal, and if not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) is not paid within the period of 56 days beginning with the day of determination or withdrawal of the appeal, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

Fixed monetary penalties: criminal proceedings and conviction

4 (1) Where a notice under paragraph 2(1) is served on a person—

(a) no criminal proceedings for a campaign offence may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period within which the person’s liability may be discharged as mentioned in paragraph 2(2) (see paragraph 3(2)),

(b) if the liability is so discharged, the person may not at any time be convicted of a campaign offence in relation to that act or omission.

(2) A person on whom a fixed monetary penalty is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the penalty.

PART 2

DISCRETIONARY REQUIREMENTS

Imposition of discretionary requirements

5 (1) The Electoral Commission may impose one or more discretionary requirements on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 8.

(2) The Commission may impose one or more discretionary requirements on a permitted participant if satisfied beyond reasonable doubt that the responsible person—

(a) has committed a campaign offence listed in Part 8, or

(b) has failed to comply with a requirement imposed by paragraph 22(2), (3) or (4) of schedule 4.

(3) For the purposes of this schedule a “discretionary requirement” is—

(a) a requirement to pay a monetary penalty to the Commission of such amount as the Commission may determine up to a maximum of £10,000, (but see also sub-paragraph (6)),

(b) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the offence or failure to comply does not continue or recur, or

(c) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence or failure to comply had not happened.
(4) Discretionary requirements may not be imposed on the same person on more than one occasion in relation to the same act or omission.

(5) In this schedule—
   “variable monetary penalty” means such a requirement as is referred to in sub-paragraph (3)(a),
   “non-monetary discretionary requirement” means such a requirement as is referred to in sub-paragraph (3)(b) or (c).

(6) In the case of a variable monetary penalty imposed under sub-paragraph (1) or (2)(a), where the offence in question is—
   (a) triable summarily only, and
   (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),
   the amount of the penalty may not exceed the maximum amount of that fine.

Representations and appeals etc.

6 (1) Where the Electoral Commission propose to impose a discretionary requirement on a person, they must serve on the person a notice of what is proposed.

(2) A person served with a notice under sub-paragraph (1) may make written representations and objections to the Commission in relation to the proposed imposition of the discretionary requirement.

(3) After the end of the period for making such representations and objections (see paragraph 7(2)) the Commission must decide whether—
   (a) to impose the discretionary requirement, with or without modifications, or
   (b) to impose any other discretionary requirement that the Commission have power to impose under paragraph 5.

(4) The Commission may not impose a discretionary requirement on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 5(1) or 2(2) (as applicable).

(5) Where the Commission decide to impose a discretionary requirement on a person, they must serve on the person a notice specifying what the requirement is.

(6) A person on whom a discretionary requirement is imposed may appeal against the decision to impose the requirement on the ground—
   (a) that the decision was based on an error of fact,
   (b) that the decision was wrong in law,
   (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
   (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable, or
   (e) that the decision is unreasonable for any other reason.

(7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (5) is received.
(8) Where an appeal under sub-paragraph (6) is made, the discretionary requirement is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Information to be included in notices under paragraph 6

5 7 (1) A notice under paragraph 6(1) must include information as to—
   (a) the grounds for the proposal to impose the discretionary requirement,
   (b) the right to make representations and objections,
   (c) the circumstances in which the Commission may not impose the discretionary requirement.

10 (2) Such a notice must also specify the period within which representations and objections may be made.

That period may not be less than 28 days beginning with the day on which the notice is received.

(3) A notice under paragraph 6(5) must include information as to—

15 (a) the grounds for imposing the discretionary requirement,

(b) where the discretionary requirement is a variable monetary penalty—
   (i) how payment may be made,
   (ii) the period within which payment must be made, and
   (iii) any early payment discounts or late payment penalties,

(c) rights of appeal,

(d) the consequences of non-compliance.

Discretionary requirements: criminal conviction

8 (1) A person on whom a discretionary requirement is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the requirement.

25 (2) Sub-paragraph (1) does not apply where—
   (a) a non-monetary discretionary requirement is imposed on the person,
   (b) no variable monetary penalty is imposed on the person, and
   (c) the person fails to comply with the non-monetary discretionary requirement.

Compliance and restoration certificates

30 8A(1) Where, after the service of a notice under paragraph 6(5) imposing a non-monetary discretionary requirement on a person, the Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect.

35 (2) A notice served under paragraph 6(5) ceases to have effect on the issue of a certificate relating to that notice.
(3) A person on whom a notice under paragraph 6(5) has been served may at any time apply for a certificate and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.

(4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the notice has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—

(a) the grounds for the decision not to issue a certificate, and

(b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a certificate, the notice has effect as if the certificate had not been issued.

(8) A person who has applied for a certificate under sub-paragraph (3) may appeal to a sheriff against a decision not to issue a certificate under this paragraph on the ground that the decision was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unfair or unreasonable.

(9) An appeal must be made within the period of 28 days beginning with the day on which notification of the decision is received.

Failure to comply with discretionary requirements

9 (1) The Electoral Commission may by notice impose a monetary penalty (a “non-compliance penalty”) on a person for failing to comply with a non-monetary discretionary requirement imposed on the person.

(1A) The amount of a non-compliance penalty is to be determined by the Commission, but must not exceed £10,000.

(1B) A non-compliance penalty must be paid to the Commission.

(1C) A notice under sub-paragraph (1) must include information as to—

(a) the grounds for imposing the non-compliance penalty,

(b) the amount of the penalty,

(c) how payment may be made,

(d) the period within which payment must be made, which must be not less than 28 days beginning with the day on which the notice imposing the penalty is received,

(e) rights of appeal, and

(f) the consequences of failure to make payment within the period specified.
(1D) If, before the end of the period specified for payment of a non-compliance penalty—
   (a) the person on whom the penalty was imposed has taken the steps specified in the notice imposing the non-monetary discretionary requirement to which the penalty relates, and
   (b) the Commission have issued a certificate under paragraph 8A(1) in respect of that notice,
the Commission may waive, or reduce the amount of, the penalty.

(3) A person served with a notice imposing a non-compliance penalty may appeal against the notice on the ground that the decision to serve the notice—
   (a) was based on an error of fact,
   (b) was wrong in law, or
   (c) was unfair or unreasonable for any reason (for example because the amount is unreasonable).

(4) An appeal under sub-paragraph (3) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) is received.

(5) Where an appeal under sub-paragraph (3) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

**Late payment**

9A(1) A variable monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 6(5) is received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.

(3) If the penalty (as increased by sub-paragraph (2)) is not paid within 56 days of the day on which the notice under paragraph 6(5) is received, the amount payable is the amount of the penalty originally imposed increased by 50%.

(4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or varied it, or because the appeal was withdrawn, is payable within 28 days of the day of determination or withdrawal of the appeal, and if it is not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) is not paid within 56 days of the day of determination or withdrawal of the appeal the amount payable is the amount of the penalty originally imposed increased by 50%.

**PART 3**

**STOP NOTICES**

10 (1) Where sub-paragraph (2) or (3) applies, the Electoral Commission may serve on a person a notice (a “stop notice”) prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) This sub-paragraph applies where—
(a) the person is carrying on the activity,
(b) the Commission reasonably believe that the activity as carried on by the person involves or is likely to involve the person committing a campaign offence listed in Part 8, and
(c) the Commission reasonably believe that the activity as carried on by the person is seriously damaging public confidence in the effectiveness of the controls in schedule 4, or presents a significant risk of doing so.

(3) This sub-paragraph applies where—
(a) the person is likely to carry on the activity,
(b) the Commission reasonably believe that the activity as carried on by the person will involve or will be likely to involve the person committing a campaign offence listed in Part 8, and
(c) the Commission reasonably believe that the activity as likely to be carried on by the person will seriously damage public confidence in the effectiveness of the controls mentioned in sub-paragraph (2)(c), or will present a significant risk of doing so.

(4) The steps referred to in sub-paragraph (1) must be steps to secure that the activity is carried on or (as the case may be) will be carried on in a way that does not involve the person acting as mentioned in sub-paragraph (2)(b) or (3)(b).

Information to be included in stop notices

11 A stop notice must include information as to—
(a) the grounds for serving the notice,
(b) rights of appeal,
(c) the consequences of not complying with the notice.

Completion certificates

12 (1) Where, after the service of a stop notice on a person, the Electoral Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect (a “completion certificate”).

(2) A stop notice ceases to have effect on the issue of a completion certificate relating to that notice.

(3) A person on whom a stop notice is served may at any time apply for a completion certificate.

The Commission must make a decision whether to issue a completion certificate within the period of 14 days of the day on which they receive such an application.

(4) An application for a completion certificate must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the stop notice has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a completion certificate they must notify the applicant and provide the applicant with information as to—
(a) the grounds for the decision not to issue a completion certificate, and
(b) rights of appeal.

(6) The Commission may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a completion certificate, the stop notice has effect as if the certificate had not been issued.

Appeals etc.

13 (1) A person served with a stop notice may appeal against the decision to serve it on the ground that—

(a) the decision was based on an error of fact,
(b) the decision was wrong in law,
(c) the decision was unreasonable,
(d) any step specified in the notice is unreasonable, or
(e) the person has not acted as mentioned in paragraph 10(2)(b) or (3)(b) and would not have done so even if the stop notice had not been served.

(2) A person served with a stop notice may appeal against a decision not to issue a completion certificate on the ground that the decision—

(a) was based on an error of fact,
(b) was wrong in law, or
(c) was unfair or unreasonable.

(3) An appeal under sub-paragraph (1) or (2) is to a sheriff.

(4) An appeal under sub-paragraph (1) against a decision to serve a stop notice must be made within the period of 28 days beginning with the day on which the stop notice is received.

(5) An appeal under sub-paragraph (2) against a decision not to issue a completion certificate must be made within the period of 28 days beginning with the day on which notification of the decision is received.

(6) Where an appeal under sub-paragraph (1) or (2) is made, the stop notice continues to have effect unless it is suspended or varied on the order of the sheriff.

Failure to comply with stop notice

14 (1) A person served with a stop notice who does not comply with it commits an offence.

(2) A person who commits an offence under sub-paragraph (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).
PART 4

ENFORCEMENT UNDERTAKINGS

15 (1) This paragraph applies where—

(a) the Electoral Commission have reasonable grounds to suspect that a person has committed a campaign offence listed in Part 8,

(b) the person offers an undertaking (an “enforcement undertaking”) to take such action, within such period, as is specified in the undertaking,

(c) the action so specified is—

(i) action to secure that the offence does not continue or recur,

(ii) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not happened, and

(d) the Commission accept the undertaking.

(2) Unless the person has failed to comply with the undertaking or any part of it—

(a) the person may not at any time be convicted of a campaign offence in respect of the act or omission to which the undertaking relates,

(b) the Commission may not impose on the person any fixed monetary penalty that they would otherwise have power to impose by virtue of paragraph 1 in respect of that act or omission,

(c) the Commission may not impose on the person any discretionary requirement that they would otherwise have power to impose by virtue of paragraph 5 in respect of that act or omission.

Enforcement undertakings: further provision

15A (1) An enforcement undertaking must be in writing and include—

(a) a statement that the undertaking is an enforcement undertaking regulated by this Act,

(b) the terms of the undertaking,

(c) the period within which the action specified in the undertaking must be completed,

(d) details of how and when a person is to be considered to have complied with the undertaking, and

(e) information as to the consequences of failure to comply in full or in part with the undertaking, including reference to the effect of paragraph 15(2).

(2) The enforcement undertaking may be varied or extended if the person who has given the undertaking and the Electoral Commission agree.

(3) The Commission may publish any enforcement undertaking which they accept in whatever manner they see fit.
Compliance certificate

15B (1) Where, after accepting an enforcement undertaking from a person, the Electoral Commission are satisfied that the undertaking has been complied with in full they must issue a certificate to that effect.

(2) An enforcement undertaking ceases to have effect on the issue of a certificate relating to that undertaking.

(3) A person who has given an enforcement undertaking may at any time apply for a certificate, and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.

(4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the undertaking has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—

(a) the grounds for the decision not to issue a certificate, and

(b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a certificate, the enforcement undertaking has effect as if the certificate had not been issued.

Appeals

15C (1) A person who has given an enforcement undertaking may appeal to the sheriff against a decision not to issue a certificate under paragraph 15B on the ground that the decision was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unfair or unreasonable.

(2) An appeal must be made within the period of 28 days beginning with the day on which notification of the Electoral Commission’s decision is received.

PART 6

GENERAL AND SUPPLEMENTAL

Combination of sanctions

22 (1) The Electoral Commission may not serve on a person a notice under paragraph 2(1) (notice of proposed fixed monetary penalty) in relation to any act or omission in relation to which—

(a) a discretionary requirement has been imposed on that person, or

(b) a stop notice has been served on that person.
(2) The Commission may not serve on a person a notice under paragraph 6(1) (notice of proposed discretionary requirement), or serve a stop notice on a person, in relation to any act or omission in relation to which—

(a) a fixed monetary penalty has been imposed on that person, or

(b) the person’s liability for a fixed monetary penalty has been discharged as mentioned in paragraph 2(2).

Withdrawal or variation of notice

22A(1) The Electoral Commission may by notice in writing at any time withdraw a notice served under paragraph 2(4).

(2) The Commission may by notice in writing at any time—

(a) withdraw a notice served under paragraph 6(5),

(b) reduce the monetary amount payable under such a notice, or

(c) reduce the steps to be taken under such a notice.

(3) The Commission may by notice in writing at any time withdraw a stop notice (but may serve another stop notice in respect of the same activity specified in the withdrawn notice).

Use of statements made compulsorily

23 (1) The Electoral Commission must not take into account a statement made by a person in compliance with a requirement imposed under schedule 5 in deciding whether—

(a) to impose a fixed monetary penalty on the person,

(b) to impose a discretionary requirement on the person,

(c) to serve a stop notice on the person.

(2) Sub-paragraph (1)(a) or (b) does not apply to a penalty or requirement imposed in respect of an offence under paragraph 12(3) of schedule 5 (providing false information in purported compliance with a requirement under that schedule).

Unincorporated associations

24 Any amount that is payable under this schedule by an unincorporated association must be paid out of the funds of the association.

Guidance as to enforcement

25A(1) Guidance (and revised guidance) published by the Electoral Commission under paragraph 25 of Schedule 19C (civil sanctions) to the 2000 Act has effect, with any necessary modifications, for the purposes of this schedule as it has effect for the purposes of that Schedule.

(2) The Commission may publish additional guidance in relation to the application of this schedule.

(3) Where appropriate, the Commission must revise guidance published under sub-paragraph (2) and publish the revised guidance.
(4) The Commission must have regard to the guidance and revised guidance referred to in sub-paragraph (1) and any guidance or revised guidance published under sub-paragraph (2) or (3) in exercising their functions under this Act.

Recovery of penalties etc.

25B The Electoral Commission may recover as a civil debt—

(a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty, and

(b) any interest or other financial payment for late payment of such a penalty.

Payment of penalties etc into Scottish Consolidated Fund

26 Where, in pursuance of any provision contained in or made under this schedule, the Electoral Commission receive—

(a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty,

(b) any interest or other financial penalty for late payment of such a penalty, or

(c) a sum paid as mentioned in paragraph 2(2) (in discharge of liability for a fixed monetary penalty),

they must pay it into the Scottish Consolidated Fund.

Reports on use of civil sanctions

27 (1) The Electoral Commission must, in accordance with this paragraph, make a report about the use made by the Commission of their powers under this schedule.

(2) The report must, in particular, specify—

(a) the cases in which a fixed monetary penalty or discretionary requirement was imposed or a stop notice served (other than cases in which the penalty, requirement or notice was overturned on appeal),

(b) the cases in which liability for a fixed monetary penalty was discharged as mentioned in paragraph 2(2),

(c) the cases in which an enforcement undertaking was accepted.

(3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—

(a) would or might be unlawful, or

(b) might adversely affect any current investigation or proceedings.

(4) The report may be made—

(a) in the report by the Commission under section 24,

(b) in a separate report made as soon as reasonably practicable after the report under section 24 is published, or

(c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).
(5) The Commission must—
(a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and
(b) after laying, publish the report in such manner as they may determine.

Disclosure of information
28 (1) Information held by or on behalf of a procurator fiscal or a constable in Scotland may be disclosed to the Electoral Commission for the purpose of the exercise by the Commission of any powers conferred on them under or by virtue of this schedule.

(2) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into effect of this schedule.

(3) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information.

(4) This paragraph does not affect a power to disclose that exists apart from this paragraph.

Powers of sheriff
28A(1) On an appeal under paragraph 2(6) the sheriff may overturn or confirm the penalty.

(2) On an appeal under paragraph 6(6), 9(3) or 13(1) the sheriff may—
(a) overturn, confirm or vary the requirement or notice,
(b) take such steps as the Electoral Commission could take in relation to the act or omission giving rise to the requirement or notice,
(c) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Commission.

(3) On an appeal under paragraph 8A(3), 13(2) or 15C(1) the sheriff may make an order requiring the Commission to issue (as appropriate)—
(a) a certificate under paragraph 8A(1),
(b) a completion certificate under paragraph 12(1), or
(c) a certificate under paragraph 15B(1).

PART 7
INTERPRETATION

29 In this schedule—
“completion certificate” has the meaning given in paragraph 12(1),
“discretionary requirement” has the meaning given in paragraph 5(3),
“enforcement undertaking” has the meaning given in paragraph 15(1)(b),
“fixed monetary penalty” has the meaning given in paragraph 1(3),
“non-compliance penalty” has the meaning given in paragraph 9(1),
“non-monetary discretionary requirement” has the meaning given in paragraph 5(5),
“responsible person”, in relation to a permitted participant, has the meaning given in schedule 8,
“restriction” includes prohibition,
“stop notice” has the meaning given in paragraph 10(1),
“variable monetary penalty” has the meaning given in paragraph 5(5).

### PART 8

**LISTED CAMPAIGN OFFENCES**

The following table lists campaign offences for the purposes of this schedule.

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### Scottish Independence Referendum Bill

**Schedule 6—Campaign rules: civil sanctions**

**Part 8—Listed campaign offences**

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#### Schedule 7—Offences

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### SCHEDULE 7

*(introduced by section 28)*

**OFFENCES**

#### Personation

1 (1) A person (“A”) commits the offence of personation in the referendum if—

(a) A votes in person or by post in the referendum as some other person, whether as a voter or as proxy, and whether that other person is living or dead or is a fictitious person, or

(b) A votes, as proxy, in person or by post in the referendum—

(i) for a person whom A knows or has reasonable grounds for supposing to be dead or to be a fictitious person, or

(ii) when A knows or has reasonable grounds for supposing that A’s appointment as proxy is no longer in force.

(2) For the purposes of this paragraph, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

(3) A person commits a corrupt practice if the person commits the offence of personation in the referendum or aids, abets, counsels or procures the commission of that offence.

#### Other voting offences

2 (1) A person (“A”) commits an offence if—

(a) A votes in person or by post in the referendum, whether as a voter or as proxy, or applies to vote by proxy or by post as a voter in the referendum knowing that A is subject to a legal incapacity to vote in the referendum,
(b) A applies for the appointment of a proxy to vote for A in the referendum knowing that A or the person to be appointed is subject to a legal incapacity to vote in the referendum, or

(c) A votes, whether in person or by post, as proxy for some other person in the referendum, knowing that the other person is subject to a legal incapacity to vote.

(2) For the purposes of sub-paragraph (1), references to a person being subject to a legal incapacity to vote do not, in relation to things done before the date of the referendum, include the person’s being below voting age if the person will be of voting age on that date.

(3) A person (“A”) commits an offence if—

(a) A votes as a voter more than once in the referendum,

(b) A votes as a voter in person in the referendum when A is entitled to vote by post,

(c) A votes as a voter in the referendum knowing that a person appointed to vote as A’s proxy in the referendum either has already voted in person in the referendum or is entitled to vote by post in the referendum,

(d) A applies for a person to be appointed as A’s proxy to vote for A in the referendum without applying for the cancellation of a previous appointment of a third person then in force in respect of the referendum or without withdrawing a pending application for such an appointment in respect of the referendum.

(4) A person (“A”) commits an offence if—

(a) A votes as proxy for the same voter more than once in the referendum,

(b) A votes in person as proxy for a voter in the referendum when A is entitled to vote by post as proxy in the referendum for that voter,

(c) A votes in person as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum,

(d) A votes by post as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum.

(5) A person (“A”) commits an offence if A votes in the referendum as proxy for more than two persons of whom A is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

(6) A person (“A”) commits an offence if A knowingly induces or procures some other person to do an act which is, or but for that other person’s lack of knowledge would be, an offence by that other person under any of sub-paragraphs (1) to (5).

(7) For the purposes of this paragraph a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

(8) For the purpose of determining whether an application for a ballot paper constitutes an offence under sub-paragraph (5), a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper is, if the person does not exercise that right, to be disregarded.

(9) A person does not commit an offence under sub-paragraph (3)(b) or (4)(b) only by reason of the person’s having marked a tendered ballot paper in pursuance of rule 24 of the conduct rules.
(10) An offence under this paragraph is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

(11) In this paragraph “legal incapacity to vote” has the meaning given by section 2(2) of the Scottish Independence Referendum (Franchise) Act 2013.

**Imitation poll cards**

3 (1) A person commits an offence if the person, for the purpose of promoting or procuring a particular outcome in the referendum, issues any poll card or document so closely resembling an official poll card as to be calculated to deceive.

(2) An offence under sub-paragraph (1) is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

**Offences relating to applications for postal and proxy votes**

4 (1) A person (“A”) commits an offence if A—

(a) engages in an act specified in sub-paragraph (2) in connection with the referendum, and

(b) intends, by doing so, to deprive another of an opportunity to vote in the referendum or to make for A or another a gain of a vote in the referendum to which A or the other is not otherwise entitled or a gain of money or property.

(2) These are the acts—

(a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person),

(b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote or providing false information in, or in connection with, such an application,

(c) inducing the registration officer or counting officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote,

(d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.

(3) In sub-paragraph (1)(b), property includes any description of property.

(4) In sub-paragraph (2), a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or proxy postal ballot paper (as the case may be).

(5) A person commits a corrupt practice if the person commits an offence under sub-paragraph (1) or aids, abets, counsels or procures the commission of that offence.

**Breach of official duty**

5 (1) If a person to whom this paragraph applies without reasonable cause (and whether by act or omission) breaches the person’s official duty, the person commits an offence.
(2) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) No person to whom this paragraph applies is liable for breach of official duty to any penalty at common law and no action for damages lies in respect of the breach by such a person of the person’s official duty.

(4) The persons to whom this paragraph applies are—

(a) the Chief Counting Officer,
(b) any proper officer, registration officer, counting officer or presiding officer, and
(c) any deputy of a person mentioned in paragraph (a) or (b) or any other person appointed to assist or, in the course of the other person’s employment, assisting a person so mentioned in connection with that person’s official duties,

and “official duty” for the purpose of this paragraph is to be construed accordingly, but does not include duties imposed otherwise than by this Act.

Tampering with ballot papers etc.

6 (1) A person (“A”) commits an offence if, in connection with the referendum—

(a) A fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or official envelope used in connection with voting by post,
(b) A, without due authority, supplies any ballot paper to any person,
(c) A fraudulently puts into any ballot box any paper other than the ballot paper which A is authorised by law to put in,
(d) A fraudulently takes out of the polling station any ballot paper,
(e) A, without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the referendum, or
(f) A fraudulently or without due authority (as the case may be) attempts to do any of the acts mentioned in paragraphs (a) to (e).

(2) A person commits an offence if, in connection with the referendum, the person forges or counterfeits (or attempts to forge or counterfeit) any ballot paper or the official mark on any ballot paper.

(3) If a counting officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers in the referendum, commits an offence under this paragraph, the officer or clerk is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).

(4) If any other person commits an offence under this paragraph the person is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).
Requirement of secrecy

7 (1) Every person (other than one mentioned in sub-paragraph (2)) attending at a polling station in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not, except for a purpose authorised by law, communicate to any person before the close of the poll the information described in sub-paragraph (3).

(2) Sub-paragraph (1) does not apply to—
   (a) a person attending at the polling station for the purpose of voting,
   (b) a person under the age of 16 accompanying a voter,
   (c) a companion of a voter with disabilities,
   (d) a constable on duty at the polling station.

(3) The information referred to in sub-paragraph (1) is any information as to—
   (a) the name of any voter or proxy for a voter who has or has not applied for a ballot paper or voted at a polling station,
   (b) the number on the Polling List of any voter who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station,
   (c) the official mark being used in accordance with rule 6 of the conduct rules.

(4) Every person attending at the counting of the votes in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—
   (a) ascertain or attempt to ascertain at the counting of the votes the unique identifying number on the back of any ballot paper,
   (b) communicate any information obtained at the counting of the votes as to the outcome for which any vote is given on any particular ballot paper.

(5) A person must not—
   (a) interfere with or attempt to interfere with a voter when recording the voter’s vote in the referendum,
   (b) otherwise obtain or attempt to obtain in a polling station information as to the outcome for which a voter in that station is about to vote or has voted in the referendum,
   (c) communicate at any time to any person any information obtained in a polling station in the referendum as to the outcome for which a voter in that station is about to vote or has voted, or as to the unique identifying number on the back of a ballot paper given to a voter at that station, or
   (d) directly or indirectly induce a voter to display a ballot paper after the voter has marked it so as to make known to any person any outcome for which the voter has or has not voted in the referendum.

(6) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—
   (a) except for a purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark,
(b) except for a purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the unique identifying number on the back of any ballot paper sent to any person,

(c) except for a purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the unique identifying number on the back of any ballot paper, or

(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the outcome for which any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(7) A companion of a voter with disabilities must not communicate at any time to any person any information as to the outcome for which that voter intends to vote or has voted, or as to the unique identifying number on the back of a ballot paper given for the use of that voter.

(8) If a person acts in contravention of this paragraph the person commits an offence.

(9) A person who commits an offence under sub-paragraph (8) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

(10) In this paragraph a voter with disabilities is a voter who has made a declaration under rule 23(1) of the conduct rules.

Prohibition on publication of exit polls

8 (1) No person may publish before the close of the poll—

(a) any statement relating to the way in which voters have voted in the referendum where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or

(b) any forecast as to the result of the referendum which is (or might reasonably be taken to be) based on information so given.

(2) If a person acts in contravention of this paragraph the person commits an offence.

(3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

(4) In this paragraph—

“forecast” includes estimate,

“publish” means make available to the public at large (or any section of the public), in whatever form and by whatever means,

any reference to the result of the referendum is a reference to the result for the whole of Scotland or the result in one or more local government areas.

Payments to voters for exhibition of referendum notices

9 (1) No payment or contract for payment may, for the purposes of promoting a particular outcome in the referendum, be made to a voter on account of—

(a) the exhibition of, or

(b) the use of any house, land, building or premises for the exhibition of,
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any bill, advertisement or notice.

(2) Sub-paragraph (1) does not apply if—
   (a) it is the ordinary business of the voter to exhibit bills, advertisements or notices
       for payment, and
   (b) the payment or contract is made in the ordinary course of that business.

(3) If a payment or contract for payment is knowingly made in contravention of sub-
paragraph (1) (whether before, during or after the referendum), each of the following
persons commits an offence—
   (a) the person who makes the payment or enters into the contract,
   (b) the person who receives the payment or is a party to the contract (if the person
       knows the payment or contract is in contravention of sub-paragraph (1)).

(4) An offence under sub-paragraph (3) is an illegal practice.

Treatng

10 (1) A person (“A”) commits the offence of treating in connection with the referendum if A,
whether before, during or after the referendum, corruptly gives or provides, or pays
wholly or in part the expense of giving or providing, any meat, drink, entertainment or
provision to or for any person—
   (a) for the purpose of corruptly influencing that person or any other person to vote or
       refrain from voting in the referendum, or
   (b) on account of that person or any other person having voted or refrained from
       voting, or being about to vote or refrain from voting, in the referendum.

(2) Sub-paragraph (1) applies regardless of whether an act is done—
   (a) directly or indirectly,
   (b) by A or by another person on A’s behalf.

(3) A voter or proxy who corruptly accepts or takes any such meat, drink, entertainment or
provision also commits the offence of treating in connection with the referendum.

(4) A person commits a corrupt practice if the person commits the offence of treating in
connection with the referendum.

Undue influence

11 (1) A person (“A”) commits the offence of undue influence in connection with the
referendum if—
   (a) A makes use of or threatens to make use of any force, violence or restraint, or
       inflicts or threatens to inflict, personally or by any other person, any temporal or
       spiritual injury, damage, harm or loss upon or against any person in order to
       induce or compel that person to vote or refrain from voting in the referendum, or
       on account of that person having voted or refrained from voting, in the
       referendum, or
(b) by abduction, duress or any fraudulent device or contrivance, A impedes or
prevents, or intends to impede or prevent, the free exercise of the franchise of a
voter or proxy for a voter in the referendum, or so compels, induces or prevails
upon, or intends so to compel, induce or prevail upon, a voter or proxy for a voter
either to vote or to refrain from voting in the referendum.

(2) Sub-paragraph (1)(a) applies regardless of whether an act is done—
   (a) directly or indirectly,
   (b) by the person or by another person on the person’s behalf.

(3) A person commits a corrupt practice if the person commits the offence of undue
influence in connection with the referendum.

Bribery

12 (1) A person commits the offence of bribery in connection with the referendum if the
person—
   (a) gives any money or procures any office—
      (i) to or for any voter,
      (ii) to or for any other person on behalf of any voter, or
      (iii) to or for any other person,
in order to induce any voter to vote or refrain from voting in the referendum,
   (b) corruptly makes any gift or procurement as mentioned in paragraph (a) on account
      of any voter having voted or refrained from voting in the referendum,
   (c) makes any gift or procurement as mentioned in paragraph (a) to or for any person
      in order to induce that person to procure, or endeavour to procure, any particular
      outcome in the referendum, or
   (d) upon or in consequence of any such gift or procurement as mentioned in
      paragraph (a), procures or engages, promises or endeavours to procure any
      particular outcome in the referendum.

(2) A person commits the offence of bribery in connection with the referendum if the
person—
   (a) advances or pays or causes to be paid any money to or for the use of any other
      person with the intent that the money or any part of it is to be expended in bribery
      in connection with the referendum, or
   (b) knowingly pays or causes to be paid any money to any person in discharge or
      repayment of any money wholly or partly expended in bribery in connection with
      the referendum.

(3) A voter commits the offence of bribery in connection with the referendum if, whether
before or during the referendum, the voter receives, agrees or contracts for any money,
gift, loan or valuable consideration, office, place or employment for the voter or for any
other person for—
   (a) voting or agreeing to vote in the referendum, or
   (b) refraining or agreeing to refrain from voting in the referendum.
(4) A person commits the offence of bribery in connection with the referendum if, after the referendum, the person receives any money or valuable consideration on account of any person—
   (a) having voted or refrained from voting in the referendum, or
   (b) having induced any other person to vote or refrain from voting in the referendum.

(5) Sub-paragraphs (1) to (4) apply regardless of whether an act is done—
   (a) directly or indirectly,
   (b) by the person or by another person on the person’s behalf.

(6) For the purposes of sub-paragraph (1)—
   (a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or to endeavour to procure any money or valuable consideration,
   (b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.

(7) Sub-paragraphs (1) and (2) do not apply to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning the referendum.

(8) A person commits a corrupt practice if the person commits the offence of bribery in connection with the referendum.

(9) In this paragraph, the expression “voter” includes any person who has or claims to have a right to vote in the referendum.

*Disturbances at public meetings*

13 (1) A person commits an offence if the person, at a lawful public meeting to which this paragraph applies, acts (or incites others to act) in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together.

(2) This paragraph applies to a meeting held in connection with the referendum during the referendum period.

(3) An offence under this paragraph is an illegal practice.

*Illegal canvassing by police officers*

14 (1) A person who is a constable commits an offence if the person by word, message, writing or in any other manner, endeavours to persuade any person to give (or dissuade any person from giving) the person’s vote in the referendum.

(2) A person is not liable under sub-paragraph (1) for anything done in the discharge of the person’s duty as a constable.

(3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Prosecutions for corrupt practices*

15 A person who commits a corrupt practice under any provision of this schedule is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment—

(i) in the case of a corrupt practice under paragraph 1 or 4, to imprisonment for a term not exceeding 2 years or to a fine (or both),

(ii) in any other case, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Prosecutions for illegal practices

16 (1) A person who commits an illegal practice under any provision of this schedule is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) On a prosecution for such an illegal practice it is sufficient to allege that the person charged has committed an illegal practice.

Conviction of illegal practice on charge of corrupt practice etc.

17 A person charged with a corrupt practice under any provision of this schedule may, if the circumstances warrant such finding, be convicted of an illegal practice (which offence is for that purpose to be an indictable offence), and a person charged with an illegal practice may be convicted of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

Incapacity to hold public or judicial office in Scotland

18 (1) A person convicted of a corrupt or illegal practice under any provision of this schedule—

(a) is for the period of 5 years beginning with the date of the person’s conviction, incapable of holding any public or judicial office in Scotland (within the meaning of section 185 of the 1983 Act), and

(b) if already holding such an office, vacates it as from that date.

(2) Sub-paragraph (1) applies in addition to any punishment imposed on the person under paragraph 15 or 16.

Prohibition of paid canvassers

19 If a person is, whether before or during the referendum, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting a particular outcome in the referendum—

(a) the person so engaging or employing the canvasser, and

(b) the canvasser,

commits the offence of illegal employment.

Providing money for illegal purposes

20 If a person knowingly provides money—

(a) for any payment which is contrary to the provisions of this Act,
(b) for any expenses incurred in excess of the maximum amount allowed by this Act, or
(c) for replacing any money expended in any such payment or expenses, the person commits the offence of illegal payment.

5 Prosecutions for illegal employment or illegal payment

21 (1) A person who commits an offence of—
(a) illegal employment under paragraph 19, or
(b) illegal payment under paragraph 20,
is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) On a prosecution for such an illegal employment or illegal payment it is sufficient to allege that the person charged has committed the offence of illegal employment or illegal payment (as the case may be).

(3) A person charged with an offence of illegal employment or illegal payment may be convicted of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

SCHEDULE 8
(introduced by section 32)

INTERPRETATION

In this Act—

“the 1983 Act” means the Representation of the People Act 1983,
“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000,
“absent vote” is to be construed in accordance with paragraph 1(8)(a) of schedule 2,
“anonymous entry” in relation to a register of electors, is to be construed in accordance with section 9B of the 1983 Act, and “record of anonymous entries” means the record prepared under regulation 45A of the Representation of the People (Scotland) Regulations 2001 (SI 2001/497),
“assisted voters list” has the meaning given in rule 23(8) of the conduct rules,
“ballot paper account” has the meaning given in rule 28(4) of the conduct rules,
“campaign offence” means an offence under section 13 or any of schedules 4 to 6,
“campaign organiser”, in relation to referendum expenses, means the individual or body by whom or on whose behalf the expenses are incurred,
“Chief Counting Officer” means the person appointed under section 4(1) or (6),
“companion” has the meaning given in rule 23(1) of the conduct rules,
“companion declaration” has the meaning given in rule 23(2) of the conduct rules,
“completed corresponding number list” has the meaning given in rule 28(2)(e) of the conduct rules,
“conduct rules” means the rules set out in schedule 3,
“corresponding number list” means the list prepared in accordance with rule 5 of the conduct rules,

council” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994,

counting agent” has the meaning given by rule 14(8) of the conduct rules,

counting officer” means a person appointed under section 5(1) or (5),

cut-off date” has the meaning given in paragraph 18(1) of schedule 2,

data form” means information which is in a form which is capable of being processed by means of equipment operating automatically in response to instructions given for that purpose,

date of the referendum” means the date on which the poll at the referendum is to be held in accordance with section 1(4) or (6),
designated organisation” means a permitted participant that has been designated under paragraph 5 of schedule 4,

education authority” has the same meaning as in the Education (Scotland) Act 1980,

list of proxies” means the list kept under paragraph 4(3) of schedule 2,

local government area” is to be construed in accordance with section 1 of the Local Government etc. (Scotland) Act 1994,

marked copy” has the meaning given in paragraph 54(10) of schedule 2,

marked votes list” has the meaning given in rule 22(2) of the conduct rules,

members of the Chief Counting Officer’s staff” means staff appointed or provided under section 6(8),

members of the counting officer’s staff” means staff provided under section 6(9),

minor party” has the same meaning as in the 2000 Act,

money” and “pecuniary reward” (except in schedule 4 and paragraph 12 of schedule 7) include—

(a) any office, place or employment,
(b) any valuable security or other equivalent of money, and
(c) any valuable consideration,

and expressions referring to money are to be construed accordingly,

organisation” includes any body corporate and any combination of persons or other unincorporated association,

outcome” means a particular outcome in relation to the referendum question,

payment” includes any pecuniary or other reward,

permissible donor” is to be construed in accordance with paragraph 1(2) of schedule 4,

permitted participant” has the meaning given in paragraph 2 of schedule 4,

personal identifiers record” means the record kept by a registration officer under paragraph 10 of schedule 2,
“polling agent” has the meaning given by rule 14(8) of the conduct rules,

“polling day alterations list” has the meaning given in rule 26(2) of the conduct rules,

“Polling List” has the meaning given in paragraph 17(2) of schedule 2,

“postal ballot agent” has the meaning given by paragraph 19(3) of schedule 2,

“postal voters list” means the list kept under paragraph 4(2) of schedule 2,

“postal voting statement” means the statement referred to in rule 8(1)(b) of the conduct rules,

“presiding officer” means an officer appointed under rule 10(1)(a) of the conduct rules,

“proper officer” has the meaning given in section 235(3) of the Local Government (Scotland) Act 1973,

“proxy postal voters list” means the list kept under paragraph 6(7) of schedule 2,

“qualifying address” in relation to a person registered in the register of electors, is the address in respect of which that person is entitled to be so registered,

“referendum agent” has the meaning given in section 16,

“referendum campaign” means a campaign conducted with a view to promoting or procuring a particular outcome in the referendum,

“referendum campaign broadcast” means a broadcast the purpose (or main purpose) of which is or may reasonably be assumed to be—

(a) to further any referendum campaign, or
(b) otherwise to promote or procure any particular outcome in the referendum,

“referendum expenses” is to be construed in accordance with paragraph 9 of schedule 4,

“referendum period” means the period of 16 weeks ending on the date of the referendum,

“referendum question” means the question to be voted on in the referendum (as set out in section 1(2)),

“register of electors” means (as the case may be)—

(a) the register of local government electors for any area maintained under section 9 of the 1983 Act, or
(b) the register of young voters for any area maintained under section 4 of the Scottish Independence Referendum (Franchise) Act 2013,

“registered party” means a party registered under Part 2 of the 2000 Act other than a Gibraltar party (within the meaning of that Act),

“registration officer” means a registration officer appointed under section 8(3) of the 1983 Act,

“relevant citizen of the European Union” means a citizen of the Union who is not a Commonwealth citizen or a citizen of the Republic of Ireland,
“relevant counting officer”, in relation to a registration officer, means the counting officer for the local government area for which the registration officer is appointed,

“responsible person” means, in relation to a permitted participant—

(a) if the permitted participant is a registered party—

(i) the treasurer of the party, or

(ii) in the case of a minor party, the person for the time being notified to the Electoral Commission by the party in accordance with paragraph 3(1)(b) of schedule 4,

(b) if the permitted participant is an individual, that individual, and

(c) otherwise, the person or officer for the time being notified to the Electoral Commission by the permitted participant in accordance with paragraph 3(3)(a)(ii) of schedule 4,

“SPCB” means the Scottish Parliamentary Corporate Body,

“spoilt ballot paper” has the meaning given in rule 25(1) of the conduct rules,

“tendered ballot paper” means a ballot paper referred to in rule 24(6) of the conduct rules,

“tendered votes list” has the meaning given in rule 24(8) of the conduct rules,

“treasurer”, in relation to a registered party, has the same meaning as in the 2000 Act,

“unique identifying number” means the number on the back of a ballot paper which is unique to that ballot paper and which identifies that ballot paper as a ballot paper to be issued by the counting officer,

“verification statement” has the meaning given in rule 30(2) of the conduct rules,

“voter” (except in the conduct rules) means a person entitled to vote in the referendum in the person’s own right (as opposed to a person entitled to vote as proxy for another),

“voter” (in the conduct rules) means a person voting at the referendum and includes (except where the context requires otherwise) a person voting as proxy and “vote” (whether as noun or verb) is to be construed accordingly except that any reference to a voter voting or a voter’s vote includes a reference to a voter voting by proxy or a voter’s vote given by proxy,

“voter number” means, in relation to a person registered in the register of local government electors, the person’s electoral number,

“voting age” means age 16 or over.
Scottish Independence Referendum Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision, in accordance with paragraph 5A of Part 1 of Schedule 5 to the Scotland Act 1998, for the holding of a referendum in Scotland on a question about the independence of Scotland.

Introduced by: Nicola Sturgeon
On: 21 March 2013
Bill type: Government Bill
This document relates to the Scottish Independence Referendum Bill as amended at Stage 2
(SP Bill 25A)

SCOTTISH INDEPENDENCE REFERENDUM BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised
Explanatory Notes are published to accompany the Scottish Independence Referendum Bill
(introduced in the Scottish Parliament on 21 March 2013) as amended at Stage 2. Text has been
added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these
changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to
assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and
have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to
be, a comprehensive description of the Bill. So where a section or schedule, or a part of a
section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill covers a range of issues, with much of the detail set out in schedules, as follows:
   • Provision for a referendum (section 1 and schedule 1)
   • Provision about voting etc. (sections 2-3 and schedule 2)
   • Rules concerning the conduct of the poll (sections 4-9 and schedule 3)
   • Campaign rules and enforcement (section 10-15 and schedules 4-6)
   • Referendum agents and observers (sections 16-20)
   • Other functions and funding of the Electoral Commission (sections 21-27)
   • Offences (sections 28-29 and schedule 7)
   • Power to make supplementary, incidental or consequential provision (section 30)
   • Legal proceedings (section 31)
   • Final provisions and interpretation (sections 32-34 and schedule 8)
BACKGROUND TO THE BILL

5. This Bill provides the legislative framework for the holding of a referendum on Scotland’s independence. The Bill provides for a single-question referendum about whether Scotland should be an independent country.

6. The Bill covers the technical aspects of holding the referendum. It prescribes the rules for voting, and sets out the rules for how the poll should be conducted. The Bill also provides campaign rules to regulate the political campaign preceding the referendum. The rules are largely based on existing UK and Scottish legislation covering elections and referendums. They include the administration and limits of spending by and donations given to participants during the referendum campaign.

COMMENTARY

7. The Bill consists of 34 sections, with most of the detailed provisions set out in 8 schedules.

Referendum

8. Section 1 of the Bill provides for a referendum on a question about Scotland’s independence. It sets out the question and the date of the referendum.

9. Section 1 also introduces schedule 1 to the Bill which sets out the design of the ballot paper to be used in the referendum.

10. The ballot paper asks voters whether Scotland should be an independent country and seeks a yes or no response.

11. The date of the referendum will be 18 September 2014. Subsections (5) to (7) give the Scottish Ministers power by order approved by the Scottish Parliament to modify the date of the referendum to a later date, but only where it would be impossible or impractical to hold the referendum on the original date, or if the referendum would not be conducted properly. The power includes making supplementary or consequential provision as a result. Any new date must be no later than 31 December 2014.

Franchise

12. Section 2 provides that details of who can vote in the referendum are as contained in the Scottish Independence Referendum (Franchise) Act 2013.

13. Section 2A amends the Scottish Independence Referendum (Franchise) Act 2013 to provide a mechanism for eligible children of those with a service qualification to register to vote in the referendum via a service declaration of their own. Such individuals will be added to the register of young voters for the area in Scotland given as their Scottish address in the declaration. It also amends the Scottish Independence Referendum (Franchise) Act 2013 to ensure, in relation to declarations on local connection made under section 7A of that Act, that the Scottish address is regarded as meeting all relevant residence requirements.
Voting etc.

14. Section 3 introduces schedule 2 which sets out provisions about the manner of voting, the register of electors, postal voting and the supply of documents used in this process. These rules broadly follow existing law and practice for local government elections in Scotland, though they are adapted to fit the circumstances of a referendum.

Schedule 2: Further provision about voting in the referendum

Part 1: Manner of voting

15. Paragraph 1 of schedule 2 sets out the various ways to vote in the referendum, giving voters an entitlement to vote in person at polling stations unless they have opted to vote by post, in which case they may do so. A voter may also vote by using a proxy. Offences related to voting are set out in schedule 7.

16. Sub-paragraph (5) allows someone who is working for a counting officer or is a police constable on duty on the day when polling is taking place to vote at any polling station in the same local council area as the polling station at which they would normally vote (provided they have a certificate as described under rule 15(6) of schedule 3).

17. Sub-paragraph (6) allows voters who have been detained in a mental or psychiatric hospital to vote in person at the polling station if they have permission to do so or to vote by post or proxy if they are entitled to do so. Sub-paragraph (6)(b) permits someone remanded in custody, and to whom section 7A of the Representation of the People Act 1983 applies, to vote only by post or proxy.

18. The Bill uses the term ‘absent voter’ to describe both postal voters and proxy voters. Paragraph 2 grants an absent vote in the referendum to postal and proxy voters already on the relevant lists for Scottish local government or Scottish Parliamentary elections at 5pm on the 11th working day before the referendum (‘the cut-off date’, which is defined in paragraph 18 of schedule 2). Such voters are referred to as ‘existing postal voters’ and ‘existing proxy voters’.

19. Paragraph 3 deals with new applications for postal votes and proxy votes for the referendum from applicants who are already on, or have applied to be on, the register of electors, including those with anonymous entries. The ‘register of electors’ for the purposes of the Bill means the register of local government electors and the register of young voters maintained under the Scottish Independence Referendum (Franchise) Act 2013. Applications must be accepted provided they are submitted before the cut-off date and meet the requirements set out in this paragraph and paragraph 7. Paragraph 3 also deals with applications from existing postal voters to vote by proxy and existing proxy voters who wish to vote by post.

20. Paragraph 4 places a requirement on electoral registration officers to keep absent voters lists that comprise a list of all those entitled to a postal vote in the referendum (the postal voters list) and all those entitled to a proxy vote (the list of proxies). Sub-paragraph (4) requires that where someone has an anonymous entry in the register of electors, any entry in the absent voter’s list should include only the person’s voter number. Sub-paragraph (5) requires electoral
registration officers to notify anyone who is removed from either of these lists, where it is practicable to do so, with the reason for their removal.

21. Paragraph 5 sets out the requirements for someone who votes as proxy for another voter. The voter can have only one person appointed as proxy to vote for them. The proxy cannot be someone who would be below voting age on the date of the referendum, who would be subject to any other legal incapacity to vote, or who does not fulfil the citizenship qualifications for a local government election. No one can vote as proxy for more than two people who are not their spouse, civil partner or other close family relation. There is a duty on the registration officer to make the appointment of a proxy provided the applicant is entitled to an absent vote and makes an application in accordance with paragraph 3, the nominated proxy is willing and able to be a proxy and the application meets the requirements set out in paragraph 7. These include provision of details of the person the applicant wishes to be appointed as their proxy. Sub-paragraph (10) allows a person to cancel the appointment of a proxy by giving notice to the registration officer.

22. Paragraph 6 sets out the requirements for voting as a proxy. The proxy can vote by post if they opt to have a postal vote, or they may vote at a polling station. Where someone has a proxy and the proxy opts to vote by post, the person who has the proxy is not allowed to apply for a ballot paper to vote at a polling station (other than a tendered ballot paper as described in rule 24 of schedule 3). He or she must rely on the proxy’s postal vote. However, where someone has a proxy and the proxy does not opt to vote by post, the person may vote at a polling station, provided they do so before a ballot paper has been issued to their proxy (see paragraph 1(4)). Sub-paragraph (6) requires that where someone applies to the registration officer to vote by post as a proxy for someone else, the application must be granted if they are an existing proxy voter for that person and the application meets the requirements of paragraph 7.

23. Sub-paragraph (7) places a requirement on electoral registration officers to keep a proxy postal voters list comprising existing proxies who opt to vote by post and those whose applications under sub-paragraph (6) have been granted. Sub-paragraph (9) requires that where a voter has an anonymous entry in the electoral register, any entry in the proxy postal voter’s list should include only the person’s voter number. The proxy may only vote by post if they are named on that list. Sub-paragraphs (10) and (11) require the registration officer to retain details (name, date of birth and signature) of those who have applied for proxy votes under this paragraph until one year after the date of the referendum.

24. Paragraph 7 sets out the requirements for applications:
   i. From voters to vote by post
   ii. From voters to vote by proxy
   iii. From existing postal voters for their ballot paper to be sent to a different address
   iv. From existing postal voters to vote by proxy in the referendum
   v. From existing proxy voters to vote by post
   vi. From voters wishing to appoint a proxy to vote for them
   vii. From voters wishing to vote by post as proxy for someone else.
viii. From proxies who wish to vote by post for their ballot paper to be sent to a different address.

25. Such applications must be made in writing before the cut-off date (sub-paragraph (2)). They must also include certain information such as the person’s name, date of birth and signature (unless a signature is not required due to a disability or inability to read or write), as set out in sub-paragraphs (3), (4) and (5). Sub-paragraph (4A) requires emergency proxy applications made on the grounds set out in sub-paragraph (8)(a) to comply with additional requirements set out in paragraph 7A. Sub-paragraph (6) sets out the requirements for the format of the applicant’s date of birth and signature on the application. Sub-paragraph (7) sets out the required details in relation to the person to be appointed as a voter’s proxy.

26. Sub-paragraphs (8) and (9) allow for emergency proxy applications, where someone becomes unable to vote in person at the polling station due to a disability suffered after the cut-off date, an unavoidable absence from their qualifying address (at short notice) after the cut-off date; or an absence for reasons relating to occupation, service or employment at short notice after the cut-off date and that person wishes to appoint someone as their proxy. Such applications must be submitted before 5pm on the day of the referendum.

27. Paragraph 7A sets out the attestation requirements for emergency proxy applications on the grounds set out in paragraph 7(8)(a). An application from a person applying for an emergency proxy vote must contain a statement of the date the applicant became aware of the reason for making the application. Where the application is made on the grounds of the applicant’s suffering a disability after the cut-off date or being unavoidably absent from the applicant’s qualifying address, the application must also be attested to by a person who is 18 or over, knows the applicant and is not related to the applicant. For those who apply for reasons of occupation, service or employment, the application must be attested by the applicant’s employer or, in other cases such as self-employment, by a person aged 18 or over who knows the applicant and is not related to them. Registered service voters applying on employment-related grounds do not have to meet the attestation requirements.

28. Paragraph 8 places an obligation on electoral registration officers to notify applicants for a postal or proxy vote whether the application has been accepted or not, and to give a reason if the application is refused.

29. Paragraph 9 requires the registration officer to supply as many forms as necessary to anyone wishing to use them in connection with registering to vote, or to applying for an absent vote, at the referendum. The forms must be free of charge. Paragraph 44 provides that the style of the form is as prescribed by the Chief Counting Officer.

30. Paragraph 10 requires registration officers to keep a record of the dates of birth and signatures of voters who have applied for a postal or proxy vote. This information must be made available to the relevant counting officer as soon as possible after the cut-off date. This information is used by counting officers to verify postal voting statements returned along with postal votes.
31. Paragraph 11 states that any entry relating to a voter or proxy who has opted to vote by post should be marked with the letter ‘A’ on any list of voters provided for use at a polling station. This highlights the fact that the voter is an absent voter and is not entitled to vote in person.

32. Paragraph 12 deals with registration appeals made under existing legislation about registering on the electoral register (i.e. under section 56 of the 1983 Act, including as that provision is applied in relation to the register of young voters). Sub-paragraph (1) states that until the appeal has been decided, any activity related to the referendum proceeds on the basis that there is no appeal. For example, if an individual is appealing against the registration officer refusing to register him or her, he or she is not entitled to a vote in the referendum.

33. Under sub-paragraph (2), if, when an appeal is decided it results in an alteration of the register of electors (which is usually carried out by means of a notice rather than by publication of a completely new register), any referendum-related activity should take place in light of the decision as represented by the notice. In other words, once the notice is issued the appeal decision should be acted upon, but until that point the appeal should be ignored.

Part 2: Registration

34. Part 2 of schedule 2 sets out the consequences of being registered to vote and the functions of registration officers.

35. Paragraph 13 prevents anyone who is registered in the electoral register (or who is on the list of proxies) from not being allowed to vote in the referendum on the grounds that they are ineligible to vote. However, if they are found later to be ineligible to vote, their vote can be rejected and they may be subject to pay a penalty for a voting offence. The effect of this is that the person’s entry in the electoral register or on the list of proxies is to be taken as prima facie evidence of his or her entitlement to vote.

36. Paragraph 14 prevents any minor error, such as a spelling error, in the electoral register or any of the other relevant documents used in relation to voting in the referendum from hindering the use of that document.

37. Paragraph 15 requires registration officers to carry out their functions in accordance with directions given by the Chief Counting Officer, which must in turn be in accordance with this Bill and all other legislation which currently applies to registration officers (mostly they are regulated under the Representation of the People Act 1983, particularly as amended by the Representation of the People Act 2000). It also allows a deputy registration officer to carry out a registration officer’s duties and in that event the provisions of the Bill apply to deputy registration officers. The paragraph also requires councils to provide staff to a registration officer to enable him or her to fulfil their functions under the Bill.

38. Under the provisions of paragraph 16, any alteration that is to be made to the electoral register within 5 days of the date of the referendum will have no effect in the referendum. Sub-paragraph (3) applies section 13B(2) to (6) of the Representation of the People Act 1983 to the referendum, the effect of which is that where an alteration is to take effect at least 5 days before
This document relates to the Scottish Independence Referendum Bill as amended at Stage 2
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the referendum but under the normal rules about alterations the notification would not be issued by that date, the registration officer must issue a notice of the alteration which takes effect on the day on which it is issued. This allows alterations to be made quickly so that counting officers are aware of every person who is entitled to vote.

39. Sub-paragraph (4) applies section 13BB of the Representation of the People Act 1983 to the referendum if the referendum is to be held during a canvass period. Section 13BB requires registration officers to publish notice of changes to the electoral register resulting from applications made during the canvass period.

40. Paragraph 17 requires electoral registration officers to create a list known as the ‘polling list’, merging the register of local government electors in their area with the register of young voters in their area. Once the registers are merged, it must not be possible to distinguish between young voters and other voters. The entries should display all of the information contained on the separate registers, except dates of birth. Under sub-paragraphs (5) to (7), electoral registration officers and their staff are prohibited from sharing the polling list with anyone who does not require a copy of the list for the purpose of registration functions in connection with the referendum or otherwise in accordance with the Bill, e.g. counting officers and the designated campaign organisations. The list must be securely destroyed one year after the poll, unless the Court of Session or a sheriff principal otherwise direct.

41. Paragraph 18 sets out the days that are not to be counted in working out the cut-off date of 11 days before the referendum by which certain things must be done for a voter to vote. These include weekends, Christmas Eve and Christmas Day, bank holidays in Scotland, and days appointed for public thanksgiving or mourning.

Part 3: Postal voting: issue and receipt of ballot papers

42. Part 3 of Schedule 2 sets out the rules for the handling of postal ballot papers.

43. Paragraph 19 specifies that only the counting officer and their staff may be present at the issuing of postal ballot papers, though it protects the right of representatives of the Electoral Commission and accredited observers to attend. At the receipt of the postal ballot papers, counting officers and their staff may be present, along with these representatives and observers. However, referendum agents and their nominated attendees (‘postal ballot agents’) may also attend at the receipt stage (the maximum number of attendees will be determined by the counting officer and will be the same for each referendum agent). Notice of the appointment of a postal ballot agent must be given to the counting officer in advance of the postal voters box being opened.

44. Paragraph 20 requires the counting officer to ensure that anyone attending the issue or receipt of ballot papers has been provided with a copy of the requirement of secrecy contained in paragraph 7 of schedule 7.

45. Paragraph 21A states that postal ballots are to be issued as soon as it is practicable to do so.

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46. Paragraph 22 provides the rules for the issuing of postal ballot papers to the addresses shown on the postal voters or proxy postal voters lists. The voter number (as specified in the polling list) must be marked on the corresponding number list beside the unique identifying number of the ballot paper issued to that voter. A mark must also be made on the postal voters list or proxy postal voters list to denote that a ballot paper has been sent to that voter.

47. Under paragraph 23 a counting officer must issue only one ballot paper to a voter with more than one entry in the postal voters list or proxy postal voters list.

48. Under paragraph 24 a counting officer must issue two envelopes to postal voters; an envelope marked ‘A’ in which to put the completed ballot paper (‘the ballot paper envelope’); and an envelope marked ‘B’ in which to return envelope A along with the postal voting statement.

49. Paragraph 25 requires the counting officer to seal the corresponding number lists in a packet after the issue of each batch of ballot papers, and to maintain the security of the marked postal voters list and proxy postal voters lists up until that point.

50. Paragraph 26 provides that all postage costs for postal ballot papers must be pre-paid, except return postage for postal voters whose ballot pack is sent to an address outside of the UK.

51. Paragraph 27 makes provision for a postal voter who accidentally spoils their ballot paper or postal voting statement to return them, along with the envelopes supplied, to the counting officer and to receive a replacement postal ballot pack. To receive a replacement ballot paper after 5pm on the day before the poll, the ballot pack must be returned in person.

52. The counting officer must, under sub-paragraphs (6) and (7), immediately cancel any returned postal ballot packs and put them into a sealed packet. Under sub-paragraph (9), the counting officer must keep a ‘list of spoilt ballot papers’ detailing the name and number of the voter and the ballot paper number, and, where the postal voter is a proxy, their name and address.

53. Paragraph 28 allows a postal voter who has lost or has not received their postal ballot paper, postal voting statement or return envelopes by the fourth day before the poll, to apply to the counting officer for a replacement in the same way as described in paragraph 27.

54. Paragraph 28A provides for situations in which an application by a postal voter to vote instead by proxy has been granted, but the voter has already been issued with a postal ballot paper. The counting officer is required to cancel the previously issued documents (postal ballot paper and postal voting statement) to ensure that the postal ballot paper is to have no effect. The applicant is required to return the postal ballot paper and associated documents.

55. Paragraph 29 requires the counting officer to give at least 48 hours’ notice in writing to the referendum agents appointed for their area of the opening of any postal ballot box and its contents. They must include details of the time and place and the number of postal ballot agents permitted.
56. Paragraph 30 requires the counting officer to provide separate boxes to collect covering envelopes and postal ballot papers, marked with their purpose and the name of the local government area. The box must be shown to any postal ballot agents to prove that it is empty before being locked and sealed by the counting officer (and any postal ballot agent who wishes to attach their own seal).

57. Sub-paragraph (5) requires the counting officer to provide separate containers for rejected votes, postal voting statements, ballot paper envelopes, rejected ballot paper envelopes, votes rejected during the verification procedure, and postal voting statements rejected during the verification procedure.

58. Sub-paragraph (6) requires the counting officer to ensure the safety and security of all of the boxes described in this paragraph.

59. Paragraph 31 requires the counting officer to place any returned postal vote covering envelopes (and any other envelopes which contain a ballot paper, ballot paper envelope or postal voting statement) immediately into a postal voters box.

60. Sub-paragraphs (3) and (4) allow the counting officer to collect, or arrange to have collected, any postal ballot papers which have been delivered to polling stations. These should be contained in packets, sealed by the presiding officer and any polling agent who wishes to attach their own seal.

61. Paragraph 32 states that each postal voters box must be opened by the counting officer in front of any postal ballot agents in attendance. As long as one box remains sealed to receive covering envelopes until the close of poll, the counting officer may open the other boxes. The last postal voters box and the postal ballot box must be opened along with the counting of the rest of the votes under the conduct rules.

62. Paragraph 33 requires the counting officer to count and record the number of covering envelopes in each opened box, and to set aside at least 20% of each box for verification of the personal identifiers (signature and date of birth). The counting officer must then open each of the remaining covering envelopes, keeping the ballot papers face downwards. The counting officer must not be allowed to view the corresponding number list used at the issuing of the postal ballot papers.

63. Where the envelope is missing either a postal voting statement or ballot paper envelope (or, where there is no ballot paper envelope, is missing a ballot paper), the counting officer should mark the covering envelope ‘provisionally rejected’ and place it, with its contents attached, into the container for rejected votes.

64. Under sub-paragraph (9), where the envelope does contain a postal voting statement, the counting officer should mark the marked copy of the postal voters list or proxy postal voters list with a separate, clear mark, to highlight that the voter has returned their postal vote.
65. Sub-paragraph (11) requires the counting officer, once the last covering envelope has been opened, to make a sealed packet containing the marked postal voters list and proxy postal voters list.

66. Paragraph 34 allows anyone on the postal voters list or proxy postal voters list to request confirmation from the counting officer that their postal voting statement has been received at any time between the issuing of the postal ballots and the close of the poll.

67. Paragraph 35 requires the counting officer to check all postal voting statements which have not been set aside for verification and judge whether they have been properly completed. If the statement has not been properly completed, the counting officer should mark the statement ‘rejected’, attach it to the ballot paper envelope or ballot paper, show it to the postal ballot agents who may object to the counting officer’s decision (in which case the envelope should be marked ‘rejection objected to’) and add it to the container for rejected votes.

68. The counting officer must then compare the numbers on the postal voting statements with those on the ballot paper envelopes. If the numbers match, the postal voting statements and ballot paper envelopes should be placed in their respective containers. Where they do not match, or where there is a valid postal voting statement but no ballot paper envelope, the counting officer should mark the documents ‘provisionally rejected’ and put them in the container for rejected votes.

69. Paragraph 36 applies to envelopes which have been set aside for verification under paragraph 34. The counting officer must open the envelope and judge whether it has been properly completed, including comparing the signature and date of birth on the postal voting statement with those contained in the record of personal identifiers. Votes rejected under this paragraph should be placed in the rejected votes (verification procedure) container. The postal ballot agents must be shown the postal voting statement, permitted to view the personal identifiers record and may object to the decision, in which case the statement will be marked to show that the rejection was objected to.

70. Paragraph 37 allows the counting officer to check at any time the personal identifiers on a postal voting statement which has been placed in the postal voting statements container. If the counting officer is not satisfied that the signatures or dates of birth match, the statement should be marked ‘rejected’, shown to the postal ballot agents (who are permitted to object) and placed in the container for rejected votes (verification procedure), along with the corresponding ballot paper which should be retrieved from the postal ballot paper box. The counting officer must keep the ballot papers face downwards when retrieving them and re-seal the box in the presence of ballot paper agents.

71. Paragraph 38 requires the counting officer to open the ballot paper envelopes and place the ballot papers in the postal ballot box, except where the ballot paper envelope is empty, or where the number on the ballot paper does not match the number on the ballot paper envelope (in which case they should be marked ‘provisionally rejected’ and placed in the containers for rejected ballot paper envelopes or the container for rejected ballot papers respectively).
72. Paragraph 39 allows the counting officer to retrieve any cancelled ballot paper which has been placed in a postal voters box, postal ballot box or the container for ballot paper envelopes.

73. Paragraph 40 requires the counting officer to keep a list of the ballot paper numbers of any postal ballot paper which was received without a corresponding postal voting statement; and a separate list of the ballot paper numbers of any postal ballot papers which were not received with the corresponding postal voting statement.

74. Paragraph 41 provides that where a postal voting statement is received with no attached ballot paper, or vice versa, the counting officer should check to see whether the corresponding papers are included on either of the lists described above. If the papers can be matched, the counting officer must act as though the papers had not been marked ‘provisionally rejected’ and must treat the papers accordingly.

75. Paragraph 42 requires the counting officer, as soon as possible after the matching of papers under paragraph 41 above, to make up separate sealed packets containing the contents of the containers of rejected votes, postal voting statements, rejected ballot paper envelopes, rejected votes (verification procedure), postal voting statements (verification procedure), and the lists of spoilt, lost and superseded ballot papers.

76. Under paragraph 43, the counting officer is required to send all of the sealed packets to the proper officer of the local authority along with the other documents to be sent as part of the conduct rules in Schedule 3 and a statement of the contents and date. A copy of this statement should be provided to the Electoral Commission. Where any papers are received too late to be included in the packs the counting officer should package and send these separately.

77. Paragraph 44 allows the Chief Counting Officer to prescribe forms to be used under paragraphs 9 and 43. Where the forms are prescribed by the Chief Counting Officer, they may be used with such variations as circumstances require.

Part 4: Supply of polling lists etc.

78. Part 4 of Schedule 2 deals with the supply of polling lists and related documentation.

79. Paragraph 46 requires registration officers, at the request of the relevant counting officer, to supply to the counting officer the polling list, any notices of alterations to the register of electors, and any record of anonymous entries. Counting officers may request as many copies as they reasonably require for the purposes of the referendum, and the copies must be provided free of charge. Counting officers should also be provided with as many free copies of the postal voters list, list of proxies and proxy postal voters list as they may reasonably require. This includes a duty to supply one copy in data form. Where additional copies of any of the lists mentioned above are requested, printed copies should be issued. Anyone who receives a copy of a list under this paragraph is prohibited from supplying a copy, disclosing or making use of any of the information contained in it which is not also available in the edited copy of the local government register.
80. Paragraph 47 requires registration officers to supply free copies of the polling list and any alterations, the postal voters list, the list of proxies, and the proxy postal voters list to the Electoral Commission (in data form unless a paper copy is requested). The Electoral Commission and their staff are subject to similar restrictions around disclosing the information as registration officers under paragraph 45. The Commission may, however, use the information contained in the register to fulfil their duties in relation to the permissibility of donors, and they may also publish anonymised voter information.

81. Paragraph 48 allows registration officers to supply one copy of edited versions of the lists (with voter numbers and anonymous entries removed) to the designated campaign organisations on their making a request in writing. Unless specified by the designated organisation, the copy will be provided in data form. These copies are to be used only for the purposes of campaigning and complying with the controls on donations and regulated transactions in schedule 4.

82. Paragraph 49 requires registration officers to supply to permitted participants in the campaign, on request, one copy of the full version of the local government register and any alterations, the postal voters list, the list of proxies, and the proxy postal voters list. Permitted participants are subject to similar restrictions as designated organisations, as above, on the purposes for which the lists may be used.

83. Paragraph 50 confirms that the duty on a registration officer under this schedule is a duty only to supply the data in the form in which the registration officer holds it.

84. Paragraph 51 is an additional general restriction on the use of registration documents by those other than those for whom they are intended (for the purposes of this paragraph, “registration documents” means the polling list, notices altering that list, record of anonymous entries, postal voters list, list of proxies, or proxy postal voters list, or the edited equivalents of these items as provided for by paragraph 48), stating that any person who receives a copy of such a document must not supply any copies of that document, or disclose or make use of the information contained in it.

85. Paragraph 52 deals with offences in relation to disclosures of registration documents. A person is guilty of an offence if they breach any of the disclosure restrictions under this Part of the schedule, unless they were under direction of a supervisor with whose instructions they complied, or unless they took all reasonable steps to prevent the breach. An offence under this paragraph carries a penalty, on conviction, of a fine.

86. Under paragraph 53, any person who holds a document supplied under paragraph 46(1) or (2), 48(1) or 49(1) must securely destroy the document no later than one year after the referendum, unless the Court of Session or a sheriff principal orders otherwise. A person who fails to do so is guilty of an offence, with a penalty of a fine if convicted.

Part 5: Supply of marked polling lists etc.

87. Part 5 of schedule 2 deals with the supply of marked polling lists (i.e. the polling lists which were annotated on the day of the poll to show which voters were provided with a ballot paper). Paragraph 54 allows designated organisations to request the counting officer to supply
them with a copy of the marked versions of the polling list, any notices setting out alterations to the polling list, the postal voters list, list of proxies, and proxy postal voters list. The request must be made for purposes in connection with the campaign in respect of the referendum, or of complying with the schedule 4 controls on donations and regulated transactions, and if these purposes are satisfied the counting officer has a duty to supply the requested copies. The copies under this paragraph are subject to the same conditions as unmarked copies.

88. Paragraph 55 sets out the fees to be paid in relation to the supply of copies under paragraph 54.

**Conduct**

89. Section 4 of the Bill provides for the appointment of the Chief Counting Officer (CCO). The CCO will be the person who, at the time the Bill comes into force, is convener of the Electoral Management Board unless there is no-one in post at the time or the person in post is unwilling or unable to act as the CCO. This section also provides for appointment of a replacement CCO if he or she dies, resigns or is removed from the post by the Scottish Ministers who have a limited power to remove the CCO on health grounds, or if he or she is convicted of any criminal offence. The CCO has the power to appoint a deputy. Any appointees under this section (including the CCO) must be, or have been, a returning officer.

90. Under the provisions of section 5, the CCO must appoint a counting officer for each local government area and notify the Scottish Ministers. This section also provides for the appointment of replacement counting officers if one should die, resign or be removed from post by the CCO (who has power to remove a counting officer who cannot perform his or her functions, or who does not follow the CCO’s directions). Counting officers also have the power to appoint deputies.

91. Section 6 deals with the functions of the CCO and counting officers. The CCO is responsible for the proper and effective conduct of the referendum, including the conduct of the poll and the count of the votes. Each counting officer is responsible for conducting the poll and the count of votes in their local government area. The CCO must certify the total number of ballot papers in the referendum and the total number of votes cast in favour of each answer to the referendum question (section 6(4)), while the counting officers do the same for each local government area (section 6(2)) under the direction of the Chief Counting Officer. The CCO can give directions to counting officers with which they must comply. Local authorities are responsible for providing the CCO and counting officers with the property, staff and services they need to conduct the referendum (section 6(8) and (9)).

92. Section 7 gives the counting officers, including the CCO, a power to remedy, or correct, any act or omission which would constitute a procedural error by a relevant person (the persons listed in subsection (3)) and which is not in accordance with the requirements of the legislation. This power does not extend to a re-count of the votes after a declaration of the result has taken place.

93. Section 8 deals with the expenses incurred by counting officers and the CCO. Counting officers, including the CCO, can recover their costs from the Scottish Ministers, up to a maximum amount to be set out in an Order made by the Scottish Ministers. The Scottish
Ministers may provide monies in advance to the CCO and counting officers if they consider it appropriate to do so.

Schedule 3: Conduct rules

94. Schedule 3 to the Bill, introduced by section 9, sets out the conduct rules for the referendum.

95. To make voters aware of the arrangements for the referendum, rule 1 of schedule 3 requires each counting officer to publish notice of the referendum not later than the 25th working day before the date of the referendum. The notice must state the date of the referendum, details of who is entitled to vote, the hours of polling (7am – 10pm under the provisions of rule 2), the location of polling stations and the dates by which applications to register to vote and to vote by post and proxy (and other applications and notices about postal or proxy voting) must reach the registration officer. The counting officer must provide a copy of this notice to the referendum agents appointed for their area.

96. Under the provisions of rules 3, 4, 5, and 6, each voter will receive one ballot paper with a unique identifying number and a secret official mark. Counting officers must keep a ‘corresponding number list’ which records the unique identifying number of every ballot paper. The printing of the ballot papers should be arranged locally by counting officers unless the CCO takes over the printing arrangements.

97. Rule 7 gives counting officers a right to use rooms for the poll or for counting the votes, free of charge, in schools maintained by education authorities and other public meeting rooms maintained at a cost to the Scottish Ministers or most public authorities in Scotland. The counting officer must cover any associated expenses such as the lighting, heating or cleaning of the room.

98. Rule 8 places a duty on counting officers to issue postal voters with ballot papers and other associated documentation, including information about how to obtain directions or guidance for voters translated into other languages and Braille or in picture, audible or other formats.

99. Rule 9 places a duty on counting officers to provide enough polling stations and polling booths for the referendum and to allocate voters to polling stations appropriately. It is possible for more than one polling station to be in the same room.

100. Under Rule 10, counting officers must appoint and pay a presiding officer and clerks (as needed) for each polling station. People who have been involved in campaigning for an outcome in the referendum are excluded from undertaking these roles. A counting officer may act as a presiding officer at a polling station and the rules applying to presiding officers also then apply to a counting officer who does that. The presiding officer can authorise a clerk to do anything the presiding officer can do under these rules, except remove and exclude persons from the polling station.
101. Rule 11 places a duty on counting officers to issue the following to voters as necessary, and to the appropriate address:

- A poll card
- A postal poll card
- A poll card to a proxy
- A postal poll card to a proxy.

102. Poll cards include the voter’s name, address and electoral register number (unless they have an anonymous entry on the electoral register) and inform the voter of the date of the poll, the hours of polling and the polling station at which they should vote (where applicable). Where the voter has appointed a proxy, the poll card should confirm this.

103. Rule 12 places a duty on local authorities to lend ballot boxes and other relevant equipment to counting officers on terms and conditions which they agree.

104. The counting officer has a duty to provide presiding officers at polling stations with enough ballot boxes (designed to ensure that no ballot papers can be removed from the box without opening it) and ballot papers as necessary for the referendum, and materials for voters to mark their ballot papers, under the provisions of rule 13. Counting officers are to provide each polling station with the documentation needed to run the poll, including the polling list of voters for that area, a list of the postal and proxy voters for the area, the relevant part of the corresponding number list and any notices, declarations or other documents needed for the poll.

Procedures to be followed at polling stations

105. Rule 13 further provides that information to help voters with the voting process is to be displayed inside and outside the polling station and in every polling booth. To help voters who have a visual impairment, an enlarged sample copy of the ballot papers is to be made available, along with a device for enabling voters who are blind or partially sighted to vote without any assistance. The counting officer also has a power to display an enlarged copy of the ballot papers, marked as a specimen copy, translated into other languages as they deem appropriate for that area.

106. Rule 14 allows referendum agents to appoint polling agents or counting agents to attend the poll or the count. Referendum agents must give the counting officer notice of the appointments by the 5th day before the referendum. The number of counting agents allowed to attend the count may be limited by the counting officer, provided that each referendum agent is permitted an equal number, and that number is not less than the number of clerks employed divided by the number of referendum agents. A referendum agent may also undertake the duties of a counting or polling agent under this section. If an agent appointed under this section fails to attend to witness the proceedings, this does not invalidate the process so long as it is otherwise conducted properly.

107. Rule 15 lists the people who are allowed to be admitted to a polling station. The presiding officer of the polling station has overall control on how many voters and any children they may have with them may be admitted to the polling station at any one time. Each permitted
participant in the referendum cannot have more than one polling agent representing them in the polling station at any time.

108. The counting officer’s staff and police constables on duty at a polling station are allowed to vote at a polling station other than the one they were allotted provided they have a certificate to do so.

109. Under the provisions of rule 16, counting officers must ensure that everyone at a polling station, other than voters and those accompanying them, and police constables, has been given a copy of the information in sub-paragraphs (1), (3), (5), (7), (8) and (9) of paragraph 7 of schedule 7 to the Bill. These sub-paragraphs all relate to the need to ensure that each person’s vote in the referendum remains secret. Before the poll closes, they are not to discuss or reveal the name or electoral registration number of anyone who has or has not requested a ballot paper. The official mark on every ballot paper (under the provisions of schedule 3, rule 6) must not be discussed either (sub-paragraph (3) of paragraph 7 of schedule 7). Nor should they (under sub-paragraph (5)):

- make any attempt to interfere with a voter when recording their vote
- make any attempt in the polling station to find out how the voter intends to vote or has voted
- discuss with anyone how a voter intends to vote or has voted
- discuss the ballot paper number on the back of a voter’s ballot paper
- cause a voter to display a marked ballot paper which might reveal how they have voted or intend to vote in the referendum.

110. If they are required to help a voter with disabilities to vote in the referendum, they should not reveal to anyone how the person has voted or intends to vote, or the unique identifying number on the back of the ballot paper (sub-paragraph (7)).

111. The final piece of information, contained in sub-paragraphs (8) and (9), that counting officers are required to give to everyone at the polling station, is that if they fail to adhere to these requirements they commit an offence. The penalty for the offence is a maximum of 12 months imprisonment or a fine up to level 5 on the standard scale.

112. Rule 17 imposes a duty on the presiding officer to keep order at the polling station and a power to remove immediately anyone who does anything to stop the polling station from operating effectively; such a person can be removed either by the presiding officer or a police constable and may not enter the polling station again that day, other than to vote. If they are charged with an offence they may be taken into custody without a warrant. The presiding officer cannot remove someone if it would prevent a voter from voting.

113. Rule 18 sets out the procedures for dealing with the ballot boxes during the poll. Before the poll opens, the presiding officer must demonstrate to anyone present that the ballot boxes are empty and then they must place the presiding officer’s seal on the box in such a way that if the box is opened, the seal would be broken. This verifies to everyone that the box has remained
This document relates to the Scottish Independence Referendum Bill as amended at Stage 2
(SP Bill 25A)

closed and not been tampered with by anyone during the poll. The box must be visible to the
presiding officer at all times during the poll for the same reason and it must remain sealed until
after the poll closes and it is delivered to the counting officer for the count of the votes.

114. Rule 19 provides the questions that must be put to voters by the presiding officer when
they arrive at the polling station to vote, if a referendum agent or polling agent requires it or the
presiding officer considers it appropriate to do so. There are different questions for voters
applying to vote in person and those applying to vote as proxy. Only the questions set out in this
paragraph of schedule 3 may be asked about a voter’s eligibility to vote. The person’s answers
to the questions help the presiding officer to determine whether the voter is eligible to vote and
whether they should be given a ballot paper to vote in the referendum.

115. Rule 20 makes provision for circumstances where someone declares that the voter is not
who they claim to be or the voter is arrested on suspicion of committing or being about to
commit an offence of personation. These situations are not to be treated as reasons to prevent
the voter from voting.

116. Under the provisions of rule 21, provided an eligible voter has answered the questions
put to them under rule 19 satisfactorily, the voter must be given a ballot paper. Before handing a
ballot paper to a voter, the staff at the polling station should declare the voter’s name and number
as it appears in the polling list and then write the voter’s number against the number of the ballot
paper contained in the corresponding number list. This ensures that there is a record of that
ballot paper being given to that voter. In the copy of the polling list, the voter’s name should be
marked to show that they have received a ballot paper and if the voter is voting as proxy, a mark
should be put against their name in the list of proxies. If the voter has an anonymous entry in the
electoral register, only their number should be called out.

117. Having received a ballot paper the voter is required to go immediately to a polling booth
to vote, cast their vote, show the ballot paper number on their ballot paper to the presiding officer
and then, in the presence of the presiding officer, put their ballot paper in the ballot box
provided. They must then leave the polling station. Where a voter arrives at the polling station
before 10pm, but is still in waiting to vote at 10pm, the presiding officer must allow them to vote
after the normal 10pm deadline. The polling station must be closed immediately after the last
such voter has voted.

118. If a voter asks for help to cast their vote because of an inability to read or because of a
disability such as blindness, rule 22 places a duty on the presiding officer, in the presence of any
polling agents, to ensure that their vote is cast as they wish to vote and their ballot paper is
placed in the ballot box. The voter’s name and number from the polling list is to be marked in a
‘marked votes list’ along with the reason for the entry in that list.

119. Rule 23 covers other circumstances under which a voter who is unable to read, is blind or
has a physical disability may vote. If the voter asks the presiding officer to vote with the help of
a companion, the presiding officer will ask them to explain the reason for needing assistance.
The companion must complete a form, prescribed by the CCO, stating that they are the parent,
grandparent, brother, sister, spouse, civil partner, child or grandchild of the voter, aged 16 or
over, and eligible to vote in the referendum. The presiding officer cannot charge a fee for the declaration, and must sign and keep it.

120. If the presiding officer is satisfied that the voter needs assistance and that the companion is eligible to fulfil the role, the request must be granted. If an application has been granted, the voter’s name and number from the polling list and the companion’s name and address must be marked in an ‘assisted voters list’. If someone is voting by proxy in this way, the number to be entered is the voter’s number. If the voter being assisted by the companion has an anonymous entry in the electoral register, only the voter’s number is to be entered in the assisted voters list.

121. Rule 24 sets out four situations which may occur where there is doubt that the person is eligible to vote in the referendum. These situations, set out in paragraphs (2) to (5) are where:

- someone claiming to be a voter (but not named on the postal voter or proxy voter lists) or claiming to be a proxy voter (but not a postal proxy voter) asks for a ballot paper after someone has already voted as that person either in person or as a proxy voter
- someone asking for a ballot paper claims to be a voter on the polling list, is named in the postal voters list and claims that either they have not applied to vote by post in the referendum or that they are not an existing postal voter (under schedule 2, paragraph 2(2))
- someone asking for a ballot paper claims to be a proxy voter in the list of proxies, is named in the proxy postal voters list and claims that either they have not applied to vote by post as proxy in the referendum or that they are not an existing postal proxy voter in local government or Scottish Parliament elections (under schedule 2, paragraph 6(4))
- someone claims after the last time for replacement postal ballot papers, but before the close of the poll, that they have lost or never received a postal ballot paper and they claim that they are named on the polling list and the postal voters list or that they are a proxy voter in the list of proxies and named in the postal proxy voters list.

122. In all four of the situations described above the person would be allowed to complete what is known as a tendered ballot paper, provided they answered the questions set out in rule 19 to the satisfaction of the presiding officer.

123. In these circumstances, the person will receive a ballot paper of a colour prescribed by the CCO that is different to the colour of the normal ballot paper used in the referendum. Once they have marked their vote, the ‘tendered ballot paper’ is given to the presiding officer who will write the voter’s name and voter number on the ballot paper. The ballot paper is not placed in the ballot box, but is instead placed in a separate packet and kept to one side. Such votes are not counted towards the declared result of the referendum. The voter’s name and voter number is then entered on a list known as the ‘tendered votes list’ (paragraph (8)). If someone is voting as proxy for a voter in these circumstances, the voter’s number is entered on the tendered votes list (paragraph (9)). Where someone has an anonymous entry in the electoral register, the same procedure is to be followed, except that only the voter’s number would be entered in the tendered votes list (paragraph (10)).
124. Rule 25 deals with ballot papers that have been inadvertently spoiled. If the voter makes an error or the ballot paper cannot be used for some other reason, the original ballot paper must be returned to the presiding officer of the polling station and immediately cancelled and a new ballot paper issued.

125. Under Rule 26, the presiding officer must keep a list, known as the ‘polling day alterations list’, of people who receive ballot papers because they have had their entry in the electoral register altered on the day of the poll itself (done by issuing a late notice of alteration under the Representation of the People Act 1983, including that Act as applied by the Scottish Independence Referendum (Franchise) Act 2013 in relation to the register of young voters) and are then eligible to vote at the referendum.

126. Rule 27 provides a procedure which the presiding officer is to follow if proceedings at the polling station are interrupted by riot or open violence. The presiding officer will close the polling station until the next day and let the counting officer know immediately what has happened. The poll will be adjourned and the polling station will observe the same opening hours the following day.

127. Under the provisions of Rule 28, as soon as possible after the poll closes, the presiding officer must seal each ballot box using the presiding officer’s own seal, so that no more votes can be cast. Separate packets are to be sealed containing:

- unused and spoilt ballot papers
- tendered ballot papers
- marked copies of the polling list, marked copy notices and the list of proxies (all in one packet)
- certificates from police constables or the counting officer’s staff who voted at a polling station instead of the one they were allotted
- the completed corresponding number list. This is to be in a different packet from the one containing the marked copies of the polling list (as is the list of certificates from police constables and counting officer staff)
- the tendered votes list and other specified lists
- any postal ballot papers or postal voting statements returned to the polling station.

128. The presiding officer must include a statement with the packets, known as the ‘ballot paper account’ which provides a count of the ballot papers the presiding officer was given, the number issued and not otherwise accounted for, unused ballot papers, spoilt ballot papers and the tendered ballot papers.

129. The sealed ballot boxes and the packets are then to be delivered to the counting officer. If the presiding officer does not deliver the ballot papers in person, the counting officer must approve any alternative delivery arrangements.
130. Rule 29 places a duty on counting officers to make arrangements for the count of votes as soon as possible after the close of the poll and to give notice in writing to the Chief Counting Officer, each referendum agent appointed for the area, and any counting agents appointed to attend the count stating where and when the count will take place. There is also a duty on the counting officer to ensure that the ballot boxes and packets are kept secure from the time he or she assumes responsibility for them until the count gets underway.

131. Paragraph (5) sets out the categories of people who are allowed to attend the count. As with polling and counting agents, counting officers may limit the number of permitted participants’ agents (‘counting agents’) at the polling stations or the count of votes, but they cannot favour one permitted participant over another – they would have to ensure that each permitted participant could have the same number of counting agents present.

132. Before the count of votes for each referendum outcome can start, the counting officer must check the number of votes to be counted from each ballot box against the number of ballot papers delivered and recorded on the ballot paper account by the presiding officer of each polling station. Rule 30 sets out the procedure for this. Each ballot box must be opened with any counting agents present, and the ballot papers it contains counted and recorded (paragraph (1)). The number of ballot papers is to be checked against the ballot paper account supplied by the presiding officer for that box. The ballot paper account is then verified, again with counting agents present, by comparing its totals with the number of ballot papers recorded, the unused and spoilt ballot papers and the tendered votes list. The packets containing the unused and spoilt ballot papers and the tendered votes list are then resealed. The counting officer must then prepare a statement, known as the ‘verification statement’ that records the totals of these counts against the ballot paper accounts provided by presiding officers of the polling stations (paragraph (2)).

133. The number of postal ballot papers is also counted and recorded. Postal ballot papers cannot be included in the count unless they have been delivered by hand to a polling station in the right local authority area or posted to the counting officer before the close of the poll. A postal voting statement that is signed (unless no signature is needed due to a disability or inability to read or write) and includes the voter or proxy’s date of birth must be included with the postal ballot paper (paragraph (4) of rule 30).

134. Under paragraph (5), before the count of votes can start, postal ballot papers must be mixed with the ballot papers from at least one ballot box. Ballot papers in a ballot box must be mixed with the ballot papers of at least one other box. (This prevents anyone from being able to tell from observing the count how voters in a particular locality have voted in the referendum.) Only then can the count of votes for each outcome in the referendum get underway.

135. No tendered ballot paper is to be counted. No postal vote can be included in the count if the counting officer, having verified the personal identifiers (the voter or proxy’s signature and date of birth), is not satisfied that the postal voting statement has been completed correctly.

136. The counting officer must make every effort to ensure that no one can identify the voter that cast a particular vote in the referendum.
137. Rule 29(1) provides that the counting officer must arrange to count the votes as soon as practicable after the close of the poll, which should usually mean that counting begins before midnight on polling day. The counting officer is responsible for the security of the ballot papers during the period between close of the poll and the start of the count. The count should normally proceed to a conclusion, but rule 30(9) allows the counting officer to exclude counting between 7 pm on any day after the day of the poll and 9am the following morning.

138. Rule 31 deals with ballot papers that are rejected from the count because they do not bear the official mark, they provide a vote both for and against the referendum question, they include anything that identifies the voter (other than the printed number on the back of the ballot paper) or they are unmarked or the person’s voting intention is unclear. The counting officer must mark these papers rejected (and, if any counting agent objects to the counting officer’s decision, mark them ‘rejection objected to’), and prepare a statement that records the numbers of ballot papers rejected in these ways.

139. Paragraph (3) gives the counting officer the power to decide whether a vote can be counted if the voter’s cross is not where it should be on the ballot paper, they marked the paper without using a cross or if they marked the paper more than once. So long as the voter’s intention is clear, the counting officer may decide to include the ballot paper in the count of votes. However the vote cannot be counted if it is possible to identify the voter from the ballot paper.

140. Rule 32 gives the counting officer a duty to count the votes for and against the referendum question.

141. Rule 33 provides that any decision of the counting officer on a question that arises in respect of a ballot paper is subject to judicial review in accordance with section 31.

142. Rule 34 gives both the counting officer and the CCO the power to have votes re-counted and re-counted again if they consider it appropriate to do so.

143. Once the count of votes in their area has been concluded to the counting officer’s satisfaction, under rule 35, the counting officer has a duty to immediately provide the CCO with the total number of votes counted, the number of votes cast for and against the referendum question, the details of the verification statements that relate to the ballot paper account and the details of the rejected ballot papers statement. Once authorised by the CCO, the counting officer must then announce the local result.

144. Once the CCO has received the local information for every area and is satisfied that no recount is required, he or she must declare the result of the referendum for the whole of Scotland which includes the number of votes counted, and the number of votes cast for and against the referendum question and the number of rejected ballot papers.

145. Once the CCO has confirmed that no recount is required, each counting officer is required as soon as possible under rule 36 to seal separate packets containing counted ballot papers and rejected ballot papers. Counting officers are not to open the packets containing
tendered ballot papers, the corresponding number lists, the certificates presented by police constables and those working at polling stations and the marked copies of the polling lists and any marked copies of the notices of late alterations to the register of electors. Once the papers have been sealed, rule 37 requires the counting officer to add a label to each packet that describes their contents and includes the date of the referendum, and to send them to the proper officer of the local authority for which the ballot papers were counted. The proper officer has responsibility for custody of these kinds of documents under existing local government electoral legislation. The package of papers to be sent must include packets of the following:

- the packets of ballot papers
- the ballot paper accounts from each polling station, the rejected ballot paper statement and the verification statements
- the tendered votes list, the assisted votes list, the marked votes list, the polling day alterations lists and the companion declarations
- the completed corresponding number lists
- the certificates presented by police constables and those working at polling stations under rule 15
- the marked copies of the polling lists and marked copies of the notices of late alteration of the register.

146. The proper officer of the local authority is then required under rule 38 to keep all of the papers for one year after which they must be destroyed unless they are required to keep them for longer by order of the Court of Session or a sheriff principal.

147. With the exception of the ballot papers, the corresponding number lists and the certificates submitted by police constables and those working at polling stations, all the papers must be made available for public inspection as the officer of the local authority sees fit. Anyone who wishes to inspect the papers must not copy them or record any information from them; to do so would be an offence. They are, however, allowed to take handwritten notes about them.

148. Under rule 39, the CCO must keep any certifications made by the CCO or by counting officers under section 6 regarding the results of the referendum. These are to be made available for public inspection as determined by the CCO.

149. If someone is being prosecuted for an offence relating to any ballot papers, under rule 40 the Court of Session or a sheriff principal may order inspection of any rejected ballot papers, corresponding number list, employment certificate or ballot paper that has been counted. The Court or sheriff principal can place conditions on who, when, where and how the inspection of these papers may take place. The way in which a voter voted should not be revealed until it is proved that the vote was given and a court has declared the vote to be invalid. Any appeal against a sheriff principal’s order would be heard in the Court of Session.

150. When the officer of the local authority produces a document in relation to the case, it is to be taken as conclusive evidence that the document relates to the referendum. Anything written
on the packet in which the document is kept is to be taken as evidence that the ballot papers in that packet are what is written on the packet (unless there is evidence to the contrary). When the officer of the local authority produces a ballot paper or corresponding number list in relation to a case, these documents are to be taken as evidence that the voter who voted using the ballot paper was the same person whose voter number appears in the corresponding number list against the number of that ballot paper (again unless there is evidence to the contrary).

151. Other than for the purposes of a prosecution relating to an offence, no one is allowed to inspect any counted or rejected ballot papers or open any sealed packet containing the corresponding number list or the employment certificates provided by police constable or people working at polling stations on the day of the referendum.

152. Rule 41 allows the CCO to prescribe the forms necessary for the referendum.

**Schedule 4: Campaign rules**

**Part 1: Interpretation**

153. Section 10 introduces schedule 4 to the Bill which provides for the rules which govern campaigning at the referendum. Paragraph 1 contains definitions of words and phrases used in the schedule.

**Part 2: Permitted participants and designated organisations**

154. Paragraph 2 of schedule 4 provides that if an individual or an organisation (including a political party) wishes to spend more than £10,000 (a limit set by schedule 4, paragraph 17) on campaigning, they will have to declare to the Electoral Commission that they wish to be a ‘permitted participant’ and identify the outcome they will campaign for at the referendum. Paragraph 2 also sets out the criteria that individuals and bodies must fulfil to be eligible to become permitted participants.

155. Paragraph 3 sets out the requirements for the declarations. Declarations made by a registered political party must be signed by the responsible officers of the party (usually the treasurer) or in the case of a minor party (one that contests only one or more parish or community election in England and Wales) it must include the name of the person who will be responsible for the party’s compliance with the referendum campaign rules.

156. Declarations made by individuals wishing to become permitted participants must be signed by the individual and give their full name and home address.

157. Declarations made by other organisations, known as ‘qualifying bodies’ must be signed by the secretary or similar office bearer of the body and must include the name and address of the organisation, including, in the case of a company, its registered number.

158. Paragraph 3A prohibits a responsible person for a permitted participant from making a declaration under paragraph 2 by or on behalf of another permitted participant. If an individual is a permitted participant and also treasurer of a registered party other than a minor party, he or she ceases to be a permitted participant if the party registers as a permitted participant. A
declaration by a qualifying body or minor party will be considered not to satisfy the requirements of paragraph 3(1)(b) or 3(3)(a)(ii) to notify who is the responsible person for a permitted participant if the intended responsible person is already a responsible person for another permitted participant or a permitted participant in his or her own right.

159. Paragraph 4 places a duty on the Electoral Commission to create and maintain a register of declarations made by registered parties, individuals and other organisations who wish to become permitted participants in the referendum. The register must not include the home address of an individual who has made a declaration.

160. Paragraphs 5 and 6 provide that a permitted participant may apply to the Electoral Commission to be the principal campaign organisation representing one of the outcomes of the referendum. These permitted participants are called ‘designated organisations’ and have a higher campaign spending limit (full limits are set out in paragraph 18). Paragraph 6 specifies the form that applications must take and sets out the timetable for applications and for the Electoral Commission’s decision. It makes clear that even where an application has been made only in respect of one outcome, the Electoral Commission should make the designation provided they are satisfied that the applicant is genuinely representative of those campaigning for that outcome. The Commission may designate an organisation in relation to one or both outcomes.

161. Under paragraph 7, designated organisations are entitled to use school rooms or meeting rooms in publicly maintained buildings for public campaign meetings during the four-week period before the referendum is held.

162. Paragraph 8 requires the designated organisation to contact the education authority in advance if they wish to use a school room and entitles them to inspect a list of the rooms that are available for them to use.

Part 3: Referendum expenses

163. Paragraph 9 defines referendum expenses as any of the activities specified in paragraph 10 which are incurred in the running or conduct of a referendum campaign, or are incurred in connection with the promotion of any particular outcome in the referendum.

164. Paragraph 10 sets out different types of activities which qualify to be counted as referendum expenses (including campaign broadcasts, advertising, material addressed to voters, market research or canvassing, press conferences or media dealings, transport, rallies or public meetings). Sub-paragraph (2) confirms that the definition of referendum expenses does not extend to any expenses which fall to be met out of public funds, any campaign staff costs, any expenses incurred by an individual which are not reimbursed, or any expenses related to the publication of material about the referendum which is not an advertisement.

165. Sub-paragraph (3) gives the Electoral Commission a power to issue guidance on the different kinds of expenses that qualify as referendum expenses, and requires them to provide a copy of this guidance to Scottish Ministers, who will lay a copy before the Scottish Parliament.
166. Paragraph 11 deals with the concept of notional referendum expenses, where an individual or body is given property or allowed to use property, services or other facilities either free of charge or at more than 10% discount from the market rate for their use, for the purposes of campaigning for an outcome in the referendum. Notional expenses are counted towards the referendum expenses limit of the individual or body. There are four situations where notional expenses are calculated:

i. Where a property is provided free of charge, the ‘appropriate amount’ of expenses is calculated as a reasonable proportion of the market value of the property taking into account the use of the property.

ii. Where the property is provided at a discount of more than 10%, the appropriate amount of expenses is the reasonable proportion of the difference between the market value of the property and the amount actually spent.

iii. Where property, services or other facilities are provided free of charge, the appropriate amount of expenses is calculated as a reasonable proportion of the commercial rate for their use of the property taking into account the use of the property.

iv. Where property, services or other facilities are provided at a discount of more than 10%, the appropriate amount of expenses is the reasonable proportion of the difference between the commercial rate for their use and the amount actually spent.

167. Where an employer makes the services of an employee available to the individual or body, the notional referendum expenses are taken to be the person’s salary (but not other payments such as bonus payments for example) during the time they are working on behalf of the individual or body.

168. The effect of sub-paragraphs (9) and (10) is that only the proportion of the expenses incurred for the use of the property, services, facilities or employees during the referendum period is to be declared by a permitted participant in a return to the Electoral Commission. Only expenses of over £200 need be declared. Under sub-paragraph (12), someone who makes a false declaration in the return commits an offence. Notional referendum expenses do not include the costs associated with the transmission of a referendum campaign broadcast, the mailshot of referendum material, or the use of public rooms under paragraphs 7 and 8 for designated organisations. Time or services given voluntarily by an individual are also excluded.

169. Paragraph 12 requires that any expenditure incurred on behalf of a permitted participant must have the authority of the responsible person (e.g. its treasurer or other named officer as defined in schedule 8) or someone authorised in writing by the responsible person. Anyone who spends money without this authority commits an offence.

170. Similarly, paragraph 13 requires that any payment made by the permitted participant in connection with referendum expenses must have the authority of the responsible person or someone authorised in writing by the responsible person and there must be an invoice or receipt for any payment over £200. When a payment of over £200 is made by someone authorised by the responsible person, they must notify the responsible person that the payment has been made and give them the relevant invoice or receipt. If anyone fails to follow these rules they commit an offence.
171. Paragraph 14 requires someone with a claim for payment of referendum expenses to submit it to the permitted participant’s responsible person or someone authorised by the responsible person within 30 days of the date of the referendum. Claims can be submitted beyond the 30 day period if the Electoral Commission agree that it is appropriate to do so. All other claims must be paid within 60 days of the date of the referendum. Paying a claim after that time is an offence. Paying a claim that should not be paid is also an offence. Any other rights a creditor of the permitted participant may have in relation to payment (for example right to earlier payment under a contract agreed by the creditor and permitted participant) are not affected by the timescale for payment of not later than 60 days after the referendum period.

172. Sub-paragraph (8) of paragraph 14 applies section 77(9) and (10) of the Political Parties, Elections and Referendums Act 2000, to prevent the 30 and 60 day periods from ending on a Saturday, Sunday or other national day of thanksgiving, mourning or holiday.

173. Where the permitted participant’s responsible person (or someone allegedly authorised to incur the expenditure) fails or refuses to pay a claim for referendum expenses within 60 days of the date of the referendum, this is known as a ‘disputed claim’. Paragraph 15 allows the person who made the claim to bring a court action to decide whether the claim ought to be paid, whether the 60 day period has passed or not. The court may consider whether there is a special reason for the claim to be paid if it was submitted after the 30 day period was over. Paragraph 16 confirms that the rights of the creditors of permitted participants to receive payments due to them are not affected by a permitted participant having incurred expenditure or spent money when prohibited by the campaign rules in schedule 4 from doing so, so long as the creditor was unaware that the contract or expenditure contravened those rules.

174. Paragraph 17 sets a spending limit of £10,000 in the referendum campaign for individuals or bodies that are not permitted participants. Sub-paragraphs (8) to (10) include within the £10,000 limit the appropriate sum of notional referendum expenses for property, services or facilities incurred before or during the referendum period. If that limit is exceeded, then the individual or body is guilty of an offence, and in the case of a body, the person who authorised the expenses is also guilty of an offence if they knew or should have known that the limit would be exceeded as a result of the payment. It is a defence for an individual or body to show that they complied with a code of practice issued by the Electoral Commission at the time of deciding whether to incur the expense, and in so doing, hadn’t exceeded the spending limit at that time.

175. Paragraph 18 sets out the spending limits for permitted participants. Where a permitted participant is a designated organisation they will have a campaign spending limit of £1,500,000. Permitted participants who are registered political parties and for whom constituency and regional votes were cast in the election for the Scottish Parliament held in 2011 will have a spending limit of either £3,000,000 multiplied by their percentage share, or a minimum of £150,000. Permitted participants who are not political parties will have a limit of £150,000. If a permitted participant is a member of a designated organisation (but not the organisation itself) that will not affect their separate entitlement to incur expenditure up to their own limit. Sub-paragraphs (8) to (10) of paragraph 17 also apply to these spending limits the notional appropriate sum of property, services or facilities incurred before or during the referendum period. Any referendum expenses incurred before the individual or body became a permitted participant also count towards the spending limit and should be noted in an expense return to the Electoral Commission.
176. Breach of the spending limits is treated as an offence, in the case of a political party both by the party itself and by its responsible person or deputy treasurer. If the permitted participant is an individual, then the individual is guilty of the offence and if the permitted participant is some other body, then both the body and the responsible person are guilty of the offence if the spending limits are exceeded. As with those who are not permitted participants, it is a defence to show that they had complied with a code of practice issued by the Electoral Commission at the time of deciding whether to incur the expense, and in so doing, had not exceeded the spending limit at that time.

177. To prevent an organisation or body declaring themselves a permitted participant under a number of different names in order to take advantage of multiple spending limits, paragraph 19 treats referendum expenses incurred by two or more permitted participants working together to a common plan or arrangement as counting towards the spending limits of each permitted participant. This is a common plan or arrangement where more than one individual or body aim to promote a particular outcome at the referendum and incur expenses in doing so. Such expenditure also counts towards the spending limit of a non-permitted participant, if one is involved in the common plan or arrangement.

178. Paragraph 20 requires each permitted participant to provide a report to the Electoral Commission about its finances including its spending, any disputed claims in which it was involved, unpaid claims and any relevant donations it has received (with the exception of registered political parties which are required under UK legislation to submit a return about their donations to the Electoral Commission). This report or ‘return’ must include all invoices and receipts in relation to expenditure and a statement identifying the amount of any notional referendum expenses incurred. The return need not include details of, but must be accompanied by a declaration of the total amount of, any referendum expenses incurred before the individual or body became a permitted participant. The Electoral Commission has a power under sub-paragraph (10) to issue guidance about the form to be used for the return. Those who are not permitted participants do not need to submit a return to the Commission.

179. Paragraph 21 requires designated organisations that have spent over £250,000 to submit an auditor’s report on their financial return to the Electoral Commission. The auditor has the right to access the designated organisation’s books and other paperwork, and the responsible person must provide any relevant additional information, that the auditor requires for the purposes of the audit. If the responsible person fails to do so, the Commission may write to them to require them to do so. If the responsible person fails to comply with the written directions of the Commission, the Commission can apply to the Court of Session to deal with the person as if they had failed to comply with a court order. A deliberately misleading, deceptive or false statement, whether oral or in writing by the responsible person to an auditor about the finances of the designated organisation is an offence.

180. Under paragraph 22, returns to the Commission must be submitted along with any auditor’s report required within 6 months of the date when the referendum took place. Returns that do not need an auditor’s report must be submitted to the Commission within 3 months. Where the Electoral Commission decides that a claim for expenses that was submitted after the 30 day deadline should be paid (under paragraph 14), the responsible person must, within 7 days of the payment, submit to the Commission a return detailing the payment. The responsible person commits an offence by failing to comply with the requirements of this paragraph.
181. Paragraph 23 requires the responsible person to sign the return and provide a declaration along with it to the effect that he or she has examined the return and to the best of his or her knowledge and belief it is complete and correct and all expenses in the return have been paid by the responsible person or someone authorised by him or her. Where the permitted participant is not a registered political party, the declaration must also state that all relevant donations recorded in the return have been accepted from permissible donors and that no other donations have been accepted. The responsible person commits an offence if he or she knowingly or recklessly makes a false declaration in the return.

182. Paragraph 24 requires the Commission to make a copy of the returns it receives from permitted participants available for public inspection while the return is in the Commission’s possession. The Commission must ensure that where a donor is an individual rather than an organisation, the donor’s address is not made public in the statement of relevant donations. A similar restriction applies where the return contains information about a regulated transaction. If the transaction was entered into with an individual, the individual’s address should not be made public. The Commission has a power to destroy returns and any other papers it receives once two years have passed since it first received them, or else at the responsible person’s request the Commission must send the return and other papers back to the permitted participant.

Part 4: Publications

183. Paragraph 25 provides that, for the 28 day period before the date of the referendum, the Scottish Ministers and certain public authorities in Scotland cannot publish any material providing general information about the referendum, dealing with issues raised by the question to be voted on in the referendum, putting any arguments for or against a particular answer to the question to be voted on, or which is designed to encourage voting in the referendum. However, this rule does not apply to information made available following a specific request; specified material published by or under the auspices of the Scottish Parliament Corporate Body; any information from the Electoral Commission, a designated organisation or the Chief Counting Officer or any other counting officer; or to any published information about how the poll is to be held.

184. Under paragraph 26, printed material associated with the referendum cannot be published unless it meets the following requirements:

- If the material is contained on a single side of a printed page, then the name and address of the printer, the promoter and the person on behalf of whom the material is being published must be on the face of the document
- If the printed material is not on a single sided page, then those names and addresses must appear on the first or last page of the document
- If the printed material is a newspaper or periodical advertisement, then the name and address of the printer of the newspaper or periodical must appear on its first or last page and the names and address of both the promoter and the person on behalf of whom the material is being printed must be in the advertisement.

185. The paragraph also prevents any non-printed material associated with the referendum, such as material on the internet, from being published unless it includes the name and address of
the person on behalf of whom the material is being published. There is an exception where it is not practical to comply with these requirements; an example might be very small advertisements.

186. If any printed material is published without meeting the requirements, then the promoter of the material, the printer, and any person who publishes it are all guilty of an offence. If any non-printed material fails to meet the requirements, then the promoter of the material and publisher are guilty of an offence. In both cases, it is a defence to show that circumstances beyond the person’s control caused the offence to be committed and that they took all reasonable steps to avoid committing an offence.

187. Paragraph 27 applies the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 in relation to the display on any site of an advertisement relating specifically to the referendum as they have effect in relation to the display of an advertisement relating specifically to parliamentary election.

Part 5: Control of donations

188. The Bill deals with controls of donations to permitted participants that are not registered parties or are minor parties. Donations to registered political parties are already subject to a regulatory regime established in the Political Parties, Elections and Referendums Act 2000. The rules set out in Part 5 of schedule 4 to the Bill define what donations are allowed, both by description and by monetary value (or a determination of monetary value), who is allowed to make a donation and what a permitted participant must do to record and report the donations of over £500 that they receive.

189. Paragraph 28 defines a ‘relevant donation’ in this context as meaning a donation to a permitted participant for the purposes of meeting referendum expenses. Under sub-paragraph (6), only permitted participants that are designated organisations can accept donations from registered political parties.

190. Sub-paragraph (7)(a) adds anti-avoidance provisions in order to cover donations provided so that expenses are not incurred, and sub-paragraph (7)(b) provides for a test of reasonably assuming something to be a donation.

191. Sub-paragraphs (8) to (10) provide an explanation of what constitutes a donation in relation to any money spent in paying any referendum expenses incurred by or on behalf of the permitted participant. Sub-paragraph (11) makes it immaterial where a donation is received.

192. Paragraph 29(1) explains what constitutes a donation for the purposes of the referendum. Where the value of the transaction, whether it be in money or other property, services or facilities at less than the market rate, the money or property transferred to a permitted participant is taken to be a gift and therefore a donation made to the permitted participant. Sub-paragraph (3) explains that in order to determine whether property, services or facilities are provided to a permitted participant on terms better than a commercial rate, a comparison is needed with the total sum involved. Further clarification is provided in sub-paragraph (5) which explains that anything given to someone representing a permitted participant that is not for their personal use is assumed to be a donation to the permitted participant.
193. A donation to a permitted participant includes any sponsorship of the permitted participant. Paragraph 30 explains that sponsorship in this context includes any money given to the permitted participant in order to help with referendum expenses or to avoid incurring costs in the referendum. This includes the sponsorship of conferences or other events run by or on behalf of the permitted participant, costs associated with a publication by or on behalf of the permitted participant and any study or research it undertakes. However, sponsorship does not include someone paying for admission to a conference, buying a publication or payment for an advertisement where the cost involved is charged at the usual commercial rate.

194. Paragraph 31 outlines other payments that are not donations for the purposes of the Bill. These include a grant from public funds, the rights of a designated organisation to a free mailshot to each voter and to the use of public rooms under paragraphs 7 and 8 of schedule 4, transmission by a broadcaster of referendum campaign broadcasts, the services of someone volunteering to work with or for the permitted participant at no charge or any interest that may accrue on a donation. Any donation with a value of £500 or less is also to be disregarded.

195. Paragraph 32 explains how the value of a donation is to be established. The value of any donation other than money is to be taken as the market value of the property involved. Where goods or services are provided to the permitted participant at a rate preferential to the commercial rate, the value of the donation is taken to be the difference in value between what was actually paid and what would have been paid had the commercial rate been applied. The value of sponsorship is taken as either the money involved, or the market value of any property transferred to the permitted participant. Any value accruing to the sponsor from the sponsorship is to be disregarded. The value of any loan, or property, services or other facilities provided at a rate better than the commercial rate is taken to be the difference between the amount actually paid by the permitted participant and the amount that would have been paid had the commercial rate been applied. If the permitted participant benefits from such a donation over a period of time, for example through paying a lower rent over several months, the donation involved is the total amount saved over those months.

196. Paragraph 33 prohibits permitted participants from accepting certain donations. Only donations from people or bodies listed in paragraph 1(2) of schedule 4 as ‘permissible donors’ can be accepted:

- individuals registered on the electoral register
- companies registered under the Companies Act or incorporated in the EU or that conduct business in the UK
- registered parties that intend to contest an EU election (only designated organisations may receive donations from registered parties, under sub-paragraph 29(6))
- trade unions
- building societies
- limited liability partnerships
- friendly societies
- unincorporated associations carrying on business or other activities wholly or mainly and having their main office in the UK.
197. In addition, donations from exempt trusts are to be counted as relevant donations. However a donation from a trustee of any property which is not an exempt trust donation, or if the beneficiaries under the trust are not permitted participants or members of an unincorporated association which is a permissible donor, is to be taken as a donation from an impermissible donor, i.e. it should not be accepted by the permitted participant.

198. Where someone provides a donation to the permitted participant on behalf of themselves together with someone else as a ‘principal donor’, or an agent provides a donation on behalf of others, then each donation of over £500 is to be taken as a donation from each of the individuals. In such cases, the responsible person of the permitted participant must be given certain details about the donor. An offence is committed by the principal donor or the agent if the details are not provided. The details to be provided depend on the status of the donor but usually it involves their name and address. These details are to be provided for each donation in the statement of donations to be submitted to the Electoral Commission under paragraph 38.

199. Under paragraph 34, if a donation is accepted by the permitted participant, they should make every effort to verify that the donor is who they say they are and that the donor is a permitted donor and to verify the donor’s name and address. If the permitted participant receives a donation they should not accept, then the donation should be returned within 30 days to whoever provided it. An offence is committed if these steps are not taken within the 30 day period but it is a defence to show that within the 30 days steps were taken to identify the donor and it was concluded that the donation was from a permissible donor.

200. Under paragraph 35, if the donation was provided anonymously, it should be returned to the person who provided it on the anonymous donor’s behalf or the financial institution they used to send it. If that is not possible, the donation should be sent to the Electoral Commission. The Commission would then pay it into the Scottish Consolidated Fund.

201. Under paragraph 36, where a permitted participant accepts a donation that it should not have accepted (because it was given anonymously or by someone other than a permissible donor), a sheriff can, regardless of whether legal proceedings have been brought in connection with an offence, order the permitted participant to forfeit money equivalent to the amount of the donation. The permitted participant can appeal against the sheriff’s decision to the Court of Session. If the amount of the donation is forfeited, then the money is paid into the Scottish Consolidated Fund.

202. If someone deliberately tries in any way to make a donation to a permitted participant when the donor is not a permissible donor, that person commits an offence under the provisions of paragraph 37. An offence is also committed if someone provides deliberately false information to the responsible person of the permitted participant about the amount of a donation or the donor. Similarly, an offence is committed if someone deliberately tries to deceive the

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1 “Exempt trust donations” are donations received from a trustee where the trust was created before 27 July 1999 and which has had no property transferred to it after that date nor have the terms of the trust varied after that date or it is a donation received from a trustee where the trust was created either by a person who was a permissible donor under section 54 of the Political Parties, Elections and Referendums Act 2000 or created in the will of such a person and no property has been transferred to the trust other than by the person who created or by the will. (See section 162 of the 2000 Act and the definition in paragraph 1(1) of the Bill).
This document relates to the Scottish Independence Referendum Bill as amended at Stage 2
(SP Bill 25A)

responsible person of the permitted participant by withholding information about the amount of a
donation or the donor.

203. As part of the return to the Electoral Commission, the permitted participant is required by
the provisions of paragraph 38 to provide a statement of relevant donations.

204. Paragraph 39 sets out the information to be provided in the statement of relevant
donations. For individual donations of over £7,500 or cumulative donations of over £7,500 from
the same donor, the statement must include the amount of the donation or its value if the
donation was something other than money, the date when it was accepted by the permitted
participant and other information about the donor, which, although dependent on the status of the
donor, is in most cases the donor’s name and address.

205. The total value of all the other donations which are under £7,500 should also be provided
in the statement. Where someone who has an anonymous entry on the electoral register has
made a donation, the statement should also include a copy of the evidence that the permitted
participant has seen of the anonymous entry.

206. Where a donation has been received by a permitted participant from an impermissible
donor in accordance with the rules for such donations in paragraph 33(1)(a), paragraph 40
requires that the statement should record the name and address of the donor, the amount of the
donation or its value if the donation was something other than money, the date the donation was
received and the date it was sent back to the donor or the person acting on the donor’s behalf in
accordance with paragraph 34(3)(a). Where a donation has been received by a permitted
participant from an unidentifiable donor in accordance with the rules for such donations in
paragraph 33(1)(b), the statement should record the name and address of the donor, the amount
of the donation or its value if the donation was something other than money, the date the
donation was received and the date it was dealt with in accordance with paragraph 34(3)(b).

207. Paragraph 41 requires that reports are prepared by responsible persons for permitted
participants during the referendum period which include details of donations received of more
than £7,500 that are to be used for the purpose of meeting referendum expenses incurred by the
permitted participant during the referendum period. Reports must be prepared in respect of the
period ending with the 28th day of the referendum period, including the time before the
referendum period, the two succeeding periods of 4-weeks, and the period from the end of the
second of these 4-week periods until the end of the seventh day before the report is due to the
Electoral Commission. If no donations of more than £7,500 were received, this information
must also be included in the report. The reports must be delivered to the Electoral Commission
within 7 days at the end of each 4-week period, or, in the case of the final 4-week period, by the
end of the fourth day before the referendum. It is an offence to fail to make such a report, or if
the report does not comply with the requirements of paragraph 41. Paragraph 41A requires each
of these reports to be accompanied by a declaration, signed by the responsible person,
confirming that the report is complete. A false declaration, or a failure to make one by a
responsible person, is also an offence.

208. Paragraph 41B requires the Electoral Commission to make pre-poll donation reports
publicly available as soon as reasonably practicable.
Part 6: Control of loans and credit

209. The rules set out in Part 6 of schedule 4 provide for the control of ‘regulated transactions’, i.e. loan or credit transactions entered into by permitted participants who are not registered parties. Paragraph 42 sets out the operation of this Part of the schedule. Paragraph 43 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 or credit to meet referendum expenses. An agreement of this type may also be supplemented by a ‘connected transaction’, where a third party backs up the permitted participant by offering security to the lender. In this case, the connected transaction is also considered to be a regulated transaction. Agreements where the value is less than £500, and payments which are already covered in statements to the Electoral Commission under paragraph 38, do not count as regulated transactions.

210. Paragraph 44 clarifies the value of regulated transactions. Where the transaction is a loan agreement, the value is the full amount of the money to be lent. Where the transaction is a credit agreement, the value is the maximum credit limit. Both of these exclude any interest provisions in the agreement. Where the transaction is arranged on the basis of a security, the value is the liability under the security.

211. Paragraph 45 prohibits permitted participants from entering into regulated transactions with anyone who is not a permissible donor as defined in paragraph 1(2) of schedule 4.

212. Under paragraph 46, any transaction between a permitted participant and an impermissible donor 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 courts 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 existed.

213. Paragraph 47 provides that where a regulated transaction is void due to impermissibility of the donor as under paragraph 46, any connected transaction as described in paragraph 43(3)(b) is also 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.

214. Paragraph 48 confirms that any attempt by an authorised participant to transfer their interest in a regulated transaction to an unauthorised participant is not valid.

215. Paragraph 49 provides the offences related to regulated transactions, including:

- it is an offence to enter into a regulated transaction in the knowledge (or where it ought reasonably to have been known) that the other party is not an authorised participant
- where a permitted participant has entered into a transaction with an unauthorised participant, but could not reasonably have been expected to know, it is still an offence not to take reasonable steps to repay the money after the impermissibility of the other party becomes apparent
• it is an offence to benefit from or be in line to benefit from a connected transaction which involves an unauthorised participant where their impermissibility was known or could reasonably expect to have been known. It is also an offence, where the impermissibility was not known, to fail to take all reasonable steps to repay the benefits once the impermissibility becomes apparent
• it is an offence to knowingly enter into, or knowingly facilitate any arrangement which is likely to result in the permitted participant being involved in a regulated transaction with an unauthorised participant.

216. The offences include situations where the other party was originally an authorised participant but later ceased to be one. It is a defence for a person who is the responsible person for the permitted participant to show that they took all reasonable steps to prevent the permitted participant entering into the transaction.

217. Paragraph 50 details the penalties associated with the offences listed above, which, depending on the offence, are either a fine or imprisonment for a term of up to 12 months.

218. Paragraph 51 sets out the requirement for permitted participants to include regulated transactions in the statements prepared for the Electoral Commission under paragraph 20. The transaction need only be included in the return where the value exceeds £7,500, or where the aggregate value of the transaction and any other relevant benefits exceeds £7,500.

219. Paragraphs 52 to 54 require the statement to include details of any authorised or unauthorised participants, and details of the transaction in line with Schedule 6A to the Political Parties, Elections and Referendums Act 2000.

220. Under paragraph 55, where there is any change to the agreement, such as different participants, 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.

221. Paragraph 56 requires that the statement also includes the total value of regulated transactions that are not recordable.

222. Paragraph 57 requires that reports must be prepared by the responsible person in relation to permitted participants detailing regulated transactions which have a value exceeding £7,500 that are to be used for the purpose of meeting referendum expenses incurred by the permitted participant during the referendum period. Reports must be prepared in respect of the same periods as required in paragraph 41 for donations. If no such transactions were entered into, the report must state this. Failure to make a report and failure to comply with the requirements of paragraph 57 are offences. Paragraph 58 deals with a situation where the courts, on the application of the Commission, are convinced that a failure to comply with any requirement under this part of the schedule was caused by a person attempting to conceal the existence of, or true value of, the transaction. In this case, the courts may make an order which will return the parties to the same position as if the transaction had never been made. Paragraph 57A requires each of these reports to be accompanied by a declaration, signed by the responsible person,
confirming that the report is complete. A false declaration, or a failure to make one by a responsible person, is also an offence.

223. Paragraph 57B requires the Electoral Commission to make pre-poll transaction reports publicly available as soon as reasonably practicable.

224. Paragraph 59 makes provision in relation to the court proceedings before the sheriff under paragraphs 46 or 58, confirming that they will take place as civil proceedings, and that orders of the sheriff are appealable to the Court of Session. Rules of court may make provision with respect to court applications or appeals.

225. Paragraph 60 contains definitions of words and phrases used in this schedule.

Monitoring and securing compliance with the campaign rules

226. Section 11 of the Act gives the Electoral Commission responsibility for monitoring and securing compliance with the rules contained in schedule 4. It also gives the Commission power to issue guidance on how to comply with the regulations or restrictions. Schedules 5 and 6 replicate the Commission’s usual investigatory powers and power to impose civil sanctions to help them fulfil their duties under section 11.

227. Under section 12, the Commission must make the register of declarations they hold under schedule 4, paragraph 4, available for public inspection, either in their offices, by arrangement, or by providing a copy. The Commission are entitled to charge a reasonable fee for this service.

228. Section 13 specifies that a person commits an offence by suppressing, concealing, destroying or falsifying any document to circumvent the campaign control provisions of the Act. It is also an offence to withhold information or to fail to provide information to the relevant person without a reasonable excuse, or to provide false information. Offences under this section carry a penalty of, depending on the offence, imprisonment or a fine.

229. Section 14 states that summary proceedings under section 13 or schedules 4 to 6 may be taken in respect of a body at its place of business, and in the case of a person at any place where that person is for the time being. Subsection (2) allows criminal proceedings to be commenced at any time within 3 years after the offence is committed, or within 6 months of the prosecutor having knowledge of sufficient evidence to justify proceedings.

230. Section 15 places an obligation on the courts to notify the Electoral Commission of any campaign offences under the Act as soon as possible after they arise.

Schedule 5: Campaign rules: investigatory powers of the Electoral Commission

231. Schedule 5, introduced by section 11(4), contains the investigatory powers afforded to the Electoral Commission in line with their powers under the Political Parties, Elections and Referendums Act 2000 to allow them to monitor and enforce compliance with the campaign rules.
232. Paragraph 1 allows the Commission, after issuing a ‘disclosure notice’, to require a permitted participant or officer of a permitted participant, to produce or provide documents or an explanation in relation to income or expenditure where reasonably required by the Commission to carry out their functions. Sub-paragraph (4) obliges the person to comply with a requirement set out in a disclosure notice within a reasonable time.

233. Paragraph 2 enables a person authorised by the Commission to enter premises at any reasonable time and inspect relevant documentation, to enable the Commission to carry out their functions. This power can only be exercised after the Commission have obtained a warrant from a sheriff or justice of the peace authorising entry of the specified premises and is restricted so that it can only be used in relation to permitted participants.

234. An inspection warrant will be valid for one month from the day on which it is issued and may not be used in connection with an investigation by the Commission of a suspected breach or offence.

235. Paragraph 3 provides that where the Commission have reasonable grounds for suspecting that an offence under schedule 4 has been committed they may issue a notice to a person requiring that person to produce or provide any documents or explanation reasonably required for an investigation by them of the suspected offence or contravention. Sub-paragraph (5) obliges the person to comply with the notice within a reasonable time. This power is wider than that in paragraph 1 because it is not restricted to documentation or information relating to income or expenditure nor is it restricted to a list of specified individuals or bodies. Sub-paragraph (6) allows an investigator authorised by the Commission to require a person to come and answer in person any questions that the investigator reasonably considers relevant to the investigation.

236. The powers created by paragraph 3 can be used in relation to a person who is also covered by paragraph 1, albeit for a different purpose (i.e. that of investigating purported wrongdoing), and may be used against any other person who holds, or is thought to hold, information reasonably required for an investigation by the Commission. It follows that use of the power may be used in respect of the individual or body suspected by the Commission of having committed an offence or contravention but is not limited to such an individual or body.

237. Paragraph 4 applies where the Commission have given a notice under paragraph 3 requiring documents to be produced. Sub-paragraph (2) allows the Court of Session to issue a document disclosure order against a person following an application from the Commission if satisfied of four things. First, that there are reasonable grounds for believing that there has been an offence under, or other contravention of schedule 4. Second, that documents referred to in the notice under paragraph 3 have not been produced in response to that notice. Third, that the documents are in the custody of the person against whom the order is issued. Finally, that the documents are reasonably required for the purposes of an investigation. The order requires the person to whom it is given to deliver to the Commission documents referred to in the order within the timeframe set out in the order. A document is in a person’s control if they have possession of it, or a right to possession of it. Sub-paragraph (5) stipulates that a person who fails to comply with the order may not be punished for both contempt of court and an offence under paragraph 12 of the schedule.
238. Paragraph 5 applies where the Commission have given notice under paragraph 3 requiring any information or explanation to be produced. The Court of Session can issue an information disclosure order against a person on an application from the Commission if satisfied of the three things. First, that there are reasonable grounds to suspect a person has committed an offence or contravention under schedule 4. Second, that information or an explanation referred to the notice under paragraph 3 has not been provided and is reasonably required. Third, that the respondent is able to provide the information or explanation. The order requires the person to whom it is given to provide the Commission with information or explanation referred to in the order within the timeframe set out in the order. A person who fails to comply with the order may not be punished for both contempt of court, and an offence under paragraph 12(1) of the schedule.

239. Paragraph 6 specifies that the Commission may retain documents delivered to them in compliance with an order under paragraph 4 for 3 months. However, if during that time any relevant criminal proceedings are begun, or notices are issued or penalties imposed under schedule 6 the documents may generally be retained until they are no longer required in relation to the proceedings or civil sanctions.

240. Paragraph 7 provides that the Commission, or a person authorised by the Commission, may make copies or records of relevant information or explanations obtained under the Schedule.

241. Paragraph 8 requires that any authorisation of a person by the Commission made under this Schedule must be in writing.

242. Paragraph 9 deals with documents held in electronic form. Sub-paragraph (1)(a) gives the Commission a power to require such documents to be made available in a legible form. Sub-paragraph (1)(b) enables a person authorised to inspect documents to require any person on premises being searched to give reasonable assistance to allow the inspector to make legible copies of electronic documents, or records of information contained in them. Under this power such assistance may also be required by an inspector in order to enable him to inspect and check any computer or associated apparatus used in connection with the information.

243. Paragraph 10 exempts information subject to confidentiality of communications from any requirement to produce information (in whatever form) under any power provided by this schedule. The appropriate test is whether a claim to confidentiality of communications could be maintained in legal proceedings in respect of the material in question.

244. Paragraph 11 deals with the admissibility of statements provided under compulsion. A statement made in response to a requirement under the schedule may be used in any proceedings, provided that it complies with any other rules of evidence in those proceedings. But sub-paragraph (2) provides that the statement is not admissible against the maker of the statement in criminal proceedings unless evidence about the statement is relied on, or a question about it is asked, by the maker, or unless the proceedings are for an offence mentioned in sub-paragraphs (3) and (4). (These offences are similar to perjury).
245. Paragraph 12 provides that it is an offence to fail to comply with any requirement imposed under schedule 5 (for example, to refuse to supply the Commission with information requested under paragraph 1 or 3); to obstruct intentionally somebody performing functions under the schedule; or knowingly or recklessly provide false information in response to a requirement imposed under the schedule.

246. Paragraph 13A provides that guidance on the investigatory powers of the Commission published under paragraph 14 of Schedule 19B to the Political Parties, Elections and Referendums Act 2000 has effect, with any necessary modifications, at the referendum under the Bill. The Commission may prepare additional guidance as required, which they must revise where appropriate and publish.

247. Paragraph 14 requires the Commission to report on its use of the investigatory powers contained in schedule 5 in its report to the Scottish Parliament under section 24, in a separate report made as soon as possible thereafter, or in a combination of the two.

248. Sub-paragraph (2) explains what information the Commission must include in the report on the use of their investigatory powers. Sub-paragraph (3) exempts the Commission from having to report any information that, in their opinion, it would be inappropriate to include because it would be unlawful or because it would prejudice an ongoing investigation or proceedings.

Schedule 6: Campaign rules: civil sanctions

249. Schedule 6 of the Bill contains powers to impose civil sanctions enforceable by the Electoral Commission in respect of breaches of the provisions in schedule 4.

Part 1: Fixed monetary penalties

250. Paragraph 1 allows the Electoral Commission to impose fixed monetary penalties where they are satisfied beyond reasonable doubt that a campaign offence listed in Part 8 of schedule 6 has been committed. The penalties can be imposed either on a person or on a permitted participant where the responsible person for that permitted participant has committed the offence, or where the requirements imposed by paragraphs 22(2), (3) or (4) of schedule 4 have been contravened. The amount of a fixed monetary penalty is set at £200.

251. Paragraph 2 sets out the representations and appeals processes. The Commission can serve notice of an intention to impose a fixed monetary penalty on a person. This must offer the opportunity to discharge the penalty by paying £200. Alternatively, the person can opt to make written representations and objections to the Commission against the penalty. If the deadline for making representations and objections passes without the person having paid, the Commission must decide whether to impose the penalty and serve a further notice recording that on the relevant person (sub-paragraph (4)). Sub-paragraph (5) provides that if the person’s representations have raised any matter that leads the Commission to no longer suspect the person of having committed an offence, the Commission may not impose the penalty. The person may appeal to the sheriff against the decision to impose the penalty on the grounds set out in sub-paragraph (6). Such an appeal must be made within 28 days of a decision notice being received, and the penalty is suspended until the appeal is determined or withdrawn.
252. Paragraph 3 explains what information the Commission must include when giving notice of an intention to impose a fixed monetary penalty on a person or when giving notice of a subsequent decision to impose the penalty. This must include the grounds for imposition of the sanction, the right to make representations or appeals and the time periods in which these can be made.

253. Paragraph 3A makes provision for the late payment of fixed monetary penalties. If the penalty is not paid within 28 days of the notice being received, the amount of the penalty is increased by 25%, and if it is not paid within 56 days, the amount is increased by 50%. Where a penalty is upheld on appeal, or such an appeal withdrawn, similar increases apply from the determination or withdrawal of the appeal.

254. Paragraph 4 limits the criminal proceedings that can be taken against a person for a prescribed offence or other breach that may be dealt with by way of a fixed monetary penalty. If the Commission notify the person of their intention to impose a fixed monetary penalty for the breach, no criminal proceedings for the breach can be brought during the period when liability can be discharged under paragraph 2(2). This paragraph also precludes such proceedings being taken against a person who does discharge liability by making the payment. Finally, paragraph 4(2) precludes a person on whom the Commission imposes a fixed monetary penalty under paragraph 2(4) from being convicted of an offence for the breach.

**Part 2: Discretionary requirements**

255. Paragraph 5 allows the Electoral Commission to impose a discretionary requirement on a person where they are satisfied, beyond reasonable doubt, that the person has committed a campaign offence listed in Part 8 of schedule 6. A discretionary requirement as a sanction can take the form of a monetary penalty (up to a maximum of £10,000) or alternatively an instruction to take certain actions designed to either prevent the recurrence of the offence or restore the position to what it would have been had the offence not occurred. The penalties can be imposed either on a person or on a permitted participant where the responsible person for that permitted participant has committed the offence, or where the requirements imposed by paragraphs 22(2), (3) or (4) of schedule 4 have been contravened. Sub-paragraph (4) limits the use of discretionary requirements by preventing the Commission from imposing a discretionary requirement on a person more than once for the same act or omission. Sub-paragraph (6) sets the financial limit of a variable monetary penalty for offences which are triable summarily—where such offences are punishable by a fine, the variable monetary penalty must not be greater than the maximum fine.

256. Paragraph 6(1) requires that, where the Commission intend to impose a discretionary requirement on a person for a campaign offence, they must first notify the person of their intention. Sub-paragraph (2) allows the person to make written representations and objections to the Commission against the proposed penalty. If anything is raised which leads the Commission to no longer be satisfied that the offence took place, the Commission may not impose the penalty (sub-paragraph (4)). In all other cases, the Commission may proceed to serve on the person a notice formally imposing the discretionary requirement, which will specify what the requirement is (sub-paragraph (5)). The person may appeal to a sheriff against the decision to impose the discretionary requirement on the grounds specified in sub-paragraph (6). Such an appeal must be made within 28 days of a decision notice being received, and the discretionary requirement is suspended until the appeal is determined or withdrawn.
257. Paragraph 7 explains what information the Commission must include when giving the initial notice of an intention to impose a discretionary requirement on a person. This includes the grounds for imposing the requirement and the period within which representations and objections may be made (no less than 28 days from the day on which the notice is received). Sub-paragraph (3) sets out the information that must be provided by the Commission when they are imposing a discretionary requirement, such as the grounds for the proposed discretionary requirement, details of any monetary penalty, rights of appeal and the consequences of non-compliance.

258. Paragraph 8 limits the use of other sanctions against a person who has had a discretionary requirement imposed upon them. If a discretionary requirement is imposed on a person, that person cannot be convicted of a criminal offence arising from the same act or omission. However, this protection from future prosecution does not apply in cases where the discretionary requirement imposed was non-monetary, no variable monetary penalty was imposed, and the person failed to comply with the non-monetary discretionary requirement.

259. Paragraph 8A provides that where the Commission are satisfied that a discretionary requirement has been complied with, they must issue a certificate confirming that this is the case. This causes the original requirement notice to cease to have effect. A person who has been served with a discretionary requirement notice may apply to the Commission for a compliance certificate and the Commission must decide whether to issue one within 28 days. If the Commission decides not to issue a certificate, the applicant may appeal to a sheriff within 28 days of receiving the Commission’s decision.

260. Paragraph 9 allows the Commission to impose by notice a “non-compliance penalty”, up to a maximum of £10,000, on a person who fails to comply with a non-monetary discretionary requirement. It also sets out the information which must be included in the notice and provides that where a person has complied with the related non-monetary discretionary requirement, the Commission may waive or reduce the penalty. It sets out the grounds of appeal to the sheriff against a non-compliance penalty (sub-paragraphs (3) and (4)).

261. Paragraph 9A requires that a variable monetary penalty must be paid within 28 days of the relevant notice being received, or the amount of the penalty will increase by 25%. If the penalty is not paid within 56 days of the notice being received, it will increase by 50%. Where a penalty is upheld on appeal, or such an appeal withdrawn, similar increases apply from the determination or withdrawal of the appeal.

Part 3: Stop notices

262. Paragraph 10 provides that the Electoral Commission can impose a stop notice on a person in order to prevent them from continuing or repeating a particular activity which the Commission reasonably believe is (or is likely to be) a campaign offence listed in Part 8 of schedule 6 or where the Commission believe that a person’s behaviour is likely to lead to them committing an offence. In both cases the Commission must believe that the activity, or potential activity, is seriously damaging to public confidence in the effectiveness of the controls in schedule 4, or significantly risks doing so.
263. Paragraphs 11 to 14 set out the details and limitations of how the stop notice system operates. Paragraph 11 lists the information to be included in a stop notice—the grounds for imposition, rights of appeal and consequences of non-compliance. Paragraph 12 requires the Commission to issue a ‘completion certificate’ once they are satisfied that the person has taken the steps set out in the stop notice (at which point it will cease to have effect). The person upon whom a notice has been imposed may apply for a completion certificate at any time and the Commission must make a decision on the application within 14 days of receipt. An application must be accompanied by certain information and the Commission may revoke a completion notice if issued on the basis of inaccurate, incomplete or misleading information, which causes the stop notice to be reinstated. Paragraph 13 explains how a person may appeal against the imposition of a stop notice, or against a decision not to issue a completion certificate, and provides that any appeal will be heard by a sheriff. It also sets out the grounds for appeal in both circumstances. An appeal against a stop notice or against a decision not to issue a completion certificate must be made within 28 days of receipt of the notice or decision, and where an appeal is made, the stop notice continues to have effect unless suspended or varied on the order of the sheriff. Paragraph 14 provides that a person who does not comply with a stop notice is guilty of an offence.

Part 4: Enforcement undertakings

264. Paragraph 15 outlines the powers of the Electoral Commission to accept an enforcement undertaking from a person whom the Commission have reasonable grounds for believing has committed a campaign offence listed in Part 8 of schedule 6. An enforcement undertaking may be offered by the person suspected of the offence and outlines the action they will take (within a specified period). The action may be with a view to preventing the recurrence of the offence or returning the position to what it would have been had the offence not taken place. Sub-paragraph (1)(d) states that the undertaking will take effect only if the Commission accept it. Sub-paragraph (2) provides that a person who has complied with the accepted undertaking will generally be exempt from other sanctions, including criminal proceedings, in relation to the acts or omissions on which the undertaking is based as long as the undertaking is complied with.

265. Paragraph 15A makes provision about the form of enforcement undertakings and provides that they may be varied at the agreement of both the person who has entered into it and the Commission. It also permits the Commission to publish enforcement undertakings. Paragraph 15B sets out the process by which the Commission may issue a compliance certificate for an enforcement undertaking, and paragraph 15C provides for the grounds and time limit (28 days) for appeal against a decision not to issue a compliance certificate.

Part 6: General and supplemental

266. Paragraph 22 limits the use of fixed monetary penalties, discretionary requirements and stop notices. It explains that a fixed monetary penalty may not be imposed on a person if they are already subject to a discretionary requirement or stop notice for a breach. Additionally, if a person has had a fixed monetary penalty imposed on them for a breach, or has paid a sum to discharge liability for a fixed monetary penalty, they cannot be given a discretionary requirement or a stop notice in relation to the breach.
267. Paragraph 22A allows the Commission to withdraw a fixed penalty notice, withdraw or vary notice of a discretionary requirement and withdraw a stop notice. If a stop notice is withdrawn, this does not prevent another stop notice in respect of the same activity.

268. Paragraph 23 provides that, if someone is required under schedule 5 to make a statement as part of an investigation by the Electoral Commission, the Commission must not take account of that statement when deciding whether to impose a civil sanction on the person. The only exception is for the offence of providing false information set out in paragraph 12(3) of schedule 5.

269. Paragraph 24 stipulates that any financial penalty imposed on an unincorporated association must be paid from its own funds.

270. Paragraph 25A provides that guidance on civil sanctions published under paragraph 25 of Schedule 19C to the Political Parties, Elections and Referendums Act 2000 has effect, with any necessary modifications, at the referendum under the Bill. The Commission may prepare additional guidance as required, which they must revise where appropriate and publish.

271. Paragraph 25B enables the Commission to recover fixed monetary penalties, variable monetary penalties and non-compliance penalties as a civil debt. Any interest or financial penalty for late payment may also be recovered as a civil debt.

272. Paragraph 26 stipulates that the monetary penalties paid to the Commission as a result of the imposition of civil sanctions under schedule 6 must be paid into the Scottish Consolidated Fund.

273. Paragraph 27 requires the Commission to report on the use of its powers under this schedule, including a list of the cases (other than those where sanctions have been successfully appealed against) in which they have imposed fixed monetary penalties, discretionary notices or stop notices; cases in which liability for a fixed monetary penalty has been accepted through payment of a sum; and cases in which an enforcement undertaking has been accepted. Sub-paragraph (2) enables the Commission to exclude information if it might be unlawful for the report to include it or might adversely affect ongoing investigations or proceedings. The report may be included in the Commission’s report under section 24, in a separate report made as soon as possible thereafter, or in a combination of the two.

274. Paragraph 28 allows the Commission to request information from procurators fiscal or constables in Scotland when exercising the powers under the schedule. It will not enable disclosure where that would breach the Data Protection Act 1998 or Part 1 of the Regulation of Investigatory Powers Act 2000 or in relation to certain reserved enactments. It also provides that other powers of disclosure that are independent of this power are not affected by it.

275. Paragraph 28A gives the sheriff powers to use on appeals against civil sanctions imposed by the Commission. If a person appeals a fixed monetary penalty, the sheriff may overturn or confirm the penalty. On an appeal against a discretionary requirement, non-compliance penalty or stop notice, the sheriff may overturn, confirm or vary the sanction. The sheriff also has the
same powers as the Commission as to steps that may be taken in response to such an appeal, or can remit the decision regarding the requirement or notice, or matters relating to the decision, to the Commission. On an appeal against a decision by the Commission not to issue a completion certificate for a stop notice, a compliance notice for a discretionary requirement, or a compliance certificate for an enforcement undertaking, the sheriff may issue the appropriate completion or compliance certificate.

276. Paragraph 29 sets out definitions of words and expressions used in the schedule.

277. Part 8 lists the campaign offences for which civil sanctions may be imposed.

Referendum agents

278. Section 16 deals with referendum agents. Referendum agents may be appointed by permitted participants for a particular local government area, and notice must be given to the relevant counting officer of the appointment. The notification must give the names and addresses of the permitted participant, of the referendum agent, must be in writing, signed, and received before noon on the 25th working day before the referendum. The counting officer must then publish details of this notification.

Observers

279. Section 17 deals with Electoral Commission observers (anyone who is a member of the Commission, or a member of staff, or is appointed by the Commission for the purposes of this section) and gives them a right to attend any proceedings which are the responsibility of the CCO or a counting officer, or to observe any of their work carried out under this Act.

280. Section 18 allows anyone aged 16 or over to apply to the Commission to be accredited as an observer, which permits them to be present at the issue or receipt of postal ballot papers, proceedings at the poll, or at the count. Accredited observers are subject to all rules contained in the Act regarding their attendance at these proceedings. The application should be made in the form specified by the Commission and, if granted, may be revoked at any time by them. The Commission must give reasons for the refusal of an application or for revocation of an accreditation.

281. Section 19 provides for organisations to apply to be accredited to allow them to nominate observers, who may attend the proceedings described in the previous paragraph on their behalf. Any observers so nominated must be members of the organisation and the Commission may specify a limit to the number of nominees. The same provision as in section 18 applies to applications.

282. Section 20 allows a CCO, counting officer, or any person authorised by them, to limit the number of people in attendance at proceedings under sections 18 or 19, or to cancel the entitlement to attend in case of misconduct. The presiding officer has the same power in relation to proceedings at a polling station.
283. Section 20A requires the Commission to prepare a code of practice on the attendance of representatives of the Commission; accredited observers; and nominated members of accredited organisations at proceedings related to the referendum. The code must specify the manner in which applications for accreditation by individuals or organisations are to be made to the Commission, and the criteria that will be taken into the account by the Commission when deciding whether to grant or refuse such applications. In addition to giving guidance to persons observing proceedings, it should also give guidance to relevant officers as to the exercise of their powers to limit the number of people in attendance at proceedings or to remove a person’s entitlement to attend proceedings because of an act of misconduct. The Commission must consult the Scottish Ministers before preparing the code, and must lay the code before the Scottish Parliament. The provisions also allow the Commission to revise the code at any time, subject to the same requirements for consultation and laying before the Scottish Parliament.

Information, guidance and advice

284. Section 21 allows the Electoral Commission to give voters information on the referendum, the referendum question and voting in the referendum.

285. Section 22 gives the Commission power to issue guidance to the CCO regarding the CCO’s role under the Act, and with the CCO’s consent to issue guidance to counting officers. They may also issue guidance to permitted participants or potential permitted participants on the campaign rules (schedule 4), which must include information on what may constitute a common plan for the purposes of paragraph 19 of schedule 4. Section 22 also gives the CCO power to issue guidance to counting officers and registration officers about the exercise of their functions under the Act.

286. Section 23 gives the Commission power to offer information to anyone who requests it regarding the application of the Act or any other matter relating to the referendum.

287. Section 23A confers a power on the CCO to take whatever steps are considered by the CCO to be appropriate to encourage participation in the referendum, and to facilitate cooperation among counting officers in doing the same. The provisions also require a counting officer to take such steps as they think appropriate to encourage participation in the referendum in the local area for which they are responsible.

Report on referendum

288. As provided for by section 24, the Commission must prepare a report for the Scottish Parliament on the conduct of the referendum and must publish that report.

Electoral Commission: administrative provision

289. Section 25 deals with the Electoral Commission’s costs in respect of their functions under the Act, which will be refunded by the Scottish Parliamentary Corporate Body (SPCB).

290. Section 26 requires the Commission to estimate their costs and income before the start of each financial year and send this to the SPCB for approval. A revised estimate may be sent during the year.
291. Section 27 confirms that an investigation by the Scottish Public Services Ombudsman into the Electoral Commission’s functions under the Act is not prevented under the Scottish Public Services Ombudsman Act 2002.

Offences

292. Section 28 introduces schedule 7 which contains provisions about offences related to the referendum.

293. Section 29 provides for offences by a body corporate, a Scottish partnership or other unincorporated association under the Act. In this case, where it can be proved that the offence was committed with the consent or connivance, or caused by the neglect of, an individual, the individual, as well as the body, is liable.

Schedule 7: Offences

294. Schedule 7, introduced by section 28, contains details of the offences under the Act. Some are deemed to be ‘corrupt practices’ (such as the ‘personation’ offence in paragraph 1) and carry a penalty of imprisonment for a term not exceeding two years or to an unlimited fine or both. Other offences are ‘illegal practices’ (such as the voting offences in paragraph 2) which are summary offences and the maximum penalty is a £5,000 fine.

295. Schedule 7 includes the following provisions:

- **Personation** (paragraph 1) – this is where any individual votes as someone else (whether that person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or as a proxy. Further, the individual voting can be deemed guilty of personation if they vote as a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing their proxy appointment is no longer valid.

- **Other voting offences** (paragraph 2) – there are a number of voting offences listed in this paragraph. Knowingly causing someone else to commit one of the voting offences below is itself an offence:
  - Voting in person or by post, or applying to vote by proxy or by post knowing that you are subject to a legal incapacity to vote.
  - Applying for the appointment of a proxy, in the knowledge that you or the proxy is subject to a legal incapacity to vote.
  - Voting, whether by proxy or by post, knowing that the voter for whom you are voting as proxy is subject to a legal incapacity to vote.
  - Voting more than once in the referendum (other than as a proxy).
  - Voting in person when entitled to vote by post.
  - Voting in person in the knowledge that someone else has voted by proxy on your behalf or is entitled to vote as proxy postally.
  - Applying for someone to vote as your proxy without cancelling the appointment or application for appointment of someone already appointed as your proxy voter.
This document relates to the Scottish Independence Referendum Bill as amended at Stage 2 (SP Bill 25A)

- Voting by proxy for the same voter more than once.
- Voting in person as proxy for someone when you have opted to vote by post as proxy for that voter.
- Voting in person as proxy for a voter in the knowledge that the person has already voted in person or by post.
- Voting by post as proxy for a voter knowing that the voter has already voted in person or by post.
- Voting as proxy for more than two people of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

- **Imitation poll cards** (paragraph 3) - producing false poll cards which are intended to deceive people, for the purpose of achieving a particular outcome in the referendum, is an offence.

- **Offences relating to applications for postal and proxy votes** (paragraph 4) – it is an offence to try to prevent a vote or gain a vote in the referendum by: applying for a postal or proxy vote as someone else (including a fictitious person), making a false statement in, or providing false information in connection with, a postal or proxy vote application, causing a ballot paper relating to a postal or proxy vote to be sent to an incorrect address or to cause information related to a postal or proxy vote or a postal ballot paper not to be delivered to the correct recipient.

- **Breach of official duty** (paragraph 5) – the Chief Counting Officer and any proper officer of a council, registration officer, counting officer, presiding officer, their deputies or any other person assisting them in the running of the referendum may be guilty of an offence by means of an act or omission in breach of their official duty under the Act.

- **Tampering with ballot papers etc.** (paragraph 6) – it is an offence to:
  - deface or destroy a ballot paper, postal voting statement or official envelope used in postal voting,
  - give someone a ballot paper without proper authority,
  - put any paper into the ballot box other than the authorised ballot paper,
  - remove a ballot paper from a polling station,
  - destroy, take, open or interfere with a ballot box or packet of ballot papers.
  - counterfeit a ballot paper or the official mark on a ballot paper.

- **Requirement of secrecy** (paragraph 7) - everyone involved in the electoral process should be aware of the secrecy of the ballot and should not breach it. The counting officer will give everyone who attends the opening or counting of ballot papers a copy of parts of the requirement of secrecy, as required by rule 16 of schedule 3 to the Bill. Breach of the requirement of secrecy is an offence under paragraph 7(8).

- **Prohibition on publication of exit polls** (paragraph 8) – it is an offence for anyone to publish a statement before the close of the poll about the way voters have voted based on information they provided after voting or to publish a forecast of the result.
before the close of the poll based on information provided by voters about how they voted.

- **Payments to voters for exhibition of referendum notices** (paragraph 9) – it is an offence for a voter to be paid for exhibiting a poster, advert or notice on their property to promote a referendum outcome, where it is not the voter’s usual course of business.

- **Treating** (paragraph 10) - a person is guilty of treating if either before, during or after the referendum they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any meat, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.

- **Undue influence** (paragraph 11) - a person is guilty of undue influence if they directly or indirectly use or threaten to use force, violence or restraint, or cause or threaten to cause injury, damage, harm or loss in order to induce or compel any voter to vote or refrain from voting. A person may also be guilty of undue influence if they impede or prevent the voter from freely exercising their right to vote. This latter offence can also be committed where a person intends to impede or prevent the free exercise of a vote even where the attempt is unsuccessful.

- **Bribery** (paragraph 12) - a person is guilty of bribery if they directly or indirectly give money to or procure an office for any voter, in order to induce any voter to vote, or not vote, for a particular outcome; or to vote or refrain from voting. This includes making any gift or procurement in favour of the voter, giving, lending, agreeing to give or lend, offering promising or promising to procure or endeavour to procure any money or valuable consideration. It is an offence for a person to commit bribery in connection with the referendum, and a voter who receives a bribe in connection with the referendum is also guilty of an offence.

- **Disturbances at public meetings** (paragraph 13) – it is an offence deliberately to disrupt a public meeting by causing a disturbance.

- **Illegal canvassing by police constables** (paragraph 14) – it is an offence for a police constable to try to persuade someone to vote or not vote in a particular way.

- **Prosecutions for corrupt practices** (paragraph 15) - this paragraph sets out the penalties for someone guilty of a corrupt practice.

- **Prosecutions for illegal practices** (paragraph 16) - this paragraph sets out the penalty for someone guilty of an illegal practice.

- **Conviction of illegal practice on charge of corrupt practice** (paragraph 17) – this paragraph clarifies that someone charged with a corrupt practice may be found guilty of an illegal practice which attracts a lesser maximum penalty (a person cannot be imprisoned when convicted of an illegal practice and the maximum fine is limited). A person charged with an illegal practice may be found guilty of that offence whether or not the act was a corrupt practice.

- **Incapacity to hold public or judicial office in Scotland** (paragraph 18) – anyone convicted of a corrupt or illegal practice under schedule 7 is not allowed to hold any public or judicial office in Scotland for 5 years from the date of their conviction. If they already hold such an position, they vacate it on conviction.
This document relates to the Scottish Independence Referendum Bill as amended at Stage 2
(SP Bill 25A)

- **Prohibition of paid canvassers** (paragraph 19) – if someone pays someone else to canvass to promote a particular outcome in the referendum, then the person paying the canvasser and the canvasser are both guilty of illegal employment.

- **Providing money for illegal purposes** (paragraph 20) - someone who provides or replaces money for a payment contrary to the legislation, for any expenses that exceed the spending limits, is guilty of an illegal payment.

- **Prosecutions for illegal employment or illegal payment** (paragraph 21) – this paragraph sets out the penalty for someone found guilty of illegal employment or an illegal payment under paragraphs 19 or 20 (the maximum penalty is a £5,000 fine). A person charged with one of these offences may be convicted of the other.

**Power to make supplementary etc. provisions and modifications**

296. Section 30 confers a power on the Scottish Ministers to make such supplemental, incidental or consequential provision as they consider appropriate for the purposes of the Act, in consequence of it, or to give its provisions full effect. This includes the power to modify enactments, including the Act, by means of an order. Any such order is subject to the affirmative procedure in the Scottish Parliament.

**Legal proceedings**

297. Section 31 provides that any legal challenge to the certification of the votes cast at the referendum must be brought by way of judicial review, and must be lodged with the court within 6 weeks of the last certification of the result.

**Final provisions**

298. Section 32 introduces schedule 8, which contains the definitions of words and expressions used in the Act.

299. Section 33 confirms that the Act comes into force the day after receiving Royal Assent.

SCOTTISH INDEPENDENCE REFERENDUM BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.7(10) of the Parliament’s Standing Orders, in relation to the Scottish Independence Referendum Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

Removal of power

Schedule 6, paragraph 16 – power to make supplementary provision by order

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>None – power removed</td>
</tr>
</tbody>
</table>

2. The Bill gives the Electoral Commission responsibility for monitoring and ensuring compliance with the regulations which apply to referendum campaigners. A range of powers are available to the Commission to enable it to investigate any alleged breaches of the campaign rules and to sanction those who are suspected of committing a campaign offence or failing to comply with a requirement of the campaign rules. Schedule 6 makes provision for the civil sanctions regime. The Delegated Powers Memorandum on the Bill as introduced noted that paragraph 16 of schedule 6 conferred on Scottish Ministers the main power to make further provision relating to the civil sanctions regime by supplementary order.

3. As indicated in correspondence with the Delegated Powers and Law Reform Committee on 19 August, the Government brought forward amendments at Stage 2 to set out the additional detail regarding the civil sanctions provisions in the Bill itself, rather than by a later supplementary order. Amendments to this effect were agreed by the Referendum (Scotland) Bill Committee at Stage 2 on 10 October 2013. These amendments were based on the Political
Parties, Elections and Referendums (Civil Sanctions) Order 2010\(^1\), which underpins the civil sanctions regime for UK referendums.

4. The power to make supplementary provision by order is therefore no longer necessary, and paragraph 16, together with the provision in schedule 6 by virtue of which various specific matters could be prescribed in such an order, has been removed from the Bill accordingly. Likewise, paragraphs 17 to 21 of schedule 6, which made provision for information that could be included in such an order and required that it be consulted on, have also been removed. Some flexibility for any unforeseen eventualities is retained in the powers to amend the Bill in sections 1(7) and 30(2) of the Bill.

**Additional power**

**Section 20A – Code of practice on attendance of observers**

- **Power conferred on:** Electoral Commission
- **Power exercisable by:** Code of Practice
- **Parliamentary procedure:** Laid before Scottish Parliament

**Provision**

5. The Bill gives the Electoral Commission a duty to prepare and publish a code of practice for observers at the referendum. Section 20A sets out what the code should cover and to whom it should apply. Observers are defined as: representatives of the Commission; accredited observers; and nominated members of accredited organisations.

6. The code must specify the manner in which applications for accreditation by individuals or organisations are to be made to the Commission, and the criteria to be taken into account by the Commission when deciding whether to grant or refuse such applications. It should also give guidance to relevant officers as to the exercise of their powers to limit the number of people in attendance at proceedings or to remove a person’s entitlement to attend proceedings because of an act of misconduct.

7. The Bill provides that the Commission must consult the Scottish Ministers before preparing the code, and that the Commission must lay the code before the Scottish Parliament. The provisions also allow the Commission to revise the code at any time, subject to the same requirements for consultation and laying before the Scottish Parliament.

**Reason for taking this power**

8. Provision for the Electoral Commission to issue Codes of Practice on attendance of observers at specified elections and referendums is made by sections 6F and 6G of the Political Parties, Elections and Referendums Act 2000 (c.41); these sections were inserted by the Electoral Administration Act 2006 and the Local Electoral Administration (Scotland) Act 2011, respectively. The Electoral Commission has recommended that the Bill should provide for the Commission to issue a statutory code of practice in line with the approach taken under PPERA

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\(^1\) S.I. 2010/2860.
on the grounds that previous codes have been well received and found to be useful by the Commission and observers. In general, the provisions of the Bill will ensure that the Commission is able to carry out its functions in an independent manner. In light of this, the Scottish Government considers that the views of the Commission on this matter should be accepted and that the same approach should apply for the independence referendum.

Procedure

9. Given the views of the Electoral Commission as to the effectiveness of the equivalent PPERA provisions, Scottish Ministers consider that the procedure for this code of practice should follow the approach of sections 6F and 6G of the Political Parties, Elections and Referendums Act 2000, in terms of consultation, laying and revision.
Scottish Independence Referendum Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 34  Schedules 1 to 8
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 12

Nicola Sturgeon
1 In section 12, page 7, line 38, after <24> insert <, 41B or 57B>

Schedule 2

Nicola Sturgeon
2 In schedule 2, page 20, line 14, leave out <, at the cut-off date,>

Nicola Sturgeon
3 In schedule 2, page 20, line 25, leave out <, at the cut-off date,>

Nicola Sturgeon
4 In schedule 2, page 23, line 36, leave out <, at the cut-off date>

Nicola Sturgeon
5 In schedule 2, page 24, line 1, leave out <8(4)> and insert <11(5)>

Nicola Sturgeon
6 In schedule 2, page 25, leave out line 35

Nicola Sturgeon
7 In schedule 2, page 26, line 35, leave out <The> and insert <Where the application is made on or after the fifth day before the date of the referendum, the>

Nicola Sturgeon
8 In schedule 2, page 27, line 19, leave out <The> and insert <Where the application is made on or after the fifth day before the date of the referendum, the>
Nicola Sturgeon

9 In schedule 2, page 28, line 10, at end insert—

<( ) For the purposes of sub-paragraphs (3) and (9), the following days are to be disregarded—
   (a) a Saturday or Sunday,
   (b) Christmas Eve or Christmas Day,
   (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
   (d) a day appointed for public thanksgiving or mourning.>

Nicola Sturgeon

10 In schedule 2, page 36, line 41, leave out from <application> to <granted> and insert <event mentioned in sub-paragraph (1A) occurs in relation to a voter or a voter’s proxy>

Nicola Sturgeon

11 In schedule 2, page 37, line 2, leave out <applicant> and insert <voter or, as the case may be, proxy>

Nicola Sturgeon

12 In schedule 2, page 37, line 2, at end insert—

<(1A) The events are—
   (a) an application by the voter is granted under paragraph 3(2), (5), (6) or (7),
   (b) the voter is removed from the postal voters list,
   (c) the appointment of the proxy to vote for the voter in the referendum is cancelled,
       or ceases to have effect, by virtue of paragraph 5(10),
   (d) the proxy is removed from the proxy postal voters list,
   (e) an application by the proxy is granted under paragraph 6(8).>

Nicola Sturgeon

13 In schedule 2, page 37, line 6, at end insert—

<( ) The registration officer must notify the counting officer of the occurrence of the event.>

Nicola Sturgeon

14 In schedule 2, page 37, line 7, at end insert—

<(3A) The counting officer must issue a replacement postal ballot paper where an application is granted under paragraph 3(5) or 6(8).>

Nicola Sturgeon

15 In schedule 2, page 37, line 8, leave out <applicant> and insert <voter or, as the case may be, proxy>
Nicola Sturgeon  
16 In schedule 2, page 37, line 8, after <documents> insert <mentioned in sub-paragraph (2)>  

Nicola Sturgeon  
17 In schedule 2, page 37, line 18, leave out <applicant> and insert <voter>  

Nicola Sturgeon  
18 In schedule 2, page 37, line 19, leave out <an applicant> and insert <a voter>  

Nicola Sturgeon  
19 In schedule 2, page 37, line 19, leave out <applicant’s> and insert <voter’s>  

Nicola Sturgeon  
20 In schedule 2, page 37, line 20, leave out <and>  

Nicola Sturgeon  
21 In schedule 2, page 37, line 21, at end insert—  
( ) the number of any replacement postal ballot paper issued under sub-paragraph (3A), and  
( ) where the superseded postal ballot paper was issued to a proxy, the name and address of the proxy.>  

Nicola Sturgeon  
22 In schedule 2, page 39, line 28, after <officer> insert <and the counting officer’s staff>  

Nicola Sturgeon  
23 In schedule 2, page 39, line 31, leave out <be permitted to view> and insert <look at>  

Nicola Sturgeon  
24 In schedule 2, page 45, line 13, after <28(6),> insert <28A(6),>  

Nicola Sturgeon  
25 In schedule 2, page 45, line 13, after <33(11)> insert <, 39(2)(e)>  

Nicola Sturgeon  
26 In schedule 2, page 46, line 3, after <issued> insert <, or to be issued,>  

Nicola Sturgeon  
27 In schedule 2, page 52, line 18, leave out <registration document> and insert <document supplied under paragraph 46(1) or (2), 48(1) or 49(1)>
Schedule 3

Nicola Sturgeon
28 In schedule 3, page 62, line 22, after <Act> insert—
   
   ( ) the first reference in each of the questions in entries 1(a) and 3(a), (b) and (c) to
   the Polling List is to be read as a reference to the register of electors, and
   
   ( )>

Nicola Sturgeon
29 In schedule 3, page 62, line 22, leave out <the question in entry 1(a)> and insert <each of those
   questions>

Nicola Sturgeon
30 In schedule 3, page 71, line 15, after <is> insert <final,>

Schedule 4

Nicola Sturgeon
31 In schedule 4, page 75, line 37, after <electors> insert <for any area (whether or not in Scotland)>

Lewis Macdonald
56 In schedule 4, page 76, line 40, at end insert—
   <and is not closely connected to a permitted participant, including a permitted participant
   that is a designated body.>

Lewis Macdonald
57 In schedule 4, page 77, line 21, at end insert—
   <and is not closely connected to a permitted participant, including a permitted participant
   that is a designated organisation.>

Lewis Macdonald
58 In schedule 4, page 77, line 21, at end insert—
   ( ) For the purposes of this paragraph, “closely connected to a permitted participant”,
   means—
   
   (a) in the case of an individual, that the individual has powers of representation,
       decision-making or control in relation to a permitted participant,
   
   (b) in the case of a body, that the body shares with a permitted participant—
       
       (i) more than 50 per cent of its total funding,
       
       (ii) more than 50 per cent of its governing body, or
       
       (iii) a person who has powers of representation, decision-making or control in
           relation to a permitted participant.>
Nicola Sturgeon
32 In schedule 4, page 90, line 35, at the beginning insert <Subject to sub-paragraph (3A),>.

Nicola Sturgeon
33 In schedule 4, page 90, line 36, leave out <and 20 to 23>.

Nicola Sturgeon
34 In schedule 4, page 90, leave out lines 40 to 42 and insert—

<(3A) Where a designated organisation is involved in the common plan or arrangement, the expenses referred to in sub-paragraph (1)(a)—

(a) so far as—

(i) incurred by or on behalf of an individual or body that is not a permitted participant, and

(ii) the total amount of such expenses incurred by or on behalf of that individual or body does not exceed £10,000,
are to be treated for the purposes of paragraphs 17 and 18 as having been incurred only by the designated organisation,

(b) so far as incurred by or on behalf of a permitted participant other than the designated organisation are to be treated for the purposes of paragraphs 17 and 18 as having been incurred only by the designated organisation, and

(c) so far as incurred by or on behalf of the designated organisation, are not to be treated for any purposes as having been incurred also by or on behalf of any other individual or body.>

Nicola Sturgeon
35 In schedule 4, page 94, line 24, at end insert <, and “regulated transaction” is to be construed in accordance with paragraph 43.>

Nicola Sturgeon
36 In schedule 4, page 96, line 1, leave out <the day before>.

Nicola Sturgeon
37 In schedule 4, page 115, line 39, leave out <does not exceed> and insert <exceeds>.

Nicola Sturgeon
38 In schedule 4, page 116, line 1, leave out <does not exceed> and insert <exceeds>.

Nicola Sturgeon
39 In schedule 4, page 116, line 28, leave out <43(3)(a)> and insert <43(3)>.
Nicola Sturgeon
40 In schedule 4, page 117, line 40, after <sub-paragraphs> insert <to the period>

Nicola Sturgeon
41 In schedule 4, page 119, line 32, leave out <57> and insert <57A>

Schedule 6

Nicola Sturgeon
42 In schedule 6, page 141, line 21, leave out <8A(3)> and insert <8A(8)>

Schedule 7

Nicola Sturgeon
43 In schedule 7, page 145, line 31, after <voter> insert <or as proxy>

Nicola Sturgeon
44 In schedule 7, page 149, line 8, after <voter> insert <or a proxy for a voter>

Nicola Sturgeon
45 In schedule 7, page 149, line 35, at end insert—

<( ) In sub-paragraph (5), references to a voter include references to a proxy for a voter.>

Nicola Sturgeon
46 In schedule 7, page 150, line 34, at end insert—

<“voters” includes proxies for voters,>

Nicola Sturgeon
47 In schedule 7, page 153, line 20, leave out <any> and insert <—

(a) a proxy for a voter, and
(b) any other>

Schedule 8

Nicola Sturgeon
48 In schedule 8, page 157, line 5, leave out <19(3)> and insert <19(8)>

Nicola Sturgeon
49 In schedule 8, page 157, line 5, at end insert—

<“postal ballot paper” has the meaning given in paragraph 45 of schedule 2,>
Nicola Sturgeon

50 In schedule 8, page 157, line 25, leave out <on> and insert <with>

Nicola Sturgeon

51 In schedule 8, page 157, line 30, leave out from <maintained> to <Act> in line 31

Nicola Sturgeon

52 In schedule 8, page 157, line 32, leave out from <maintained> to end of line 33

Nicola Sturgeon

53 In schedule 8, page 157, line 33, at end insert—
   <“register of local government electors” means the register of local government
   electors maintained under section 9(1)(b) of the 1983 Act for any area in Scotland,
   “register of young voters” means the register of young voters maintained under
   section 4 of the Scottish Independence Referendum (Franchise) Act 2013 for any
   area,>

Nicola Sturgeon

54 In schedule 8, page 157, line 37, at end insert—
   <“regulated transaction” is to be construed in accordance with paragraph 43 of
   schedule 4,>

Nicola Sturgeon

55 In schedule 8, page 158, line 3, at end insert—
   <“relevant donation” has the meaning given in paragraph 28 of schedule 4,>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Group 1: Minor and drafting**
1, 5, 22, 23, 26, 27, 28, 29, 30, 31, 35, 37, 38, 39, 40, 41, 42, 48, 49, 51, 52, 53, 54, 55

**Group 2: Absent voting: existing absent voters and existing proxies**
2, 3, 4

**Group 3: Absent voting: signature on application form**
6

**Group 4: Absent voting: attestation requirements for emergency proxy applications**
7, 8, 9

Debate to end no later than 40 minutes after proceedings begin

**Group 5: Absent voting: change of method of voting after postal ballot papers have been issued**
10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25

**Group 6: Campaign rules: connection between permitted participants**
56, 57, 58

**Group 7: Campaign rules: common plans**
32, 33, 34

Debate to end no later than 1 hour 30 minutes after proceedings begin
Group 8: Campaign rules: timing of relevant period and referendum period
36, 50

Group 9: Voting offences: application in relation to proxies
43, 44, 45, 46, 47

Debate to end no later than 1 hour 45 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-08297—That the Parliament agrees that, during stage 3 of the Scottish Independence Referendum Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

- Groups 1 to 4: 40 minutes
- Groups 5 to 7: 1 hour and 30 minutes
- Groups 8 and 9: 1 hour 45 minutes.

The motion was agreed to.

**Scottish Independence Referendum Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55.

The following amendments were disagreed to (by division)—
- 56 (For 49, Against 65, Abstentions 0)
- 57 (For 51, Against 64, Abstentions 0)

Amendment 58 was not moved.

**Scottish Independence Referendum Bill:** The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon) moved S4M-08239—That the Parliament agrees that the Scottish Independence Referendum Bill be passed.

After debate, the motion was agreed to (DT).
On resuming—

Business Motion

The Deputy Presiding Officer (John Scott):

Good afternoon, everyone. The first item of business is consideration of business motion S4M-08297, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Scottish Independence Referendum Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Scottish Independence Referendum Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 40 minutes
Groups 5 to 7: 1 hour and 30 minutes
Groups 8 and 9: 1 hour 45 minutes.—[Joe FitzPatrick.]

Motion agreed to.

Scottish Independence Referendum Bill: Stage 3

The Deputy Presiding Officer (John Scott):

The next item of business is stage 3 proceedings on the Scottish Independence Referendum Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate and 30 seconds for all other divisions. Members who wish to speak in the debate on a group of amendments should press their request-to-speak button as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 12—Inspection of Electoral Commission’s registers etc

The Deputy Presiding Officer: Amendment 1, in the name of the Deputy First Minister, is grouped with amendments 5, 22, 23, 26 to 31, 35, 37 to 42, 48, 49 and 51 to 55.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): This group consists of 24 minor and technical amendments to sections throughout the bill. They were identified as being necessary during a review of the bill following stage 2. They make minor changes that are consequential to amendments that were made at stage 2, update cross-references, improve the consistency of wording in the bill and make minor drafting amendments.

I will run through the amendments briefly in turn. I apologise in advance for the length of my remarks on the amendments in the group. I might be about to prove in the next few minutes that not all aspects of passing historic legislation are exciting.

I start with amendment 1. At stage 2, the Referendum (Scotland) Bill Committee agreed to amend the bill to require the Electoral Commission to publish permitted participants’ pre-poll donation and loan reports during the referendum period so that voters have as much information as possible about the sources of campaign funding. Section 12 sets out detailed arrangements for the publication of documents that the commission must make public, including the register of
permitted participants and referendum expenses returns. Amendment 1 applies those arrangements to the publication of pre-poll reports on donations and loans.

Amendments 5 and 48 correct erroneous cross-references. Amendments 22 and 23 relate to the security of postal ballot papers. Amendment 26 amends the definition of “postal ballot paper” to ensure that it covers ballot papers before they are issued to voters and during the issuing process. Amendment 49 adds a reference to that definition to the list of defined expressions in schedule 8, for ease of reference and to ensure that the definition can, where necessary, apply to references to the term elsewhere in the bill.

I turn to amendment 27. Paragraph 54(8) of schedule 2 applies the provisions in paragraph 53 of that schedule, which require secure destruction of documents, to the marked polling list. Amendment 27 ensures consistency by bringing the wording of paragraph 54 into line with Government amendments to paragraph 53 at stage 2.

I turn to amendments 28 and 29. When a voter asks for their ballot paper at the polling station, the presiding officer may ask them a set of questions to ascertain that they are entitled to vote. In certain cases, a voter’s name will appear on a notice of alteration to the register of electors rather than on the polling list. Amendments 28 and 29 simply ensure that, in those cases, the presiding officer will refer to the correct document when they ask the voter to confirm their identity and entitlement to vote.

Amendment 30 relates to an amendment to rule 33 of schedule 3 that Annabel Goldie lodged at stage 2, and it might assist members if I explain a bit more fully why a further amendment to that provision is proposed. As Annabel Goldie made clear at stage 2, the intention of the amendment was to clarify that although the counting officer’s decision on a ballot paper is final, the decision could be made subject to judicial review. However, the amendment was drafted in such a way as to omit the word “final” from the rule in question, which means that in its current form the rule no longer states that a decision made by a counting officer in respect of a ballot paper is final. Amendment 30 seeks to reinstate the word “final” to ensure that Annabel Goldie’s original intentions are delivered.

Amendment 31 has been proposed in light of the changes that amendment 53 will make to definitions in the bill. With regard to amendments 35, 54 and 55, paragraph 23 of schedule 4 requires the responsible person for a permitted participant to declare the accuracy of the permitted participant’s referendum expenses return under paragraph 20. Amendment 35 seeks to insert a definition of “regulated transaction” for the purpose of that declaration in line with the definition of “relevant donation”. For consistency and ease of reference, references to the definitions of “relevant donation” and “regulated transaction” are added to the list of defined expressions in schedule 8 by amendments 54 and 55.

On amendments 37, 38 and 39, permitted participants will, as Parliament is aware, be required to report donations and loans that exceed £7,500 in value either individually or aggregated. Amendments 37 and 38 seek to correct a drafting error to clarify that it is regulated transactions that exceed £7,500 that must be reported and amendment 39 seeks to make a small change to the details of transactions required in the statement of regulated transactions to refer to a transaction of a description in paragraph 43(3) of schedule 4 instead of only paragraph 43(3)(a).

On amendment 40, paragraph 57 of schedule 4 seeks to provide for pre-poll reports on regulated transactions that have been entered into by the permitted participant, and the amendment is a very minor amendment to ensure consistency in the provisions on pre-poll reports.

With regard to amendment 41, paragraph 58 of schedule 4 gives the sheriff power to order the position to be restored if satisfied that failure to comply with the transaction report requirements was caused by those attempting to conceal the existence or true value of a transaction. At stage 2, the Referendum (Scotland) Bill Committee agreed to amendments to insert paragraph 57A into schedule 4 to provide for the responsible person to declare that pre-poll transaction reports are accurate. As a result, amendment 41 seeks to extend the sheriff’s power to cover those requirements.

The purpose of amendment 42 is to bring the provision in question into line with the equivalent provision under the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010. Paragraph 28A(3) of schedule 6 permits the sheriff to issue a compliance certificate for a discretionary requirement following an appeal against the Electoral Commission’s decision not to issue one. The reference should be to the appeal rather than to the initial application to the commission, and the amendment seeks to alter the reference accordingly.

Amendments 51 to 53 are minor amendments to ensure clarity in the definitions of the local government register and register of young voters.

With those comments, it gives me great pleasure to move amendment 1.

The Deputy Presiding Officer: Well done. [Applause.]
Tavish Scott (Shetland Islands) (LD): I found the Deputy First Minister’s explanation of all those amendments highly stimulating. I am by no means opposing them but ask her to reflect on the balance of new amendments that are being introduced at stage 3 against amendments that have been lodged to respond to issues raised at earlier stages of the bill’s consideration. I was doing some reading last night for this debate and found two very good points of order, one from Bruce Crawford and the other from John Swinney, at stage 3 of the Licensing (Scotland) Bill back in 2005. Indeed, Mr Crawford might remember the occasion well. In fairness, the amendments to which he took very fair exception were manuscript amendments, which, of course, the Deputy First Minister has not lodged. However, I wonder whether in the Parliament’s consideration of stage 3 proceedings some thought might be given to the balance between new amendments and those that are consequential on previous discussions on the bill.

Nicola Sturgeon: I am glad that Tavish Scott found my explanation of this group of amendments stimulating. I wish I could reciprocate but we cannot have everything—and before Mr Scott takes that comment too seriously, I point out that it was a joke.

I should also point out that these are technical amendments and it is right and proper that as we go through the process of reviewing the bill any minor tidying-up amendments are made. This is also an appropriate time to make them, as the Parliament has the ability to scrutinise them fully. As is always the case with Tavish Scott’s interventions, I will reflect carefully on his comments and feed them back into the process with regard to future legislation.

 Amendment 1 agreed to.

Schedule 2—Further provision about voting in the referendum

The Deputy Presiding Officer: We move on to group 2. Amendment 2, in the name of the Deputy First Minister, is grouped with amendments 3 and 4.

Nicola Sturgeon: Amendments 2, 3 and 4 are related to changes that were made to the bill at stage 2 that were designed to allow counting officers to start issuing postal ballot papers before the cut-off date for applying for an absent vote in the referendum. We acted at stage 2 in response to requests from electoral administrators and the Electoral Commission to allow more time for the issue and receipt of postal ballot papers.

Amendments 2, 3 and 4 address concerns that the wording of the bill could mean that postal ballot papers could not be issued to some postal voters with certainty that they would be postal voters any earlier than the normal 11 days before the poll. The bill as amended at stage 2 linked entitlement for some to an absent vote to being on a list of absent voters at “the cut-off date”, which is defined as being the 11th day before the referendum.

The amendments will remove some references to “the cut-off date”, which will mean that the counting officer will be able to issue postal ballot papers as soon as it is practicable to do so without the bill specifying when that should take place. That will retain the intention of the amendments that were agreed at stage 2 while addressing the concerns that have been raised about the practical application of the amendments. It is likely that the chief counting officer will issue a direction to counting officers on that subject to ensure consistency.

I move amendment 2.

The Deputy Presiding Officer: As no one else has asked to speak, do you have anything that you wish to say in winding up?

Nicola Sturgeon: No.

Amendment 2 agreed to.

Amendments 3 to 5 moved—[Nicola Sturgeon]—and agreed to.

The Deputy Presiding Officer: We move on to group 3. Amendment 6, in the name of the Deputy First Minister, is the only amendment in the group.

Nicola Sturgeon: Amendment 6 is a minor technical amendment that seeks to remove the maximum signature size limit on proxy and postal vote application forms. It will bring the requirements for the application forms for the referendum into line with those for other elections, and it is intended to ensure that the design of the forms does not have to be changed for the referendum, thereby ensuring consistency and value for money.

I move amendment 6.

Annabel Goldie (West Scotland) (Con): Before the Deputy First Minister has a heart attack, I do not propose to oppose amendment 6. I wish to apologise to the Presiding Officer and the Deputy First Minister for my late arrival. I was misinformed about the time of commencement of proceedings.

The Deputy Presiding Officer: Many thanks.

Deputy First Minister, would you like to wind up?

Nicola Sturgeon: No.

Amendment 6 agreed to.

The Deputy Presiding Officer: We move on to group 4. Amendment 7, in the name of the Deputy
First Minister, is grouped with amendments 8 and 9.

Nicola Sturgeon: In response to comments from electoral administrators and the Electoral Commission, the Scottish Government amended the bill at stage 2 to extend eligibility to make an application for an emergency proxy vote. The bill currently permits emergency proxy applications after the 11th working day before the referendum on the ground of a disability recently suffered, because the voter is likely to be unavoidably absent from home on polling day, or for occupation, employment or service reasons. The bill provides that voters can make such an application at any time between 11 days before the poll and 5 pm on the day of the poll.

To address any security concerns, the bill includes a requirement for attestation for all applications for an emergency proxy vote. However, the Electoral Commission has suggested that that represents an unnecessary inconvenience for voters who apply for such a vote between 11 and six days before the poll. Under the arrangements for local government and parliamentary elections, voters in such circumstances would not normally require to have their applications attested.

As I made clear to the committee during stage 2, there are sound reasons for our amending the bill in the way that we did. That said, I am sympathetic to the concerns that the Electoral Commission and the committee have raised, so I ask Parliament to agree to amendments 7, 8 and 9, which will retain the extension of eligibility for emergency proxy applications that was agreed at stage 2 but will remove the attestation requirements for applications that are made between 11 and six days before the referendum.

That approach will address any concerns about arrangements being consistent with voter expectations about attestation requirements, while maintaining the system’s security and flexibility.

I move amendment 7.

14:15

Lewis Macdonald (North East Scotland) (Lab): The Deputy First Minister has lodged amendments that appear to bring the bill closer to the model that applies under the Political Parties, Elections and Referendums Act 2000 and the model that the Electoral Commission prefers. Nonetheless, the approach that is being taken to postal and proxy votes in the referendum is somewhat novel. I have been involved in many elections and a number of referendums in Scotland over the years, but I have never been involved in a poll in which voters could appoint on polling day a proxy to vote on their behalf.

A high turnout can be expected next September, and measures to encourage a high turnout are welcome but, on balance, although the provisions that we have agreed and the amendments will move absent voting nearer to the Electoral Commission’s original position, they will create a novel situation. Does the Deputy First Minister agree with the commission’s response to the amendments, which is that the complexity created by successive Government amendments at stages 2 and 3 will result in “a new category of application” for emergency proxy votes between the 11th and sixth days before the poll, for which new guidance will be required? It might have been easier all round if the Government had followed the existing approach, instead of introducing novel arrangements.

Kevin Stewart (Aberdeen Central) (SNP): Mr Macdonald is wrong on some aspects. On polling day at the Aberdeen Donside by-election, an emergency proxy vote was given at 3 o’clock in the afternoon to a lady who was receiving chemotherapy. His take on what happens at the moment is slightly wrong.

Nicola Sturgeon: I say to Lewis Macdonald that we lodged some of the amendments in direct response to calls for amendments to be made. I recall that, at stage 1, his colleague Patricia Ferguson called for us—rightly—to make some of the amendments. We have listened carefully to the points that have been made.

The Electoral Commission’s briefing welcomes amendments to the application procedures for emergency votes, including the removal of the need for attestation for applications that are made before the fifth day before the poll. The commission expects the chief counting officer to issue guidance on the process.

We have tried to meet the concerns. At stage 2, we discussed whether it would be right to bring the proxy vote application timescale into line with that for postal votes. The point was made then that that would not cater for all the concerns that have been raised. The example of the Icelandic ash situation has been given in the chamber. At short notice, people might be unable to come home to vote.

We have struck the right balance and we will have reasonable and robust arrangements in place. In the light of that, I hope that all members will support the amendments.

Amendment 7 agreed to.

Amendments 8 and 9 moved—[Nicola Sturgeon]—and agreed to.

The Deputy Presiding Officer: We move to group 5. Amendment 10, in the name of the
Deputy First Minister, is grouped with amendments 11 to 21, 24 and 25.

Nicola Sturgeon: The bill as amended at stage 2 contains a process that is to be followed when a person has been issued with a postal vote but has changed their mind and wishes instead to vote by proxy. That involves the return of the postal vote papers and the cancellation of the postal vote.

Following discussion with the Electoral Commission, we propose to amend the bill to provide a fuller process for allowing postal ballot papers to be cancelled when people switch between the four methods of voting—in person, by post, by proxy or by postal proxy—or when they change their address after the papers have been issued. The amendments are based on similar provisions that are to be introduced throughout Scotland for Westminster elections under United Kingdom legislation.

I move amendment 10.

Amendment 10 agreed to.

Amendments 11 to 27 moved—[Nicola Sturgeon]—and agreed to.

Schedule 3—Conduct rules

Amendments 28 to 30 moved—[Nicola Sturgeon]—and agreed to.

Schedule 4—Campaign rules

Amendment 31 moved—[Nicola Sturgeon]—and agreed to.

The Deputy Presiding Officer: We move to group 6. Amendment 56, in the name of Lewis Macdonald, is grouped with amendments 57 and 58.

Lewis Macdonald: Amendments 56 to 58 bring us to the heart of the bill, which is the rules that govern those who campaign in the referendum. We have agreed on a cross-party basis on most of the rules about designated organisations, permitted participants and spending limits to ensure fairness and transparency and so that voters can hear both sides of the argument and know who is making those arguments. However, spending limits will be effective only if the rules about who can spend the money are effective. The amendments in this group are intended to ensure that organisations and individuals that are permitted to spend money are open and honest with the voters about who they are.

People who are not seasoned campaigners are of course welcome to take part, and the amendments would not affect that. However, they would make it more difficult to have front organisations or to come up with clever means of registering twice, because they would explicitly deny access to separate spending limits for any organisation that is not genuinely separate from another permitted participant or designated organisation. So no body would be recognised as a permitted participant if it was largely run or funded by another such body or shared with that body a lead officer with powers of representation, decision making or control, nor would the lead officer of a permitted participant be able to register as a permitted participant in his or her own right. Those restrictions would not limit the ability of individuals or organisations to take part in the referendum, but they would ensure transparency about who they are.

At stage 2, the Referendum (Scotland) Bill Committee divided on similar amendments, which were opposed by the Deputy First Minister and rejected by Scottish National Party members. However, I ask the Government to think again, because I believe that the amendments that Nicola Sturgeon has lodged on spending to a common plan make my amendments all the more necessary. We will debate the Deputy First Minister’s amendments in a moment when we reach group 7. At this point, I simply note that any reduction in accountability of small organisations for spending under a common plan should be balanced by an increase in transparency about who such organisations actually are. The amendments in group 6 would provide for such increased transparency and would do so in a way that I believe is compatible with the Government’s approach. They do not run counter to any of the provisions that are supported by the Electoral Commission; rather, they build on them to address a specific concern. I believe that our amendments would make the bill stronger and give voters greater certainty about just who is seeking to influence their vote.

I move amendment 56.

Annabel Goldie: I am in sympathy with Mr Macdonald’s amendments because, usefully, as Mr Macdonald indicated, they would create a specific distinction about who is campaigning for what and under what guise. That would provide an additional and welcome degree of clarity to the bill as well as transparency for the public. That transparency for the public is all important, so I welcome and support the amendments.

Tavish Scott: The amendments are a sensible stab at a genuinely difficult issue. I believe that Lewis Macdonald seeks to improve the bill. Throughout consideration of the bill, the Deputy First Minister has made sensible remarks about transparency and the evidence that the committee took from the earliest stages of our deliberation was strong on that simple principle. Therefore, when a measure is proposed, even at this late stage, after the stage 2 debate, I believe that there
is merit in seeing what can be done to strengthen that transparency for the very reason that the Deputy First Minister has used from day one—and with which I agree—that the bill must command public support. It must be seen to be entirely beyond reproach, and Lewis Macdonald’s amendments seek to help with that, so I hope that members will support them.

Patrick Harvie (Glasgow) (Green): A range of principles is involved. During the committee’s stage 1 and stage 2 discussions, members recognised that we need to strike a balance between many principles, such as transparency, encouraging people to participate freely, and ensuring that the possibility of the rules being misused is closed down.

When he is making his closing remarks on the group, could Lewis Macdonald go into a wee bit more detail about what he means to achieve with his amendments? In particular, could he talk about the definition of “closely connected” that he offers. Including the wording that

“the body shares ... a person who has powers of representation, decision-making or control in relation to a permitted participant”

might go a wee bit too far. We know that many people are involved in different forms of activism and campaigning in Scotland on a range of issues, and they happen to be members of and actively involved in many different organisations. Is Lewis Macdonald suggesting that two permitted participants or organisations, one of which is represented on the other, would be covered by the provision, or is he simply talking about an organisation that happens to have one or more members in common on its organising committee? The latter would be going too far in inhibiting people from participating freely as members of two different organisations.

Nicola Sturgeon: Lewis Macdonald lodged three similar amendments at stage 2 and they were rejected by the committee. I will set out again the reasons that I gave the committee why the Government was and continues to be unable to support the amendments.

In signing the Edinburgh agreement, the Scottish Government committed to ensuring that the regulations for the referendum campaign should be based on existing legislation for elections and referendums. Lewis Macdonald’s amendments would depart from the PPERA regime in a way that is untested and could lead to unforeseen and unintended consequences. Patrick Harvie’s question underlines and highlights the complexity that is at the heart of the issue, and the fact that the amendments would give rise to more questions than answers.

At stage 2, the committee agreed a Government amendment that will place a limitation on responsible persons to limit the scope for a single campaigner to attempt to circumvent spending limits by establishing multiple campaign groups. That amendment, which is now paragraph 3A of schedule 4 to the bill was recommended by the Electoral Commission and based on a similar provision made in the enabling legislation for the referendum on the parliamentary voting system in 2011.

I recognise Lewis Macdonald’s concern about the possibility of permitted participants being set up to allow larger campaign organisations or political parties to increase their spending capability by spreading it across multiple campaigners. That would not be within the spirit of the legislation, and I have no doubt that Lewis Macdonald is sincere in trying to ensure that we minimise any potential for that to happen. However, the proposed Government amendments to the common plan provisions, which we will discuss in a few moments, will make the rules in the bill more certain. They will strike a balance in avoiding overregulation for small campaigners at the same time as ensuring that there are safeguards to prevent abuse of the campaign regulations.

The Electoral Commission has made it clear that there is a great deal of advantage in like-minded campaigners working together to put a consistent message to voters. There is absolutely nothing wrong with such activity in itself. We have therefore worked with the Electoral Commission to ensure that the rules for campaigners who are working together are sufficiently robust to prevent organisations or individuals from exceeding their spending limits or avoiding reporting requirements by using smaller campaigners to incur spending on their behalf. We have tried to do that in a way that does not discourage smaller campaigners from participating, and the amendments therefore seek to minimise the administrative burden on unregistered campaigners.

I note that the Electoral Commission supports the Government’s proposed amendments, and I will come back to it in my remarks on the next group of amendments.

An important point to stress is that any campaign that is taking the action that Lewis Macdonald is seeking to limit would be likely to be seen to be working to a common plan, and would therefore be subject to the existing controls for those circumstances.

For those reasons, I hope that Lewis Macdonald will welcome the Government’s amendments on common plans when we come to them, but I am unable to support his revised amendments for the reasons that I have set out.
Lewis Macdonald: I welcome the support expressed by Annabel Goldie and Tavish Scott, I agree with Mr Scott that Nicola Sturgeon has shown her sympathy for the principle of increased transparency during the passage of the bill, and I welcome the tone of her comments.

However, I think that the issue remains a real one that will not be fully addressed by the provisions for the common plan. Yes, such organisations would be covered by those provisions: that is clear.

In response to Patrick Harvie’s question about the definitions in my amendments, the term “powers of representation, decision-making or control” reflects language that has been used in other legislation that is under consideration. It essentially means a person who has a lead role in each of two relevant organisations, not someone who is simply a member. The intention is not therefore to prevent campaigners from engaging in the campaign in different ways or while wearing different hats, so to speak. It is to prevent one organisation from effectively acting as a proxy for another. That is a real concern and it should be addressed. On that basis, I will press amendment 56.

The Deputy Presiding Officer: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division of the afternoon, I suspend the meeting for five minutes. 

14:31

Meeting suspended.

14:36

On resuming—

The Deputy Presiding Officer: We will now proceed with the division on amendment 56. This will be a 30-second division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanszla (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greencastle and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross- shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dorris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)

24499 14 NOVEMBER 2013 24500
Amendment 57 moved—[Lewis Macdonald].

The Deputy Presiding Officer: The question is, that amendment 57 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milen, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beatle, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Sirling) (SNP)
Cunningham, Rossanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
The Referendum (Scotland) Bill Committee has given serious and careful consideration to the provisions and the issue was discussed in some detail at stage 2. I said then that the Government would have further discussions with the Electoral Commission about the provisions, including the amendments that were lodged by Patrick Harvie at stage 2, and that I would report back to the committee ahead of stage 3, which I did in the form of a letter to the convener last week.

In looking at possible amendments, we have tried to address the concerns that were expressed by some members about the possibility that designated organisations might try to exploit smaller campaigners in order to get round the spending controls. Concerns were expressed by other members, who wanted to ensure that smaller unregistered campaigners would not be faced with a disproportionate administrative burden that might lead to them inadvertently breaching the rules.

Paragraph 19 (2) of schedule 4 provides that common-plan participants should count the total common-plan expenditure towards their own expenditure for the purposes of paragraph 17, 18 and 20 to 23. Amendment 33 will remove the reference to paragraphs 20 to 23 so that the rules are confined to paragraphs 17 and 18. That means that participants in any common plan will be responsible for ensuring compliance with the wider reporting and financial controls for only their own spending.

It would be impractical to expect common-plan participants to provide, for example, copies of invoices and receipts or to confirm that donations were from permissible sources, in relation to spending that had been undertaken by someone else. Amendment 33, which was recommended by the Electoral Commission, should significantly reduce the administrative burden that might lead to them inadvertently breaching the rules.

Therefore, paragraph 19 of schedule 4 provides that any unregistered campaigners who spend more than £10,000 on behalf of a designated organisation will be required to register as a permitted participant, and against their individual spending limits.

The provisions as introduced were based on those that were used for the 2011 alternative vote referendum, with the additional requirement that the rules apply only where there is designated organisation for each outcome.

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Therefore, paragraph 19 of schedule 4 provides that any unregistered campaigners who spend more than £10,000 on behalf of a designated organisation will be required to register as a permitted participant, and against their individual spending limits.
common-plan rules, but those who spend more than £10,000 will need to register, and although their expenditure will count only against the designated organisation’s spending limit, they will still need to ensure that their expenditure complies with the wider reporting and funding controls.

Amendment 32 is consequential on those amendments and will insert in rule 19 a reference to new sub-paragraph (3A) to make clear that paragraph 19(2) will apply with these changes when a designated organisation is involved.

In summary, the amendments are intended to provide greater clarity about how the common-plan rules work in practice, and to achieve an appropriate balance between robust and transparent funding controls and minimising the administrative burden on smaller unregistered campaigners. In particular, they seek to ensure that unregistered campaigners who are working with a designated organisation are not subjected to additional requirements over an unregistered campaigner working alone.

We have had detailed discussions with the Electoral Commission about the amendments, which it supports as an improvement on previous provisions. No legislation can provide for every eventuality or scenario, and it is right that we do not try to do so. Oversight of the rules in practice will be a matter for the Electoral Commission, which has indicated that it will take a flexible and proportionate approach.

I move amendment 32.

Drew Smith (Glasgow) (Lab): As Lewis Macdonald said about the previous group, throughout the passage of the bill Scottish Labour has supported strong common-plan arrangements being in the bill and we have consistently argued for the maximum possible transparency in relationships and spending among organisations that may work in partnership at points of the campaign.

The provisions that the Scottish Government is rightly seeking to amend apply to both sides of the debate. We do not wish to see any advantage to one side or another as a result of how the common plans are interpreted by the Electoral Commission, designated organisations or permitted participants.

14:45

Concerns were expressed at stage 2 about the burden of reporting for smaller parties and other organisations, and we understand the motivation behind seeking to remove some of the burdens. We would have preferred that it had been possible to ensure that changes to that provision were subject to further scrutiny at an earlier stage, particularly as the changes were not recommended by the committee in its report.

However, we recognise the concern about the issue that Patrick Harvie expressed at stage 2. Although we were not convinced by the original amendment, in the light of the comments of the Electoral Commission and others, we are content that the amendments strike a reasonable balance and will reduce the need for double reporting, which we accept would be particularly onerous for smaller parties. We will support amendments 32, 33 and 34.

Patrick Harvie: I record my support for the amendments in group 7. I was concerned at stage 2 that a burden that would be reasonably placed on a large and well-resourced organisation might also be placed on small unresourced organisations or on individuals, and that such organisations, small campaign groups or individuals, who might have no intention, or realistic prospect, of spending anything like the spending threshold, could inadvertently commit an offence, or could be perceived to commit one, by dint of their participation in a common plan. Amendment 32 is a more successful attempt to address the issues that I raised at stage 2. I thank the Deputy First Minister for lodging the amendment.

The Deputy Presiding Officer: I call the Deputy First Minister to wind up.

Nicola Sturgeon: I thank Patrick Harvie and Drew Smith for their comments. I think that we have, on quite a complex and difficult issue, found consensus that strikes the right balance, so I am grateful to colleagues for their constructive comments in getting us to this position.

Amendment 32 agreed to.

Amendments 33 to 35 moved—[Nicola Sturgeon]—and agreed to.

The Deputy Presiding Officer: We move to group 8. Amendment 36, in the name of the Deputy First Minister, is grouped with amendment 50.

Nicola Sturgeon: The bill provides for a pre-referendum period during which certain restrictions will apply to the material that can be published by Scottish ministers and other devolved public bodies, as is usual practice ahead of elections and referendums. The provisions have been closely scrutinised over time by the Electoral Commission, the Referendum (Scotland) Bill Committee and the Parliamentary Bureau, and the bill was amended at stage 2 to exempt certain specified material that would be published by, or under the auspices of, the Scottish Parliamentary Corporate Body.

Paragraph 25 of schedule 4 currently provides for the 28-day pre-referendum period to end on
the day before the referendum. The Electoral Commission has pointed out that that differs from the equivalent provision in PPERA, which provides that the 28-day period will end on the day of the relevant referendum itself. Amendment 36 will therefore amend the bill to provide that the 28-day pre-referendum period will end on the day of the referendum. That also means that there will now be only one day during the pre-referendum period when Parliament will be sitting, which is Friday 22 August. In the spirit of the discussion at stage 2, I would hope that the restrictions on Government activity on that last day before recess will be taken into account in scheduling parliamentary business.

As I said during stage 2, it is vital that the referendum be run in a way that reflects the highest international standards of fairness, probity and transparency. The provisions place responsibilities on all of us to ensure that our conduct as public servants is beyond reproach, so that voters can have confidence in a fair result.

Amendment 50 is a minor drafting amendment that will bring the wording of the definition of the 16-week referendum period into line with the wording that is used elsewhere in the bill to define periods.

I move amendment 36.

Amendment 36 agreed to.

Amendments 37 to 41 moved—[Nicola Sturgeon]—and agreed to.

Schedule 6—Campaign rules: civil sanctions

Amendment 42 moved—[Nicola Sturgeon]—and agreed to.

Schedule 7—Offences

The Deputy Presiding Officer: Amendment 43, in the name of the Deputy First Minister, is grouped with amendments 44 to 47.

Nicola Sturgeon: I am sure that it will come as a great relief to all members to hear that amendments 43 to 47 are technical amendments that will extend existing offence provisions in the bill to cover proxies for votes in the same way that they cover people who vote in person. Amendments 43 to 47 will help to enhance and maintain the integrity of the referendum process.

I move amendment 43.

Amendment 43 agreed to

Amendments 44 to 47 moved—[Nicola Sturgeon]—and agreed to.

Schedule 8—Interpretation

Amendments 48 to 55 moved—[Nicola Sturgeon]—and agreed to.
Scottish Independence Referendum Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-08239, in the name of Nicola Sturgeon, on the Scottish Independence Referendum Bill.

14:51

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): I am very pleased to open this stage 3 debate on the Scottish Independence Referendum Bill, and I start by thanking everyone who has been involved in the development and scrutiny of this historic piece of legislation.

I thank all three parliamentary committees for their detailed scrutiny of the bill. In particular, I thank the Referendum (Scotland) Bill Committee and its clerks, under Bruce Crawford’s excellent convenership—[Applause.] I will not turn round to see if he is blushing.

The committee has made a significant contribution to the bill through its careful and balanced consideration. Whatever their political views, committee members have been meticulous in examining many complex aspects of electoral law to ensure that we have a robust legislative framework for a fair referendum and ultimately a result in which everyone can have confidence. The committee’s consensual approach is a testament to Parliament’s commitment to that aim, and I thank members for their support of the bill to date.

The bill has also benefited enormously from the level and quality of advice received from practitioners in this area. I am indebted to the electoral community in Scotland for its expert advice and guidance.

When the Government published “Your Scotland, Your Referendum” in January 2012, we said that the referendum would be run and regulated in the same way as any Scottish election, to the same standards and with the same guarantee of fairness. As we near the end of parliamentary consideration of the bill, I am confident that the detailed proposals that we have developed will achieve that aim.

By necessity, the bill is large and complex. It has drawn on existing electoral legislation, and we have made improvements where possible on the basis of lessons learned in recent polls. Electoral professionals, including the Electoral Management Board for Scotland, the elections working group of the Society of Local Authority Lawyers and Administrators, electoral registration officers and others have been an invaluable resource to help refine the provisions and ensure that the bill reflects best practice. We have also listened to and been guided by the views of the Electoral Commission, as we said that we would.

Electoral professionals and the Electoral Commission are the people who will run and oversee the referendum, so I am particularly pleased to note their confidence in the bill’s ability to provide them with the necessary framework to deliver a referendum that meets the highest international standards.

I also take this opportunity to thank again the more than 26,000 people who responded to our consultation last year and took the time to share their views on how the referendum should be run. My thanks also go to the independent researchers who undertook a professional and robust analysis of those responses in the face of considerable media scrutiny.

I also place on record my sincere thanks to my own officials in the bill team, who have done an absolutely sterling job not only on this bill but on the Scottish Independence Referendum (Franchise) Bill, which has already been passed by Parliament. They have worked incredibly hard in a very complex area, and I am very grateful to them for their work.

Before moving on to the substance of the bill, I want to say a final thank you to the former Secretary of State for Scotland, Michael Moore, who, through his constructive approach to the Edinburgh agreement negotiations, paved with the Scottish Government the way to the point that we have reached today. He did a good job and although we have many differences of opinion, not least on what we want the outcome of the referendum to be, I think that his role in the process should be recorded and I place on record my thanks to him this afternoon. [Applause.]

In the year and a half since the Government’s consultation closed, the First Minister and I signed the Edinburgh agreement with David Cameron and Michael Moore to pave the way for a referendum that will be what we always said it would be: designed and delivered here in Scotland.

After consideration by both Parliaments, the section 30 order was made, confirming this Parliament’s right to legislate for the referendum. The Scottish Government has since introduced two referendum bills: the bill that we are debating this afternoon and the bill that became the recently enacted Scottish Independence Referendum (Franchise) Act 2013, which—let us remember—will enable for the very first time in a national poll 16 and 17-year-olds to vote in the referendum.

The consensual process that has led us to where we are today—with two Governments on
opposing sides of this very important national debate nevertheless coming together in the interests of the people we serve—offers a template for the negotiations that will follow a yes vote in next September’s referendum.

With regard to some of the changes that have been made to the bill as it has progressed through Parliament, the Scottish Government has listened carefully to the views of Parliament and stakeholders since we introduced the bill in March and, where it was right to do so, has amended the bill.

At stage 2, for example, we lodged amendments in response to concerns about the deadline for absent voting applications and to enable the children of service voters posted outside Scotland to vote in the referendum. We also supported a number of non-Government amendments that sought to clarify and improve certain aspects of the bill, including Liam McArthur’s amendment to the publishing restrictions during the 28-day purdah period.

The amendments that we considered earlier this afternoon are largely technical and drafting amendments to fine tune the bill’s provisions and ensure that they are as clear as possible. However, the amendments to the common plan arrangements were more substantial and again we have been mindful of the committee’s views in determining our approach.

At stage 2, several committee members raised concerns about how the common plan rules would achieve the desired balance between providing robust controls and transparency and enabling smaller campaigners to participate without undue burdens. Patrick Harvie, in particular, argued that latter point very persuasively. Although we did not agree with all the amendments, the debate was important and, notwithstanding various differences, I believe that the amendments agreed earlier today have improved the bill.

We did our best to respond to concerns expressed by Lewis Macdonald at stage 2 in relation to the attestation requirements for applications for emergency proxy votes by amending the bill to ensure greater continuity with existing arrangements. At every stage in the process, we have sought to adopt a consensual and constructive approach.

We must now turn our attention to the practical arrangements for delivering the referendum. In September, the Electoral Commission published its progress report on the preparations for the referendum, concluding that those preparations are "currently on track for delivering a well-run referendum ... in the interests of the voter."

The commission also commented that the bill provides sufficient clarity on roles and responsibilities in the referendum and on the rules for the conduct of the poll.

The convener of the Electoral Management Board, who will, of course, be the referendum’s chief counting officer, has with the board’s support started planning the referendum’s delivery, including the governance arrangements, project and performance management, guidance and areas where the chief counting officer might wish to make a direction, for example, in planning an overnight count. I am sure that all of us in the chamber welcome that very much. The Scottish Government will fund that work and will set out the financial resources that will be available to counting officers in a fees and charges order in the new year.

The Electoral Commission has confirmed that it is on course with its preparations for public awareness activities and has circulated draft campaign guidance to prospective campaigners. It is vital that voters have the information that they need to make a considered decision in the referendum. The Electoral Commission will provide factual, impartial information on how to vote and how to register to vote, but it will be for us, as campaigners, to set out the arguments on which the people of Scotland will make their decision.

The Scottish Government has already published a number of papers on how we would realise our vision for an independent Scotland, and we will publish the white paper on Scottish independence on 26 November. That will set out the overwhelming case for Scotland becoming an independent country and our proposals for using the powers of independence to build a Scotland that is more prosperous and fairer than it currently is. We will set out very clearly the choice that people will make in September next year.

I have no doubt that the debate will be passionate and, at times, heated—we have seen that already—but we all have a responsibility to ensure that the debate is of a high quality and that we present informed, constructive arguments to voters. We must continue the ethos of cooperation and consensus that has been demonstrated in our consideration of both referendum bills into a respectful, honest and fair debate from now right up until polling day.

We can be proud that we are today passing legislation that will put Scotland’s future into Scotland’s hands. I hope that the people of Scotland will seize that opportunity, seize that future and seize the prospect of a better Scotland with a resounding yes vote in September next year.
It gives me great pleasure to move, that the Parliament agrees that the Scottish Independence Referendum Bill be passed.

The Deputy Presiding Officer (Elaine Smith): I call Drew Smith, who has eight minutes.

15:02

Drew Smith (Glasgow) (Lab): Scottish Labour welcomes the Scottish Independence Referendum Bill and we will vote yes at decision time this afternoon. [Interuption.]

The Deputy Presiding Officer: Order, please.

Drew Smith: I fear that, after decision time, the consensus may break down.

I echo the Deputy First Minister’s thanks to the various electoral professionals, to all those members of the public who engaged in the consultation and to everyone who has played a part in bringing us to this point.

The time has come for the question to be settled. Scotland’s constitutional future has been key to Scottish political debate all my life. I will name no names, but some members have been advocating the end of the union for even longer than that. No doubt, they are as keen as the rest of us to decide the matter once and for all.

The choice is either a separate Scotland or a continuing partnership with our nearest neighbours, the people with whom we share these islands and together with whom we have built the institutions that act as levellers in our society—our welfare state, our national health service and many of the things that people all over Britain are proud of. In many cases, those achievements have been won by a Labour movement across the United Kingdom, and we have no intention of either walking away from our collective achievements or abandoning others to face our collective problems alone.

As I have said before, I respect the right of nationalists to put the case for independence and the referendum provides an opportunity for us to make a positive choice, whether that is for independence from the UK or for partnership in the UK. Following the passing of the bill, it will be our responsibility alongside others to ensure that, while the political arguments are contested as the Deputy First Minister said, we treat each other as fellow Scots, each side pursuing its arguments in the interest of what we believe to be best for our country.

On this side, we believe that Scotland enjoys the best of both worlds. Decisions are made here on many of the day-to-day issues that concern voters most but, alongside that, we can share risk and resources between people to create a better society not just for Scots, but for all the people of Britain.

Up to now, the debate has concentrated on process issues such as when the referendum will be held, who will vote and even who will debate with whom on television. With the exception of the latter point, we are now past that stage. We all look forward to the white paper, as there is a need for answers on the issues of substance.

What would our currency be? If we are to retain the UK pound rather than, as used to be argued, adopt the euro—or introduce a Scots pound, as I am sure some on the Scottish National Party benches would prefer—how would that work without a pact between London and Edinburgh? On both Europe and pensions, the SNP’s position has been asserted many times but then contradicted almost as often. On energy markets, financial regulation, the benefits system, defence and even the monarchy, the SNP’s position has changed to such an extent that even the nationalists now argue for partnership with the UK.

John Mason (Glasgow Shettleston) (SNP): Can the member give us a definite position on whether, if the UK continues, its currency will be the pound? If so, how long will it have the pound, or will it adopt the euro?

Drew Smith: I am happy to confirm to Mr Mason, if he is confused, that the best way to keep the pound in the pockets of the people of Scotland is to remain in the United Kingdom.

The 2011 election and the Edinburgh agreement between the UK and Scottish Governments paved the way for this legislation. As an Opposition, despite our different position on the constitution, we have engaged with the Scottish Government constructively.

We have welcomed Nicola Sturgeon’s answers to our questions about the position of 16 and 17-year-olds living abroad with forces families. It is to the credit of both the Referendum (Scotland) Bill Committee and the Government that a solution to that issue has been found.

We have raised concerns about the common plan arrangements because we, too, want the campaign to be regulated to the highest international standards. Although we did not quite reach agreement on all the stage 3 amendments this afternoon, I welcome the Scottish Government’s acceptance of our stage 2 amendment, which prescribes a role for the Electoral Commission in providing guidance to the lead campaigners on the provisions of the bill.

I understand that the Referendum (Scotland) Bill Committee will meet shortly to consider secondary legislation arising from the Scottish Independence Referendum (Franchise) Act 2013. It would be
remiss not to thank the committee’s convener, members and clerks, as well as the Government and its officials, for the work that the committee has done to date.

When the Deputy First Minister responds to the debate, can she perhaps say whether she believes that the committee could have a continued role in scrutinising the white paper? As the white paper will be ministers’ prospectus for a separate Scotland, it is vital that the Scottish Parliament has the opportunity to interrogate the issues properly. Does she believe that the Referendum (Scotland) Bill Committee and other committees—or, indeed, a special white paper committee—should lead that task by taking evidence from experts on what the SNP is proposing?

We hope that the white paper will address many issues in more detail than has been the case up till now. One such issue is the situation of the Clyde yards, which to my mind goes to the heart of the independence debate and the Scottish Government’s approach to it.

Despite the fact that the nationalists have been campaigning for a separate Scotland for nearly 90 years, they seem to have given little thought to some of the practical repercussions of their position. It seems to me that either they take the view that the jobs involved in building UK defence ships on the Clyde are a price worth paying for breaking up Britain, in which case they should be honest about that, or they believe that those workers can and should be redeployed on some other task, in which case they are duty bound to put forward a plan that is robust and open to scrutiny.

Margo MacDonald (Lothian) (Ind): I may have missed this—I apologise if that is the case—but does Labour have a strategy or policy on shipbuilding on the Clyde? Is its intention that the Clyde should deal only with military orders? If so, who will pay for those, given that the UK is just about bankrupt and cannot afford to pay for the ships that are already on the stocks?

Drew Smith: Actually, the previous Labour Government had a proud record on bringing work to the Clyde. However, we are more than happy to debate the issue of diversification of the order books of the Clyde yards. Given that both the Govan and Scotstoun yards are not only owned by a defence contractor but build defence ships, I would be interested to hear whether the Deputy First Minister put the case to BAE Systems that the yards should diversify their business into other types of ships and what response BAE Systems made to that.

In the wider debate, asking questions should not be viewed as a negative thing to do, so it is disappointing that, when an academic spoke out this week to express his view, a Scottish Government minister contacted his boss to complain. [ Interruption. ] SNP members may groan about that, but they should be embarrassed by the conduct of that minister.

This debate can and should be better than that. Rules and regulations such as those that we are debating in the bill will not, on their own, ensure good conduct of the campaign; nor will it be of any use for enforcement of those rules to take place afterwards, because this is a vote that no one would wish to see rerun.

I have mentioned that the debate has been central to Scottish politics all my life, which is why I support settling the matter next year. In the meantime, we do not want to see government exist only as a campaign. The Government has the power to change people’s lives in the here and now; it should not put Scotland on pause to concentrate only on independence because—[ Interruption. ]

The Deputy Presiding Officer: Order, please.

Drew Smith: In the meantime, people face challenges that are the responsibility of this Government—not after 2014 or 2016 but today and every day leading up to 18 September.

I think that my constituents accept that the Government has a particular constitutional ambition, but they do not accept that their everyday concerns are secondary to it, and neither do they believe in the convenience of every answer to every problem that Scots face just happening to be independence.

The choice facing Scotland next year is one between separation and partnership, independence and union. It does not matter what terms we use, but it does matter that the question that the bill provides for does not crowd out all the other issues to which answers need to be found.

Scotland is an old nation but the United Kingdom is still a young country. There is no inevitability in the progressiveness of one or the limitations of the other. To suggest as the yes campaign has up to now—the Deputy First Minister repeated this suggestion—that the UK is somehow uniquely incapable of change or progress is wrong. I fully believe that the people of Scotland will vote no next year not because they are against change or progress, but because change and progress are achieved not by a constitution but by people working together. On this side, we look forward to the people having their say.
Annabel Goldie (West Scotland) (Con): When scrutinising the bill as a Referendum (Scotland) Bill Committee member, I was taken back to an experience at my primary school—that is not an allusion to either the Scottish Government or my committee colleagues. The occasion was a primary 7 Christmas party, or, as we liked to style it, dance. We had been learning all these marvellous Scottish country dances, I loved the music—I still do—there were interesting things emerging called boys, and I just could not wait to get to the dance.

John Swinney: Where are we going here?

Annabel Goldie: My mother, on the other hand, was solely concerned with what I was going to wear and whether I possessed any presentable, never mind suitable, shoes. She was right, because that detail required thought and attention or the dance would not work. In a sense, we are in a similar situation: we are all caught up in the preparations for it.

Whatever side of the argument we are on, we are out there, taking part in debates and attending public meetings. We advance our views with passion, field the questions with vigour and deal with challenge robustly. There is excitement in the air. I love it—I guess that I am not alone—and I want to be in the thick of it: 18 September 2014 is right at the heart of my unionist calendar.

To happen, the referendum needs its own clothes and shoes; it cannot work without them. [ Interruption. ] John Swinney wants to participate. I will take an intervention.

John Swinney: No, it is okay. [ Laughter. ]

The Deputy Presiding Officer: Order, please. If members want to participate they should request an intervention. If they do not do so, they should not participate from the sidelines.

Annabel Goldie: A taciturn Mr Swinney—I am very glad that he was not at the school dance. [ Laughter. ]

Scrutinising the Scottish Independence Referendum Bill has been an essential and not unenjoyable task. Like the Deputy First Minister, I, too, thank our convener, Bruce Crawford, the clerk, Andrew Mylne, and his team, our advisers and the Scottish Parliament information centre. We may not have done a dashing white sergeant or a gay Gordons round the committee room, but we got there, and that was in no small measure down to our convener’s skilful and wise stewardship, together with impeccable guidance and attention to detail from the clerking team. Our SPICe advisers certainly kept us from straying down some cul-de-sacs. Although they may not have realised it, all of them, in their own way, produced the clothes and shoes to ensure that the rest of us can go to the ball.

The stage 1 report noted:

“The Committee is confident that its Stage 1 inquiry has enabled this important Bill to be subject to a wide-ranging and robust scrutiny process.”

However, it pointed out that

“some aspects of the Bill ... require adjustment ... and ... clarification”.

That was a neat summation of the position then. Stage 2 produced a constructive set of amendments that addressed the need for that adjustment and clarification, and that is how we have proceeded today.

I was sorry that Lewis Macdonald’s amendments were not accepted, because they would have enhanced the clarity of the bill. I regret that they failed. However, I welcome the Scottish Government’s amendments on the common plan and accept that they provide an important clarification.

The Deputy First Minister might remember that, at stage 1, I mentioned my continuing concern about the behaviour of Scottish Government quangos during the purdah and regulated periods. Indeed, she provided a welcome acknowledgement of those concerns and confirmed that the Scottish Government would issue guidance to relevant public bodies. She offered to provide to the committee a draft of the guidance, and as the committee continues in being even though the bill will be passed this evening, I ask her when that draft guidance is likely to be available.

Although the regulated and purdah periods are naturally the subject of focus, in my opinion—and I am not alone—the sooner that guidance is available, the better. It will provide reassurance to many people that those Government bodies are getting a steer and a framework in which to operate. We also need to know, because there may be some ambiguity about this, exactly which bodies she anticipates the guidance will cover. Perhaps she can clarify that.

Other than that, I support the bill. It delivers a workable mechanism for 18 September 2014. Like Drew Smith, I confidently expect that, on that date, Scotland will overwhelmingly reject separation from the rest of the United Kingdom.

15:16

Bruce Crawford (Stirling) (SNP): I wonder whether I would most enjoy dancing strip the willow or the dashing white sergeant with Annabel Goldie. Perhaps that will happen one day.
Today, I speak not as the convener of the Referendum (Scotland) Bill Committee but as a Scottish National Party back bencher. In saying that, I thank the clerks and all my committee members who helped the scrutiny process. It was done very well.

Reaching the stage 3 debate on the Scottish Independence Referendum Bill—I like that and I will repeat it: the Scottish Independence Referendum Bill—has been a much more positive and encouraging experience than many of us might have predicted at the outset of the process, which began in January 2012 with the publication of the Scottish Government’s consultation paper.

Members might recall that, at that time, there were a great many stupid and silly scare stories about how the SNP was somehow hell-bent on gerrymandering the referendum process to fix the result that it wanted. The proof of the pudding is in the eating today. With the passing of the bill at decision time, those stories will have been proved just as silly and stupid as the Scottish Government claimed they were at the time.

Looking back over that period, I am reminded a lot of the hysteria that existed in some political and media circles about the advent of the SNP Government in 2007. Some predicted that the Government would not last a month, that it would certainly never get its budget passed and that it would be inherently unstable. Indeed, the four horsemen of the apocalypse could be seen riding towards Scotland apace.

Just like the silly and stupid scare stories around the referendum, those earlier predictions about the fate of the SNP Government never came to pass. What transpired was a period of stable and effective government that, in the circumstances, was unusual, if not unique, among western democracies. It was certainly unique when set alongside the churn and turmoil of political office that we see at Westminster, no matter whether there is coalition or majority government.

On the referendum, there were silly and stupid claims about the consultation on the bill, the question and even votes for 16 and 17-year-olds and service personnel. The Deputy First Minister rightly reminded the Parliament that the consultation attracted more than 26,000 responses, compared with only 2,857 responses to a similar exercise that the UK Government carried out.

The referendum question was submitted to the Electoral Commission, amended by that organisation and is now considered acceptable by all parties in the Parliament, contrary to what some of the doomsayers predicted at the outset.

That was all completed in a reasonable manner and with due regard to process, despite all the daft claims.

There was also much noise about the proposed date of the referendum but I believe, not unsurprisingly, that we will all support that proposed date when we reach decision time.

Of course, many of the scare stories—at least, those on the referendum process itself—ended with the signing of the historic Edinburgh agreement between the Scottish and UK Governments. That mature agreement, which was signed by both Governments, helped to lay the foundations for a parliamentary committee process that I believe was carried out in a highly effective and robust manner.

I acknowledge the significant role that was played by Michael Moore, the then Secretary of State for Scotland, in the drawing up of the Edinburgh agreement. The fact that the agreement was able to come into being was very much down to the constructive and reasonable approach that he and the Deputy First Minister adopted. I always found Michael Moore’s approach refreshingly candid and honest. He challenged when he needed to do so, but he always did so with the right tone and attitude. Talking of tone and attitude, I suspect that Michael Moore’s removal from office will soon become a matter of regret for Nick Clegg, if the recent performances of his self-styled bruiser are anything to go by.

The Edinburgh agreement has enabled the Scottish Government, the Referendum (Scotland) Bill Committee and the Parliament to have before them a bill that we can all endorse as fit for purpose and in which the people of Scotland can have confidence. As I said in the stage 1 debate, I was pleased to note that the Electoral Commission felt that the bill was

“a strong piece of legislation ... that truly puts the voter first”.—[Official Report, Referendum (Scotland) Bill Committee, 23 May 2013; c 421.]

I am delighted that, in the evidence that it has provided in advance of stage 3, the commission has confirmed its thoughts at that time.

During the stage 1 debate, I also said that we should ensure that the debate would be devoid of rancour and bitterness, and that

“If we can make it a debate that is about hope, aspiration and taking the people of Scotland forward, people from all parts of Scottish life will want to take part.”—[Official Report, 12 September 2013; c 22411.]

Other members who took part in that debate, including Annabel Goldie, Tavish Scott, Lewis Macdonald, Alex Johnstone and Patrick Harvie, picked up on that theme.
It is obvious, however, that those voices have not been heard, given that a scare story a day emanates from Westminster and project fear. On this historic day, I say, “Keep it coming.” That strategy is guaranteed to produce a diminishing return and will serve only to undermine the enthusiasm for the failing structure of the UK of those people who have yet to decide how to vote.

Meanwhile, we will be relentless in sending out our positive message, which is about trusting the people of Scotland by putting them in charge of the huge richness of their resources, both human and natural. Putting the people of Scotland in charge and ensuring that they get the Government that they vote for every time will help to eradicate the unacceptable levels of poverty and inequality that, shamefully, still exist in our nation, while we continue to spend untold billions on weapons of mass destruction.

I will put my money on aspiration and hope winning out over scaremongering and fear, and on trusting the people of Scotland to be in charge of their own destiny.

The Deputy Presiding Officer: For the avoidance of doubt, I reiterate that there is sufficient time available for members to take up to six minutes. Indeed, it would be appreciated if members were able to take six minutes in the open debate.

15:22

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): My voice is on pause, so the wisest course of action might be not to take six minutes, but this is an important debate, so I wanted to speak in it.

We agree with the objective of the bill, which is to provide for a

“fair, open and truly democratic process which is conducted and regulated to the highest international standards”

in the lead-up to next year’s referendum, and I was pleased to receive a briefing from the Electoral Commission yesterday that indicated that it has confidence in the process that the bill will put in place.

We welcome some of the developments that have taken place during the bill’s consideration. We welcome the fact that the Scottish Government has extended the franchise for the referendum to include children of armed forces personnel living abroad who are aged 16 or 17. We are also pleased that the Scottish Government has responded to some of the concerns that were raised about the bill by ourselves, by other parties and by the Electoral Commission. I am slightly disappointed that there was not unanimity on the amendments that Lewis Macdonald moved earlier.

The result of that is that the only people to vote no during today’s stage 3 consideration of amendments were SNP members, on amendments 56 and 57.

We support the bill because it provides the opportunity for the independence question to be settled. It is important that the result of the referendum is clear and accepted internationally so that Scotland can move forward—as part of the UK, we hope—with the question settled once and for all, or certainly for a generation.

We want the referendum campaign to be conducted fairly and transparently, with each side respecting the other. I have a fear, which I think that other people share, that although the procedures are now generally agreed to be right, the tone of the debate is sometimes in danger of going wrong.

Margo MacDonald: I am doing Malcolm Chisholm a good turn. Because I respect him so much, I must ask him the following question. He used the phrase “once and for all” again. Does he believe that it is ever possible to settle any principled question once and for all?

Malcolm Chisholm: I am sure that Margo MacDonald heard my qualification—I said that the question would be settled at least for a generation. I hope that we can agree on the latter, if not the former.

How we conduct the debate will be important not just for the next few months but for the months and years that follow the referendum. It is understandable that there is a great deal of emotion on both sides of the debate. That underlies a lot of the arguments that we use, particularly on the economic questions, which will be central to the referendum.

Notwithstanding the emotions, we should always remember—perhaps particularly on a day such as today, which is an important stage in the process—that the two sides on the question are not enemies. We all inhabit the same country and we share many values. We agree on many policies in other parts of the political debate. That applies in the chamber, where SNP and Labour members can agree in broad terms on the approaches to many aspects of domestic and even international policy but have a profound difference on the constitutional question.

The position is similar in the country. In many families, one member might be voting yes and another might be voting no. It is important that we conduct the debate without losing the friendships and positive relationships that we have in this country and in the chamber. We must say that today, because that will be important, not least to what will happen after the referendum. Whatever the result, we will all have to come together on 19
September 2014. Whatever the people decide, we will have to act on that. [Applause.]

We must not create a legacy of bitterness and hatred. We need to have a civilised debate, rather than warfare between two tribes.

The Deputy Presiding Officer: Some time is available in the debate because the previous business concluded earlier than expected, so if members who did not previously indicate that they wanted to speak feel inclined to contribute, they can press their request-to-speak button now.

15:28

Clare Adamson (Central Scotland) (SNP): I am not a member of the Referendum (Scotland) Bill Committee, but I echo the cabinet secretary’s sentiments in drawing to our attention the hard work that all members of that committee have done, under Bruce Crawford’s stewardship. Everyone who has been involved in the process—whether through working on the Edinburgh agreement or through working on scrutiny of the bill in committee—should be congratulated. We owe them a debt of gratitude for allowing us to reach today’s conclusion. I remember that Annabelle Ewing spoke in the stage 1 debate about her great pleasure at being a member of the committee; I think that her mother echoed that sentiment in drawing to our attention the hard work that all members of that committee have done, under Bruce Crawford’s stewardship.

As I have been on the sidelines, I am glad to speak this afternoon. Like Malcolm Chisholm, I was interested in the Electoral Commission’s briefing for the stage 3 debate, which talks about the bill providing

“A well-run referendum which has the confidence of voters and campaigners”

and

“is underpinned by a clear and certain legal framework.”

I think that the bill provides a robust legislative framework that everyone can have confidence in, so I was somewhat disappointed to read in the press this week the suggestion from former forces minister Adam Ingram MP that an attempt might be made to reverse the yes decision in the two-year transition period between the vote in September 2014 and independence in 2016.

I draw Mr Ingram’s attention to the response in Glasgow this week to the proposal to raise the plinth for the statue of the Duke of Wellington, to prevent cones from being placed on the duke’s head. That demonstrates that once Scottish people have made up their minds on something it is a very brave person indeed who suggests that they cannot have their way. I caution against Mr Ingram’s proposed approach.

During the debate on Scotland’s independence, Opposition party members have often said that this 300-year-old union is the most successful partnership of nations in the world. Anne McGuire said something similar on “Scotland Tonight” this week when she was debating the issue.

I cannot help but wonder on what basis those members are judging success. We are the most unequal country in Europe and the fourth most unequal country in the developed world. We have the lowest male life expectancy, in parts of the east end of Glasgow. In my home town, after the closure of Ravenscraig, we had the highest male unemployment rate in Europe. We have been drawn into illegal wars. It might have been Anne McGuire’s appearance on television that reminded me that we have recently endured the closure of Remploy factories across our country. I do not regard those as measures of success. Scotland deserves and can afford a fairer society, and with the passing of the bill Scotland has the opportunity to choose a fairer society.

The other night on the news, Anne McGuire said that she hopes that the next UK Government will be a Labour Government. My hope for Scotland is that she has a Government that she votes for, which represents the values and choices of the Scottish people, so that we do not have foisted on us a UK Government that does not reflect how we want to be seen as a nation.

I will give an example that demonstrates why the issue is so important, from this week’s parliamentary business. On Tuesday, the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead, updated the Parliament on the European Union common agricultural policy budget. Had Scotland been a member state, as an independent nation in Europe, Scottish farmers and crofters would have received the full benefit of external convergence. It is clear that the UK’s uplift is the direct result of low payments in Scotland. Were it not for Scotland, there would be no uplift for the UK. Therefore, in the interests of justice, 100 per cent of the rebate should have come to Scotland’s farmers. The cabinet secretary said:

“During my time in this job, there have been many examples of UK policy undermining Scottish agriculture. I thought that Hilary Benn’s decision a few years ago not to compensate sheep farmers for foot-and-mouth disease was a low point, but this is even worse than that. The decision goes against the intentions of the EU, it defies the wishes of the Scottish Parliament and it takes away from Scottish farmers and crofters resources that should be theirs and on which their livelihoods depend. It is no surprise that Scottish farming and crofting leaders are bitterly disappointed by Mr Paterson’s decision.”—[Official Report, 12 November 2013; c 24261-2.]
That is just one reason why I think that this 300-year-old union no longer works in the interests of Scotland.

I conclude on a personal note. My son will be 17 at the time of the referendum and he will have an opportunity to vote for the first time. The opportunity to work with young people is one of the greatest privileges for me and for all my politician colleagues. Young people who are tackling sectarianism in our society, fundraising for hospitals and international aid, and advocating and supporting fair trade are more than capable of examining the issues around the referendum.

I want all Scotland’s young people to embrace the opportunity to ask the big questions. Where is Scotland’s place in the world? What values do I want my country to have? What are my priorities for my country’s future? I am glad that young people will have that opportunity next year.

15:34

Tavish Scott (Shetland Islands) (LD): Earlier, I met a Government minister from Jordan, who described to me the challenges of providing sanitation, water and food for the million and a half Syrian refugees that Jordan is dealing with, and of educating the hundreds of thousands of new children in Jordan’s schools. On days when we bandy round the word “historic”, we should probably think about those who are less fortunate than we are and who live in challenging circumstances, wherever they are around the globe.

I thank Andrew Mylne and his clerks to the Referendum (Scotland) Bill Committee, as well as the advisers, who gave the committee trenchant and helpful consideration during the bill process. I also thank Bruce Crawford for the way in which he convened the committee. Fairly, he made a political speech, much of which I enjoyed although not all of which I agreed with. I did not recognise his point about the manner in which the SNP wants to frame the debate. It is entirely fair for all of us who disagree with the proposition of separating Scotland from the rest of the United Kingdom to question that very robustly indeed. Just because people question it does not mean that they are anti-Scottish or anything else. I agree with Mr Crawford’s point about raising the tone. Let us hope that that is what happens, rather than what we have seen from some in his party in just the past few days in respect of the current Secretary of State for Scotland.

I thank the Deputy First Minister for the tenor of her remarks and the fair manner in which she has conducted the bill process. I agree with her observations on the introduction of votes for 16 and 17-year-olds. I noted with great interest the decisive verdict that 16 and 17-year-olds came to in Aberdeenshire in the recent widely held plebiscite in schools. Interestingly, there was full engagement and, more to the point, a very interesting result in terms of what might happen next year.

Like others on the committee, I have raised a number of issues about the way in which the campaign will be fought and conducted. I make no bones about my concerns on the use of taxpayers’ money for what are clearly political activities. I think that that will happen and I do not see any way in which it will be stopped. After next September, there might be many deliberations on what happened and how it was done but, in my view, there is not much to prevent taxpayers’ money from being used in that way.

Marco Biagi (Edinburgh Central) (SNP): Will the member give way?

Patrick Harvie (Glasgow) (Green): Will the member give way?

Tavish Scott: I will give way to Patrick Harvie.

Patrick Harvie: Will Tavish Scott explain whether his concern about the use of taxpayers’ money for political purposes is directed at both Governments or only one?

Tavish Scott: It is directed at both. I made that point in the committee, but Mr Harvie did not support the measure that I proposed, and nor did anyone else for that matter. I hope that the member will reflect that I made that point about both Governments. Clearly, I was in a minority of one, although there is nothing particularly new there.

I also have deep concerns about how much taxpayers’ money will be used in the context of the white paper. From what we are told, it is clear that the white paper will be sent to every household in Scotland. I do not think that taxpayers’ money should be used—

Jim Eadie (Edinburgh Southern) (SNP): Will the member take an intervention?

Tavish Scott: Let me make this point. The Deputy First Minister said that the white paper will be published shortly and, clearly, it is to be sent to every household in Scotland. I wonder whether it will be announced in the Parliament or to the media. I hope that the Presiding Officers will stand up firmly for the right of this Parliament to hear that major statement of Government policy first, before we hear it addressed to CNN, the BBC and The Scotsman, although I rather suspect that the media will be more important than a mere Parliament on a day like that.

I want to mention the historic questions that have been pushed by the Government and its
back-bench members in relation to the alternative. I believe that the onus is on those of us who represent the best of both worlds—the continuance of Scotland within the United Kingdom—to make a strong case for more powers for this Parliament, as I have always done. From the day that I was elected to it, I have believed that the Parliament should be strengthened and its responsibilities augmented, and I hope that those who hold similar views can make that case in the coming months. I entirely concede to Bruce Crawford the point, which he has made to me on many occasions, that the onus is on those of us who make that case to come up with a plan. Personally, I am happy to accept that challenge.

**Margo MacDonald:** The point intrigues me. The member claims that he has the best of both worlds. Does that mean by implication that the part of the British isles that left the British state has the worst of all worlds? Has Ireland got the worst of it?

**Tavish Scott:** I was speaking personally, but I take the wider and interesting political point that Ms MacDonald makes.

I hope that in future Scotland can move away from a centralised nationalist state—we have had a centralised state under the SNP—to a decentralised state that encourages local decision making and moves in a much more positive way to an exciting vision in which local people are involved in the decisions that they want to take. That is the Liberal Democrat future that I would like to see across Scotland. I do not and will never support institutions of state such as the centralised police force that we now have. Just yesterday, we saw a report from Audit Scotland that showed why I was right at the time to oppose that bad measure that the current Government introduced. I would rather that we debated those issues and had proper and robust discussions about them than spent all our time considering our constitution.

I finish with Malcolm Chisholm’s very fair observation that, whatever the result of the referendum—however our people decide where they wish to go after that determination in September next year—we must all consider that it will be our responsibility to work constructively together on the future of our nation.

**The Deputy Presiding Officer:** A number of other members wish to contribute. Speeches should be between four and six minutes.

15:41

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** I did not plan to begin my speech by disappointing Tavish Scott, but I find that I will, because I will bandy about a certain term. I believe that today is a historic occasion. Surely we can all recognise the historic significance of putting in place the framework in which the people of our country will get to decide their future—whatever anyone thinks about what that future may be—withstanding what else is happening in the world and other matters that concern us all.

I have said that I think that today is a historic occasion. It also marks the end of the focus on procedural matters relating to the referendum. There has been some criticism that we have been too focused on procedure, but I suppose that we had to be by necessity. We can now focus by and large on the issues in the debate ahead of us on Scotland’s future. I suppose that most of us have already been engaged in that debate, and I hope to say a little bit about that later, but it is probably right to focus a little bit more on the process that we have gone through to get to the place that we are at today.

We must recognise that we were in a different place from where we are now. At stage 1, all members came together to agree the bill’s principles. I am not sure yet—indeed, none of us knows yet—what will happen tonight, but I hope that we will all likewise agree to pass the bill so that we all accept that it is right that Scotland has a referendum. There has not always been agreement.

I turn to what the leaders of other parties have previously said. In The Times of 3 September 2009, Iain Gray spoke against our having a referendum. Tavish Scott, too, opposed a referendum. In The Scotsman of 1 December 2009 he was quoted as saying:

“I will neither vote for independence, nor will I facilitate it.”

In The Scotsman on the same day, Annabel Goldie talked about the Scottish Government ditching its attempts to hold a referendum. The anti-independence parties were previously therefore anti-referendum parties. I do not think that any of us should fear putting the question to the people and I very much welcome the change in stance that we have seen. I recognise that those parties continue to oppose independence, but I welcome their support for the referendum.

Another part of the process that I want to touch on is the role of the Electoral Commission. There was concern that the Scottish Government would ignore its findings and there were demands that the Scottish Government sign up to its recommendations before it had even announced what its findings were. We now know, of course, that the Scottish Government has signed up to those recommendations, which are reflected in the bill before us. That ends the nonsense and accusations that were made. I firmly believe that the bill will deliver a fair referendum for the people of Scotland.
The SNP is consistently accused in the Parliament of having an obsession with independence, but I briefly reflect on the fact that the issue of independence is raised most frequently in debates and questioning of the Scottish Government by our opponents. It is somewhat ironic that we are the ones who are accused of having such an obsession. I am certainly not obsessed with independence or the trappings of statehood; I am obsessed with making Scotland a better place for my children. I want a Scotland that can tackle the problems of intergenerational poverty and help those who have the best of no worlds, let alone the best of both worlds. I want us to tackle the problem of young people having to seek opportunities elsewhere and leaving Scotland because the opportunities do not exist here.

I want us to avoid squandering our resources. Ian Macwhirter had an interesting column in today’s Herald about the consequences of allowing Westminster to continue to use our resources to underwrite its agenda, which we have not backed at the ballot box. I want us to tackle our voicelessness in the world. I want Scotland to be a more confident place. Above all, I want to ensure that Scotland always gets the Government that reflects the priorities and values of its people.

I appreciate and agree with Malcolm Chisholm’s point that many of those objectives are shared across the parties, but I and others in the chamber believe that we need independence to achieve the list of ambitions that I have just set out.

If there is a yes vote next year, I firmly believe that my children and my grandchildren, should I have any, will grow up asking what the issue was. For them, independence will be normal just as it is for most countries. I hope that they will grow up in a better Scotland, which depends on who is elected to form the Government of the day. Independence will give us the chance to make a better country.

This week’s Westminster vote on the bedroom tax demonstrates why I believe that to be the case. In that vote, 15 of 59 Scottish MPs did not bother to vote. That is almost a quarter of Scottish representatives at Westminster who did not vote on an issue that is causing great concern and is raised here regularly. Can we imagine any circumstances in which a quarter of the members of this legislature would not bother to turn up to vote on an issue of that importance? I cannot conceive of such circumstances.

I agree with Alan Miller, the chair of the Scottish Human Rights Commission, when he says that he cannot conceive of the circumstances in which the Parliament would even have legislated for something as pernicious as the bedroom tax. That is one reason why power over such matters should be vested with the Scottish Parliament.

I look forward to the debate ahead. Like Drew Smith, I hope that it is well-informed and that we get better than we saw yesterday from the Secretary of State for Scotland when he asked how much it would cost to set up a new Scottish state from scratch. We know that independence will not be year zero, as Alistair Carmichael implied.

We also know the difference that devolution has made. If we fully equip this Parliament with those powers that are currently reserved to Westminster, I know that we can make a bigger difference. That will be the essence of our case in the future, and I look forward to making it between now and 18 September. Above all, I look forward to securing that yes vote next year.

15:47

Linda Fabiani (East Kilbride) (SNP): I am absolutely delighted to be standing here after agreeing legislation that will allow us to have a referendum on Scottish independence, because that has been an aspiration for so many people. It is about having the right to elect our Government of choice and thus influence policy and direction, and it is about the decisions about Scotland’s future being made by the people who care most about Scotland: the people of Scotland.

In parliamentary terms, it seems like the independence referendum has been a long time coming. However, as Drew Smith said, those of us who believe in independence have been campaigning for it for decades. When someone has a vision and belief that things can be better and fairer, months, years and decades go past and despite the scare stories, the tactics, and project fear, the campaign continues.

During the decades that people have been campaigning, things have changed markedly in relatively recent years. Devolution came here in 1999 and it has been good for Scotland. Gains are made for people, their families and communities when decisions are taken in Scotland. From early on in our reconvened Parliament, and through successive Governments, there have been gains such as free personal care, assistance for veterans, the smoking ban and the rejection of the privatisation of the national health service in Scotland.

The converse of that is that there is a heavy cost when we leave decisions in the hands of Westminster. In the 2010 budget, 76 per cent of Scottish MPs voted against further austerity cuts, but they were still imposed on Scotland. In the Welfare Benefits Up-rating Bill, 81 per cent of Scottish MPs voted against welfare cuts, but they
were still imposed on Scotland. Sixty-seven per cent of Scottish MPs voted against privatisation during the passage of the Postal Services Bill, and we all know what is happening there.

Sixty per cent of Scottish MPs voted against the replacement of Trident in 2007, yet the UK is pressing ahead with new nuclear weapons. The big thing is that only 36 per cent of voters in Scotland voted for the Tories and the Lib Dems, yet we got the coalition in Westminster with all the problems that it has brought for Scotland—and with a lot more yet to come down the line.

That is why I aspire to independence. It is about always getting the Government that Scotland chooses and putting Scotland’s future in Scotland’s hands.

Our opponents like to go on about it all being about the constitution. They say that we never talk about anything except the constitution. The reality is that it is about so much more than that. It is about using the constitution to have the ability to do more than mitigate the awful effects of welfare reform.

I have the privilege of sitting on the Referendum (Scotland) Bill Committee. However, I do not consider it a privilege to have to sit on the Welfare Reform Committee when the only powers that we have are to scramble about for money to create a Scottish welfare fund to mitigate the excesses of a Government down south. Everything that that Government does is to deal with the problems that it perceives it has in a part of the United Kingdom towards which all the money is drawn down.

Jackie Baillie (Dumbarton) (Lab): Will the member take an intervention?

Linda Fabiani: No, I do not think so.

Independence is about the ability to do so much more. It is about having the ability to create policies to suit those that they most affect. It is about having the same opportunities as citizens of other small, independent, successful European nations that think it is normal to take their own decisions and to look after their own people. I think that is normal. That is the way I want things to be.

This week illustrates perfectly why independence is about not just the constitution, but the issues that affect Scots. Jamie Hepburn referred to this, too. At the start of the week, there was a sense that Labour and its leader down south, Ed Miliband, had grasped the reality of the bedroom tax and was going to take the Government on over it. Apparently, even the shadow Scottish secretary, Margaret Curran, thought that that was the case, because she wrote to the Lib Dems to try to shame them into coming and voting with Labour to get rid of the bedroom tax. On Tuesday, the reality became clear: Ed Miliband’s agenda was just another Westminster game. We have had our fill of Westminster games. A deal had been done, the coalition knew that it faced no threat and back here in Scotland people could only watch in disbelief. I, for one, am sick of it.

Jackie Baillie: Will the member take an intervention?

Linda Fabiani: No, thank you. I have heard enough over the years. I really do not want to hear any more.

The Presiding Officer (Tricia Marwick): You are also in your last 20 seconds.

Linda Fabiani: I will finish, Presiding Officer. As one of Sir Walter Scott’s characters said of members of the previous Scottish Parliament—this is written on the Parliament wall—

“we could aye peeble them wi’ stanes when they werena gude bairns—But naebody’s nails can reach the length o’ Lunnon.”

That is absolutely true: they play the games down there and we can do nothing but sit and watch and shake our heads in despair.

When we started this journey we wanted a referendum made in Scotland. With the passage of the bill, we have that. Now I want to see us use it to return the full powers that this Parliament needs for Scotland’s future and to take us all forward.

15:54

Ken Macintosh (Eastwood) (Lab): I want to make a brief contribution to the debate, really in the form of an appeal about the way in which we conduct ourselves in the forthcoming referendum. Before I do, though, I want to thank all members for their work on the bill. Given the strong views that surround the referendum, it is remarkable that the process has been relatively consensual. It is perhaps the first and only consensual moment in the debate, so we should enjoy the occasion while it lasts.

One of the main purposes of the bill has been to set the regulatory framework around which the referendum campaign will be conducted. In that regard, it has done a good job. In the end, though, more important is our behaviour and the example that we set. The Deputy First Minister put it best in her opening remarks at stage 1, when she called on all sides to conduct

“a debate over the next 12 months that is respectful of one another’s deeply held views and devoid of rancour or abuse.”—[Official Report, 12 September 2013; c 22411.]

I doubt that any of us would disagree with that statement.
In turn, I hope that the minister would agree that it would not be acceptable for the Scottish Government to use its position to bully those who speak out against it. I raise that because, at the beginning of this week, there was a particularly unfortunate story about a Scottish Government minister who was accused of bullying academics at the University of Dundee because of their views on independence. I was surprised in this case, because I have always found the minister in question to be a decent person.

However, the most important point is that I was not surprised to read the story. Immediately, many other similar allegations sprang to mind. Clearly, all members here, if not necessarily the wider public, are aware of the behaviour of the so-called cybernats, from Mike Russell’s infamous researcher all the way through to Iain Gray’s treatment at the last election.

It is not just politicians who are subject to personal invective for daring to express their views.

Bob Doris (Glasgow) (SNP): Mr McIntosh used the expression “cybernats” to describe one side of the independence debate, demonising it compared with the other side. Does he agree that there are voices on both sides of the independence debate that are deeply irresponsible? To couch his point in language that suggests that only one side, and not the other, is irresponsible is to take the tribal approach that he said he wished to reject.

Ken Macintosh: I will make that point later in my speech.

It is not just politicians who are subject to personal invective. The Olympic cyclist Sir Chris Hoy and the comedian Susan Calman have found themselves inadvertently in the firing line. The Government has developed an unfortunate reputation for trying to suppress or totally silence those who might hold an opposing view. For those who do not work in politics, it is difficult to deal with what can be vitriolic criticism.

The chief executive of Aggreko—not someone who I would imagine is easily intimidated—complained of unpleasant attacks and said explicitly that leading business figures would not speak out on independence for fear of the SNP pouring “rains of bile and ire” upon them.

Ruth Davidson reminded me of the occasion when Jim Wallace was bumped for Keith Brown at a Loganair anniversary dinner after the Scottish Government demanded a change. That last one made me laugh. If the SNP thinks that someone is pleasant and reasonable as Jim Wallace is the enemy, it really needs to get a new sense of perspective.

The Minister for Children and Young People (Aileen Campbell): I am curious to know when Ken Macintosh will get to the bit when he is consensual in the way that he described at the start of his speech. We are still waiting. It is perhaps not the tone that we would expect from Ken Macintosh.

Ken Macintosh: My point is that it is not the tone that we expect from the Government. There are people on all sides, but the Government holds power, controls the debate and sets the agenda for Parliament. It is particularly important for those who have power not to abuse that position. That is the point that I am making.

I have not had to search hard for examples. Many immediately sprang to mind when I read the story earlier this week.

In the interests of balance, I will not pretend that politicians and supporters of other parties are angels. We are all well aware of how easy it is to move from loyalty to one’s colleagues to tribalism and aggression. Presiding Officer, you have corrected members often enough for incorrectly using the term “you” when referring to opposition members in parliamentary debate to know how easy it is to move from objective political discussion to personal attack.

The worries that I highlight matter at all times to this Parliament, but they matter particularly for this referendum because we all want it to be an inclusive discussion. There is already a huge amount of national and international interest in the referendum and the vote is expected to engage the whole of Scotland. The current estimate is that turnout will be far higher than in other elections, so we will engage with people who do not normally get involved in politics.

I speak as someone who supports votes for 16 and 17-year-olds in all elections. One of the main reasons for that is that I worry deeply that so many young people no longer vote. Surely the message that we want to get across is that all views matter—that the political process is a way to engage and is not one to be decided by name calling.

Here is an opportunity to engage a whole new generation in the importance of decision making and in taking control of its own affairs, whether that be through independence or, as I hope, through the powers and benefits of devolution, through the Scottish and Westminster Parliaments.

It is up to all of us to ensure that the experience is rewarding and fulfilling and not one to be fearful or anxious about. If the minister addressed the
point that Drew Smith made earlier, that would be one way of reassuring me. What will be the formal process through which the Parliament can engage with stakeholders, take evidence and test the contentions in the white paper in the coming months?

Nicola Sturgeon: May I put it to Ken Macintosh that that is a matter for the Parliament? It is a matter for the committees. I will welcome maximum scrutiny of the white paper. It is going to be a wonderful document that will set out the overwhelming case for Scottish independence and I look forward to scrutiny of it. However, I cannot imagine Ken Macintosh’s reaction if I started to dictate to committees what their business should be.

Ken Macintosh: Despite the terms in which that was put, I actually welcome the Deputy First Minister’s comments. They imply that there will be a parliamentary process, and that is something to be welcomed. [Interjection.] I do welcome that. I welcome the fact that we will take evidence.

The Presiding Officer: I must ask you to wind up.

Ken Macintosh: Thank you, Presiding Officer.

I thank colleagues and I look forward to a constructive debate over the next 307 days.

16:00

Annabelle Ewing (Mid Scotland and Fife) (SNP): For my part, I am very privileged indeed to have been called to speak in this stage 3 debate on the Scottish Independence Referendum Bill. I say the word “privileged” deliberately, for there are many people who would have given their eye teeth to be standing here in my shoes today: people who did, indeed, till the soil. I pay tribute to each and every one of them, for this is indeed another historic day in the life of our Parliament and our country. How lucky we are to be part of the independence generation.

I too, as a member of the Referendum (Scotland) Bill Committee, pay tribute to the clerks, whose sterling service has ensured that we have been able to progress our work with due diligence and expeditiously. As other members have done, I mention our excellent convener, Bruce Crawford MSP, because the way in which he chaired our committee’s weekly proceedings was exemplary. He chaired them with competence, fairness and, importantly—I think that we would all agree across the parties—good humour.

With the Scottish Independence Referendum Bill likely to be passed later today, I believe that we can be assured that we will have a referendum process that is designed in Scotland for Scotland; that is fair and clear and has internationally recognised democratic best principles at its very heart; that has a clear date agreed—18 September next year—for the holding of the referendum; and that has a clear question agreed:

“Should Scotland be an independent country?”

That, indeed, is the key question each of us faces.

The question is not, “Could Scotland be an independent country?”, for the answer to that question is quite clear, as Scotland would be one of the richest countries in the developed world; rather, the question that is encapsulated in the bill is:

“Should Scotland be an independent country?”

The answer to that question—I would submit—has to be yes, for how can we ensure that all our vast resources are put to work for all our people if we do not take control over our own destiny? How can we ensure that we always get the Government that we vote for if we continue to be subject to the discredited Westminster system? How can we ensure that we are not part of the fourth most unequal society in the developed world, to which Clare Adamson rightly referred, if we fail to seize the historic opportunity that we have before us?

This is truly a once-in-a-lifetime chance. I believe that a new dawn indeed beckons for our country and our people. We have to decide: will we be content just to have the same old same old, or will we grasp this opportunity to build a better nation for future generations? I believe that for all those who live and work in Scotland—the people who care most about Scotland—this is indeed the time to be bold and have confidence in yourself, your family, your community and your country. This is the time to vote yes.

Before I close—I know that there are other speakers—I wish, with the chamber’s indulgence, to refer to something that I mentioned when I closed my remarks at stage 1. My mother, Winnie Ewing, famously said, further to her sensational victory in the Hamilton by-election in 1967:

“Stop the world, Scotland wants to get on.”

The world has been waiting patiently—the world is still waiting—but I truly believe that it will not be much longer now before Scotland rejoins the world and the community of nations.

16:05

Stewart Maxwell (West Scotland) (SNP): Like many others, I thank the convener for his work in chairing the committee so well. I also thank the clerks; the witnesses who gave oral and written evidence to the committee, which was invaluable in our examination of the bill; the committee advisers, who did a sterling job in helping us
through the process; and, of course, SPICe, which was also invaluable.

I want to pay particular attention to my fellow committee members. I think that we did a good job, in which we were full of respect for each other’s positions and concentrated on the bill and the work that we had to do, despite our differences on the central referendum question on independence itself.

Many people have said that this is a historic day because we are passing the bill. I agree. It is historic, but I also think that it is not very exciting. I do not mean that in a bad way; I say it because the whole process has been exceptionally well planned. The original bill that was introduced to the Parliament was very well drafted. Of course, there have been amendments to the bill as we have gone through the process and examined it in great detail, but the fact that it is not particularly exciting shows that the bill has been well planned and that the Government has done its job, and the committee has had a reasonably easy time in examining the process and procedures contained in the bill.

What a long way we have come since the 2011 election and the strident voices of the anti-independence parties, who said that they did not support independence and that they would not support a process to bring it about. I am glad that those voices have changed and that those parties have now decided that this is the right thing to do and accepted that the people of Scotland have the right to choose their own future. I am just sad that thus far they have failed to extend that logic to supporting that right across everything else. I cannot understand the logic of those who support Scotland having powers over health, but not welfare; over justice, but not defence; and over local tax, but not national tax. In my view, the arbitrary line that is drawn between devolved and reserved powers makes no sense whatsoever.

I cannot help but reflect on the difference between the relatively constructive and straightforward process that has surrounded the passage of the Scottish Independence Referendum Bill and, indeed, the Scottish Independence Referendum (Franchise) Bill, and the rather long and difficult debates—or, may I say, arguments—that took place around the most recent Scotland Bill. I served on the Scotland Bill Committee as well.

The fight to move us forward by such a small amount—by one inch—that surrounded the second Scotland Bill far exceeded anything that occurred during the passage of the Scottish Independence Referendum Bill. It is interesting that whereas we spent decades trying to get this place established, we spent a relatively short amount of time on the second Scotland Bill—although it was not the most constructive discussion that I have experienced. Despite the many protestations about support for devolution, more devolution and—among members of Tavish Scott’s party—home rule, the fact is that on every occasion that an amendment for additional power was lodged by SNP members, it was voted down by members who now say that they support lots of extra, new powers for the Parliament at some indistinct point in the future when, I suppose, they think that we might be ready.

Some issues around the bill raised questions. The question of purdah came up during the committee’s examination of the bill, and I welcome the Deputy First Minister’s clarity on that. We had questions about when the purdah period would fall, how long it should be and who it would cover. However, with the slight change that has been made even at stage 3, I think that we are in the right place with the length of the purdah period. It will also cover the right organisations. In short, I do not think that we need be concerned about that part of the bill.

As others have mentioned, there was a great deal of debate about campaign rules and spending limits in particular. Again, we are in the right place in that respect. I think that £7,500 is the right amount and that the level of constrictions on organisations not only allows us to be sure that the process is fair and transparent but lets organisations across the country get involved, take part and be part of this—I use the phrase again—historic process that we are undertaking.

I am very pleased that the question of designation of lead campaigners by the time we reach the 16-week period of the referendum was cleared up at stage 2. After all, it would have been a rather strange state of affairs if those organisations had not been in place that close to the referendum.

I recently had a conversation with a Slovenian woman whom I met on a bus in Vilnius in Lithuania. We got chatting because she recognised that I was not a Lithuanian; when I said that I was from Scotland, she immediately said that she had heard that there might be a referendum on independence here and asked whether that was correct. When I confirmed that it was, indeed, true, she was very excited by the prospect and thought it was an amazing thing to be happening in Scotland. After asking me a number of questions about the referendum—what was happening, who was saying what and what it would cover—she finally asked me what I thought the result would be. “What are the polls saying?”, she asked. I asked her what she thought they were saying and, without hesitation and with absolute confidence, she said, “100 per cent yes.” I said, “No, I wish it were.” When she guessed 90
per cent and then 80 per cent, I had to tell her the poll result that had been released just before I left for Lithuania. She was completely and utterly dumbfounded. She said that in her country it was unimaginable—

Drew Smith: Will the member give way?

The Presiding Officer: I am sorry but the member really needs to wind up.

Stewart Maxwell: I am just concluding, Presiding Officer.

The woman said that it was unimaginable that there would not be near unanimous support for running one’s own affairs. The fact that not being independent was unimaginable to that lady shows that, despite the scaremongering, independence is the normal state for peoples around the world. It is time that the people of Scotland took control of their own affairs—and they can do so by voting yes next September.

16:12

Patrick Harvie (Glasgow) (Green): Like others, I begin by once again offering my thanks to everyone who contributed to the committee’s work as we moved through stages 1 and 2 of the two referendum bills.

As others have pointed out, the process has been broadly consensual. Although the political tensions between supporters and opponents of independence were not completely absent, they were tempered and constrained enough not to prevent us from carrying out our work effectively. Our convener chaired our proceedings with fairness and charm, and Annabel Goldie always wore highly suitable shoes. [Laughter.] She was consistently impressive on that score.

Tavish Scott told us that he was on occasion in a minority of one—all I can say is that I know the feeling. In fact, I would go further and recommend the experience to every member in the chamber. They should try it at least once or twice during their political careers.

The fact that we were able to be broadly consensual in committee has prompted many members to talk about the tone of our debate over the next 10 months and suggest that it should be respectful and of high quality. To be sure, we should be able to disagree respectfully, but we do not always manage to do that in politics and between political parties. However, I hope that we return to that respectful tone as often as we can. Indeed, it is the tone that the yes and no campaigners in this referendum should be aiming for if they are serious about persuading undecided voters because it is that and not some hostile and polarised debate that those voters will listen to.

It is hugely important that we get the legislation and the rules of the game right for the referendum and it is not only desirable but vital that we conduct it with agreed rules to ensure that the side that comes out with the result that it did not want is still willing to accept it. We need a meaningful referendum and, in that respect, losers’ consent is going to be very important.

The aftermath—jubilation on one side and feelings of defeat and disappointment on the other—will be a tough enough circumstance for Scottish politics to come together again in, and we cannot afford to add to that complexity with a contentious process. I am therefore very glad that all sides seem happy with the bill. Many of the issues were successfully addressed by the agreement between the Scottish and UK Governments, which set the initial tone that allowed the broadly consensual committee process that followed.

What comes next? The implementation. There was a good degree of confidence among committee members—as I hope there is among all members—in the mechanics and the administration. We have a good degree of confidence that the referendum will be conducted to a high standard and that the process will carry the confidence of the country. We also need compelling political arguments from both sides. I want both sides to bring compelling and testing arguments to the debate. The white paper that the Government will publish soon will, no doubt, set out the Scottish Government’s current position in great depth. Perhaps in slightly less depth, the Green Party will tomorrow launch its campaign for a green yes vote. Although I admit that tender heads may still be wondering about our decision to launch the campaign on the day after our work’s night out, the Green Party will set out its own case for a yes vote.

The radical independence conference that will take place later in the month will set out a wide range of views on the left of Scottish politics, and perhaps some compelling arguments that are not heard in the chamber will be heard at that conference. I would welcome views of the same breadth, depth and passion on the no side of the argument. I challenge the idea that Scotland is on pause. In fact, this has been one of the most exciting and creative times—not always in the chamber, but in wider political debate—in which organisations, whether or not they are strictly neutral, have been asking questions of both sides and setting out their agendas for the possibilities of independence. This has been one of the most creative times that I can remember in Scottish politics, and we should conduct the referendum campaigns in that spirit so that, whichever result the Scottish people choose, we have the momentum to take some of those creative ideas...
forward. I believe that we will be better placed to put them into practice if we get a yes vote, but I want the debate on both sides to be of that standard.

Above all, we must drive up participation. If we have compelling, creative and imaginative argument, we will see a strong turnout. Everybody agrees that the result should not be contingent on an arbitrary, fixed level of turnout, but that is not to say that turnout does not matter. Scotland’s political culture will be much healthier if we have all taken part in the decision together.

I close by echoing the sentiments that other members have expressed. The Scottish Independence Referendum Bill Committee should expand its remit and take evidence on the white paper. The subject committees will want to look at certain aspects, but the constitutional transitional questions also need scrutiny and all sides should be willing to have that debate on the record in committee over the coming months.

The Presiding Officer: A number of members still wish to speak. From here on in, we are going to have speeches of four minutes in the hope that we can get through everybody.

16:18

Stuart McMillan (West Scotland) (SNP): I am pleased to speak in the debate on this historic day for the Scottish Parliament. It has been a privilege to be a member of the Scottish Independence Referendum Bill Committee, and I pass on my thanks to my fellow members of the committee, the advisers, the clerking team and all those who gave evidence to the committee.

An issue throughout the bill process has been the need for the approach to the bill to be beyond reproach, whatever the outcome next September. No matter which way members vote tonight, and no matter which way the electorate votes next September, the bill process has been transparent, inclusive and clear. Indeed, the briefing that we received from the Electoral Commission for today’s stage 3 debate states:

“Our overall view is that the Bill as amended currently meets this standard and reflects many of the recommendations that we made”.

The standard referred to is about having

“absolute clarity on the roles and responsibilities of those administering the referendum”.

Today, we will pass the Scottish Independence Referendum Bill. I welcome Labour’s commitment to vote yes tonight and I hope that I can encourage Labour members to vote yes next September as well. Tonight’s vote will take us a stage closer to the day when, I hope, the people of Scotland will choose to take responsibility for their own lives and for the future of Scotland.

Like everyone in the Parliament, I will campaign for what I believe in while respecting the fact that others will have their own position, with which I may disagree but to which they are entitled. The challenge for both sides in the debate is to rise to the occasion, to engender debate, to foster a greater understanding of the political process and to take the opportunity to encourage more people to take part both in the referendum and in future elections.

We all need to provide a clearer picture of what Scotland will look like in the event of a yes vote, or even a no vote, on 18 September. I look forward to the publication of the white paper on 26 November and I also look forward to reading the offerings from those campaign groups that will be encouraging a no vote. We need to know what the consequences would be for Scotland in the event of a no vote. On that point, I acknowledge the comments that Tavish Scott made earlier.

The referendum will provide the people of Scotland with the choice to make history. There can be no bigger political decision for electors than to decide on their political future as a nation. I look forward to Friday 19 September 2014 and to watching the rebirth of a nation knowing that I have played a part in that—my six-year-old daughter will have assisted, too—and knowing that many friends and fellow nationalists have helped as well. I will also know that those who are no longer with us have done their part in keeping the independence flame burning through some tough times for the national movement.

The phrase “standing on the shoulders of giants” can be utilised all too freely, but today we on these benches are standing on those shoulders. We have a responsibility to lost friends, as well as to our families and colleagues, to deliver our shared dream of an independent Scotland that can provide a better future and opportunities for our future generations. I will be delighted to vote yes tonight, and I cannot wait to vote yes on 18 September 2014.

16:22

Bob Doris (Glasgow) (SNP): I am privileged to be able to speak in this afternoon’s debate on the Scottish Independence Referendum Bill. I am sure that we will come together at 5 pm today to vote for a referendum on Scotland’s future that will ask people to choose that most fundamental of democratic principles—self-government. I firmly believe that, when the people of Scotland are asked whether we should be an independent country, they will give a resounding yes.
I welcome the non-tribal and constructive approach that, as we have heard, the Referendum (Scotland) Bill Committee took to scrutinising the bill. I very much hope that all parties—and, indeed, those of no party-political persuasion—will continue to take a non-tribal and constructive approach to the debate that will now follow and intensify.

At First Minister’s question time earlier today, in commenting on the future of Scotland when independent, Johann Lamont asked, “What is plan B?” In other words, what will any party do if it does not get its way? When, in the days ahead, the Scottish Government publishes its white paper on independence, there will be certainty and clarity about what an independent Scotland would look like and aspire to if, following a yes vote, an SNP Government is returned in the 2016 elections. As for plan B, without independence, there will be a commitment to continue to stand up for Scotland’s interests at every opportunity and, if given the honour, to continue to be a responsible Scottish Government.

However, the need for a plan B cuts both ways. The Labour Party contends that the only way to protect Scotland’s interest is to elect a UK Labour Party to a Westminster Government, which rarely, if ever, has Scotland on its radar never mind as a priority. The Labour Party plan A includes nuclear weapons and power, draining our oil and gas and other natural resources and sticking to Tory capital cuts to Scotland. That is a weak and ineffective proposition to put to the Scottish people.

What about plan B? That includes even more welfare reform and sticking to the bedroom tax. I was about to go through a long list of what plan B would mean, but the Labour Party would implement those measures, too, were it elected as the UK Government. Plan A is not satisfactory for the Scottish people and plan B is to play Russian roulette with Scotland’s future and to let the Tories lose on Scotland with a future UK Tory Government. That is unacceptable; it is why the referendum bill must be passed and why the people must vote yes in the independence referendum.

I will mention a couple of obvious things arising from my work in the Parliament that tell me on an elementary basis why we need independence. First, as deputy convener of the Health and Sport Committee, I know that every time there is a £1 million disinvestment from the health service in England, our committee is looking at £98,000 less spent on the Scottish health service. That is simply unacceptable.

On a local level, what else is unacceptable is that a wonderful group called Rosemount Workspace, which works with vulnerable young people furthest away from the labour market, cannot get some young people into education courses because of UK benefit rules. The UK Government will not change the rules; Angela Constance, the Minister for Youth Employment, would if she could. That is why I want independence—not as an end in and of itself but for the future of Scotland’s young people. I very much hope that Parliament comes together to take that next step in the journey to Scottish self-determination.

16:26

Margo MacDonald (Lothian) (Ind): The Deputy First Minister said that the bill is large and complex. That is fair enough—but who cares about that? What we care about is the bill’s central core, which is the opportunity for Scots to face and to answer the core question that runs through all our politics. The bill gives us a chance to choose a future of which the boundaries, aspirations and achievements of Scots will be determined by the Scots themselves, with no excuse with which to blame anybody else.

Some Scots feel that the future is somehow a barter, and that if we stay a region of the United Kingdom, there will be a safety net—but safety nets can fail, too. If you fall into the safety net at the circus, you are not as big a draw as you are if you try without the safety net. I am for going without a safety net, because we have everything that we need to do that.

Other Scots see Scotland not alone, but certainly alongside and the equal legally of any other country in the world. Independence is important for our self-image because we will change from regionalists and those who are always a wee bit behind the fashion and the times, to being leaders, as other small countries are. That applies not only to the normal small countries that we always cite; members should think also about Singapore and what it has achieved. We may not like how they did it, but members should think about what it did with the numbers and its positioning. There are lots of examples that we can draw from.

I know that I will never regret voting yes. It will be my legacy to my grandchildren—there are 10 of them. We will be expecting them to pick up from where we leave off. We will have given them the opportunity to go for the highest standards of achievement and humanity—just the best. That is what they will aim for, if I vote yes, and that is why I will never regret voting yes.

I wonder how the people whom we call unionists—of course, most of them are not unionist; they just happen to be on the opposite side of the chamber—feel about their legacy? We know what their legacy is: 17 more years of fuel
prices pitched higher than inflation and heaven knows how many more years of austerity. It is a crippling of ambition and it is a squeezing down of what we in Scotland might aspire to. That is the legacy that we take with the union. If they do not want to accept that, let us hear what the alternatives are, because there have been precious few alternatives voiced in the debate so far.

I ask those who are trying to be imaginative about what would happen post independence—the new relationships and partnerships that would be struck—to have a sense of context and timing. It will not all happen at once. Some things can happen the week after and others will take 10 years. They must be sensitive to that because first, they will lack credibility if they do not get it right and, secondly, they will frighten the horses—I mean, the opponents.

People ask whether they should vote for independence or union with their hearts or their heads. Like all Scots, their hearts are in the right place, so their heads will probably dictate that they should not vote themselves into poverty, fuel poverty—which I have talked about—and minority. If people think about it, their heads—not their hearts, which know that they are Scottish and need nothing else to think about—will tell them that. If they think about their future interests and those of their families, they will vote with their heads; they will vote yes and vote for an independent Scotland.

16:30

Sandra White (Glasgow Kelvin) (SNP): I am not a member of it, but I thank all members of the bill committee and the clerks for the excellent work that they have done and the hours that they put into the bill.

I am very proud to be one of the people in Parliament who are able to vote yes on the bill today and to vote yes in September next year. I echo my colleague Stuart McMillan's comments about the many people—too many to mention—who are not here to see this day. We are standing on the shoulders of giants; if not for them, we would not be debating the bill today, so I pay tribute to them. Everyone knows many of the people whom I mean.

Margo MacDonald’s speech was excellent. We have all seen what has happened in Scotland; it has flourished under devolution, especially since 2007. No one can deny that the statesmanship of the First Minister and the economics that he has brought to the country are far beyond those of any other Prime Minister, never mind those of any other First Minister or Administration.

For some reason, unfortunately, Labour members in particular—[ Interruption.] I hear the Labour members from the sidelines. It seems that Labour members just cannot stomach this. They just cannot stomach the fact that someone who does not agree with them—who does not agree with the union—can be so successful for the Parliament and can bring so many people from throughout the world to Parliament; the greatest number of ambassadors and others are coming to visit the Parliament. We should all be proud of that, but Labour members cannot get through the wall of thinking that because it was the SNP that did it, it cannot be good for Parliament or Scotland. Yes, that makes me angry, but it also makes me very sad.

I will tell members one thing that makes me even sadder, which is that what comes out—[ Interruption.] Duncan McNeil is probably one of the people I mean, along with many others from the Labour benches. When we talk about shipbuilding, the Labour Party tells people to vote no and it says that, if they do not vote no, the yards will disappear from the Clyde. Let us just read what BAE Systems said about that.

Duncan McNeil (Greenock and Inverclyde) (Lab): Will Sandra White give way?

Sandra White: No.

The Ministry of Defence agrees that Glasgow is the most effective location to build type 26 ships. [ Interruption.]

The Presiding Officer: Order.

Sandra White: BAE said:

“BAE Systems has agreed with the UK Ministry of Defence that Glasgow would be the most effective location for the manufacture of the future Type 26 ships ... the Company proposes to consolidate its shipbuilding operations in Glasgow”.

Do members know why BAE is doing that? It has said that it is because Glasgow has the best workforce—the one with the most experience.

Members should look at all the other countries in the world. We do not need only Ministry of Defence orders; we can build other ships. We can lead the nation but, once again, the people in the Labour Party see doom and failure at every single corner. It is a disgrace.

I will give more time to the one thing that really saddens me. As we speak, a lady in Pollok is being evicted from her house because of the bedroom tax. The Labour Party said that it would protect such people—that it would protect its constituents—but its MPs could not even turn up for a vote. I say to Labour members, shame on you. Shame on you.
George Adam (Paisley) (SNP): I am not on the Referendum (Scotland) Bill Committee, but I commend it for its hard work on the bill. I welcome today’s debate and the debate that we will have in our communities. That debate is all about what we can do for our communities and what independence offers our communities.

I have been involved in politics for longer than I care to remember, but my motivations now are the same as they were when I came into politics. I want to bring about change, to make a difference and to make people’s lives better. That is why I support independence.

I believe in having a vision. Vision has been lacking in the speeches of Opposition members. Where is their vision? What is their idea for tackling head on the challenges that we face? Why do they not want us to take on more responsibility and see what we can do? Any daring hope for a better future has been glaringly absent from their speeches. Is it wrong to work towards making the country better? Is it wrong to offer people in our communities something that can make a difference, instead of having academic debates, as Labour members continue to have in Westminster, when they can be bothered to turn up to vote? We need to do something that will make a difference to real people in the real world. Everything that I talk about relates to the people I represent. Members should believe that that is the way we have to go.

Like Jamie Hepburn, my motivation is to make a better life for our children and our nation. When I look at my own children, apart from feeling old I realise how much I want for them. I want them to have the ambition to be everything that they can be. I want them to look to the future without the Scottish cringe, and I want them to believe that they can achieve anything that they want to achieve. That is what I want.

I think that some Opposition members should start to feel more confident about themselves. We can all do that. It is a question of having the confidence to take on the powers of independence and to have meaningful debates in Parliament. I do not want to have debates such as the one that we are having now, in which members at opposite ends of the chamber are arguing about whether we should be part of a union that is well past its sell-by date, or part of new dynamic Scotland. I want us to debate what we are going to do. We need the powers of independence. The sooner Opposition members think that way and start to have discussions along those lines, the sooner we will be able to move our nation forward. That is what the public want. They want us to discuss Scotland’s future and to move things forward, rather than to sit here having academic debates.

What is the cost of Westminster? The cost to us of Westminster is more austerity: 76 per cent of Scottish MPs voted against further austerity cuts in the Finance Bill in 2010, but those cuts were imposed anyway. That is the cost of the union. The real-terms cut in the Scottish Government’s budget of 11 per cent over five years and the cut of 26 per cent in capital expenditure are what the union offers Scotland. It does not offer us ambition, nor does it offer us the future that we all want for our children and the children of others. What it offers us is Trident on the Clyde, at a cost of £163 million per year, which alone could pay for 4,500 teachers, 1,500 consultants, 33 primary schools, seven secondary schools—

Jackie Baillie: Will George Adam give way?

The Presiding Officer: The member is winding up.

George Adam: That is what we should be debating. We should be talking about what we should do with that money and how we could build a better Scotland. The sooner Opposition members remember that, the sooner we will be able to say that Scotland is moving forward.

The Presiding Officer: I call Rob Gibson. I can give you three minutes, Mr Gibson.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): Thank you very much, Presiding Officer.

I am a member of the committee that brought us the bill and the opportunity to debate it.

The Electoral Commission, which I pursued for a detailed plan, has said that it is pleased that the Scottish Government has accepted many of the recommendations that it made in its report following the referendums in 2011. In other words, the bill represents an excellent way forward for a referendum in the eyes of our people and of the world.

Today’s debate sums up something of the problem that the country has. Project fear has failed to put up speakers on the side that says no. Most of the speakers have supported the bill and independence. Why will the other side not come out and argue the positive case for what it believes? This is the place where that should be done. I believe that that positive case is not being made because it is the unionists and Westminster rule—not anything that the Scottish Government has done—that have put Scotland on pause. It was the Westminster Government that handled the crash badly; it is unpicking the glue of what was the United Kingdom by dismantling the health service, going for nuclear weapons and deciding
that we will have nuclear power stations, no matter what we want.

All those issues can be debated in the referendum campaign. All those issues are there for us to ensure that people in Scotland have a fair chance. We on our side of the case know that, when the Scots vote yes, they will always get the Government that they want.

As far as I am concerned, Scotland will be an exciting place to come to next year, to see the Commonwealth games, the homecoming, the Ryder cup and a new nation ready to take its place with the nations of the world. I support the bill.

The Presiding Officer: We move to wind-up speeches. Annabel Goldie has four minutes.

16:41

Annabel Goldie: In my opening speech, I raised some questions for the Deputy First Minister—[Interruption.] Oh—Mr Swinney is back among us and is having a wee chat. Does he want to intervene?

John Swinney: I am always ready to come to the rescue of Baroness Goldie when she gets into trouble. If she is having difficulty in filling her four minutes, perhaps she can tell us what propositions the Conservative Party will advance to improve the governance of Scotland, given its paltry failure over many years to deliver any form of stronger self-government for the people of Scotland.

Annabel Goldie: The proposition is simple—it is called staying in the United Kingdom.

Members: Aw.

The Presiding Officer: Order.

Annabel Goldie: In all seriousness, I say to the Deputy First Minister that I would be grateful if she responded to the questions that I raised in my opening speech.

The Deputy First Minister referred—rightly—to the Edinburgh agreement, which was historic, pivotal and an exemplar of how a Westminster Government and a devolved Government can work together. The Deputy First Minister says that that reflects what could happen after a yes vote; I say that it is a shining example of how devolution can continue to work in the United Kingdom following a no vote.

Sandra White uttered the memorable phrase:

“Scotland has flourished under devolution”.

Let us all pin that to our lapels and not let it be forgotten.

The Deputy First Minister said that the white paper will present an overwhelming case for independence. Should that case not have been made by now? It has certainly been a long time coming. I will reserve judgment on the white paper and leave the enthusiasm to the Deputy First Minister.

The Deputy First Minister made an important point about the language and conduct of the debate, to which Bruce Crawford and I, and others, referred at stage 1. I was struck by what Bruce Crawford, Malcolm Chisholm, Ken Macintosh and Patrick Harvie said today. This is not about being consensual. How could it be? That would be an intellectual confusion. There will be passion, robustness, fire, flair and verve—they all have their place. However, intimidation, jeering and sneering do not in any circumstances have a place.

On the merits or demerits of the argument, assertion is not fact and repeated platitudes are not evidence. I know that the public want facts and evidence. I know that the public want clear language and that they want information and explanation, not provocation and confrontation.

Like others, I have attended public meetings. It might be uncomfortable for the SNP that it has emerged that more is known about the partnership that is the United Kingdom than is known about separation. People understand what the United Kingdom is; they understand what it means and what it has done. I have no doubt that that explains the polls to which Mr Maxwell referred.

Some might have no time for the United Kingdom and find nothing good in it, but others see virtues.

Margo MacDonald: Will the member give way?

Annabel Goldie: I am very tight for time, having given Mr Swinney a very generous intervention.

Other people see virtue in the United Kingdom’s capacity to influence, whether that is through our permanent membership of the United Nations Security Council, our being in the G7 and G8 groups of countries or our influence on the global stage, about which Tavish Scott talked. People understand that, because they see it happening. People very particularly understand the meaning and significance of our British armed forces. The recent remembrance commemorations poignantly underscore that. They understand what the pound is. They know that that is their currency in the United Kingdom and they want it.

All that means that the separation case and the white paper face a significant challenge. The white paper needs to set out the case for separation. It must not just detail the virtues that those who make the argument maintain are there but produce the blueprint as to how separation would work.
There is a huge sentiment in Scotland, which is shared by me and hundreds of thousands of other people, and which is the polar opposite of the sentiment that was expressed by Linda Fabiani and Annabelle Ewing. It is that people like being part of the United Kingdom and regard that as positive. Contrary to what SNP members argue, there are hundreds of thousands of non-SNP supporters throughout Scotland who want to keep the United Kingdom, and they place that above party politics.

That is why I am confident that next September people will vote for the proven, positive partnership that is the United Kingdom and reject separation.

16:46

Lewis Macdonald (North East Scotland) (Lab): The bill is a procedural bill, and the process has been concluded with a high degree of consensus, as is borne out not least by the record progress on amendments this afternoon. The bill will be passed without substantial division in a few minutes’ time.

Of course, that is only part of the story. The price that we have paid this afternoon for our willingness to compromise on amendments has been an endless queue of what I might generously describe as excited SNP speakers. Many made good points; some perhaps made less good points. What was perhaps most surprising was that Rob Gibson, speaking towards the end of the debate, decided to criticise us for indulging those speakers. Perhaps that is a sign of things to come.

Of course independence matters to the SNP. We know and expect that Rob Gibson, speaking towards the end of the debate, decided to criticise us for indulging those speakers. Perhaps that is a sign of things to come.

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Lewis Macdonald: I promise Kevin Stewart that Labour’s plans for devolution will not be a secret and will indeed be made public at an early date.

Members: When?

The Presiding Officer: Order.

Lewis Macdonald: I am glad to hear that the party of Government recognises the party that created the Scottish Parliament and is looking to us for a lead on the next phase of devolution. That is only as it should be.

We have agreement on how we go forward on the referendum, and what we have broadly agreed is to follow the Electoral Commission’s approach in ensuring fairness and transparency in elections and referendums across the UK.

At stage 2, I was reminded that in my submission to the Scottish Government’s consultation I said that we should follow the Electoral Commission’s lead on the rules that govern the conduct of the referendum. The bill, as amended, largely does that, with the one exception of the approach to absent voting. I expressed concern about that earlier this afternoon, and although Nicola Sturgeon did not accept my point I am glad that I did so. I am, after all, as interested as any other member is in how to get the vote out at elections, and not just at the referendum. It was a unique experience to be advised by Kevin Stewart on how to do that better. I am of course grateful and I will bear his advice in mind for future reference.

On absent voting, the genuinely novel aspects of the voting system will require specific guidance and impose new burdens, but I believe that the counting and electoral registration officers will be well able to meet those demands.

The other area of debate has been on spending to a common plan, on which we thought that the bill could reasonably be strengthened to ensure transparency and to avoid campaigning by proxy through organisations that are invented for that purpose. Again, the issue is one of balance, this time between enabling participation by as many campaigners as possible and ensuring that no one seeks to mislead voters. Ministers have acknowledged the importance of getting that balance right although, unlike others, they believe that the bill achieves that as it stands. It will now be all the more important that the Electoral Commission builds on the framework that is provided by the bill and brings forward clear guidance on how campaigners should account for work that is done as part of a common plan. That way, the letter of the law will be clearly understood and, I hope, its spirit will be respected, too.
So the stage is set and the rules are clear, and those who are charged with ensuring a fair and transparent process know what tools they will have to hand to carry out their tasks. Now the country will decide and the world will be watching.

Mark McDonald (North East Scotland) (SNP): Will the member give way?

Lewis Macdonald: Nobody who has been involved at any stage in the process could doubt its significance, which is why, as many members have said, the debate should be conducted in a respectful manner.

Mark McDonald: Will the member give way?

The Presiding Officer: The member is in his last minute and he is not giving way.

Lewis Macdonald: It is important to say that Scottish men and women who take part in the debate should not lose the right to that respect on the basis that they are elected members of the Westminster Parliament. Those rules apply there, too.

It is not enough for Parliament to set the stage; it is also our job as members to scrutinise legislation, as we have done, and the wider policies and actions of the Scottish Government. That is why, at stage 1, we raised the issue of scrutiny of the white paper. Now that we have come to the point at which the referendum rules have been settled, decisions must soon be made about scrutiny of the white paper. There is a case to be made for that to be done by a committee of Parliament, constituted in a similar way to the Referendum (Scotland) Bill Committee. If ministers do not support that, I hope that they will tell us how they wish to proceed, so that the Parliament as a whole can come to a view.

The people of Scotland have a momentous decision to make, which we have enabled through the proceedings on the bill. Over the next few months, Parliament will have a role in ensuring that the proposals on which people will vote have been examined and interrogated, as we would do for any other measure. After all, that is what a Parliament is for, and it is through Parliament that the people of Scotland will continue to hold ministers to account, before and after the referendum.

16:52

Nicola Sturgeon: The debate has been interesting and, in the main, good natured. It is fair to say that it has had its surreal moments. Annabel Goldie transported us back to her first primary school dance and the awakening of her awareness of the male of the species. Unfortunately, she returned to talking about the bill and we did not get to hear how that evening ended, but perhaps we will on another occasion.

Annabel Goldie also raised a serious question for me about the timing and extent of pre-referendum guidance. She will recall that I wrote to the Referendum (Scotland) Bill Committee on 22 June setting out the list of public bodies that are subject to the 28-day pre-referendum restrictions. The exact timing for the issuing of that guidance is yet to be decided, but it will be issued in good time to allow staff to familiarise themselves with it. As I have said previously, we will send a copy of the guidance to the Referendum (Scotland) Bill Committee. I hope that that answers Annabel Goldie’s point.

Bruce Crawford made a fine speech, setting out in simple but powerful terms the case for Scotland becoming an independent country. I take the opportunity to again place on record my gratitude and that of the Scottish Government to Bruce Crawford for the enormous role that he has played in the process. Many fine speeches have been made, including by Malcolm Chisholm, Stewart Maxwell, Patrick Harvie, Stuart McMillan, Bob Doris, Margo MacDonald, Sandra White, George Adam, Rob Gibson, Clare Adamson and Linda Fabiani—they made wonderful speeches. Some of the speeches have been of the highest quality, and I want to single out two.

The first was by Annabelle Ewing, who spoke about her mother. When I press my button in a few minutes’ time, there will be many people in my mind who have contributed much to bringing us to the point that we are at today. One of them will be Annabelle Ewing’s mother: the fine, fantastic Winnie Ewing. When Winnie Ewing opened the Parliament, she reminded us that we lost our independence back in March 1707. If we vote yes next year, we can regain our independence in March 2016. I know that nobody will be happier on that day than Winnie Ewing. We pay tribute to her and others today.

Mark McDonald: I had hoped to speak in the debate. Brian Adam, who was elected in 2011, is one of the people who ought to have been here with us today to press their voting buttons. I am sure that the cabinet secretary would want to record her wish that Brian were still with us today to be able to vote for the bill at 5 o’clock.

Nicola Sturgeon: I dearly wish that Brian Adam and many other people were with us today, but I am sure that we all, in enabling the people of Scotland to vote in a referendum, will do them and their memories justice.

The other speech that I want to highlight is that by Jamie Hepburn. I thought that he made a profound point and spoke for all SNP members in doing so. He said very clearly that, for us,
independence is not an end in itself; it is a means to an end, and that end is a better Scotland. As he was speaking, it struck me that those who can be accused of being blinded by constitutional arguments in the debate are, in fact, Labour members. In truth, there is more that unites the SNP and Labour on many social and economic issues than divides us, but Labour is so wedded to the Westminster system that it would rather have a Tory Government dismantling our welfare state than have an independent Government doing something about inequality. I think that that position will fall apart over the next few months under the weight of its own absurdity, as more and more Labour voters realise that the way to achieve their political aspirations is not to remain with Westminster but to vote yes and have Scotland become an independent country.

That takes me to Drew Smith’s contribution. He started very well with the proud declaration that he will vote yes at decision time this afternoon. I think that he might find that he will get a taste for voting yes; I am sure that, in his heart, he would rather be there than where he went with his remarks. After that proud declaration about being a yes voter, it was downhill for him, because he characterised the debate as a choice between Scotland becoming a separate country or staying with Westminster. I ask him to look around the world. There are no separate countries in the world these days; there are independent countries—some 200 of them.

Drew Smith: Will the Deputy First Minister give way?

Nicola Sturgeon: Stewart Maxwell made an excellent speech about Lithuania. Those countries govern themselves. They look after their own interests and co-operate with their neighbours when that is appropriate. The choice that we face is between being like that—normal and independent, in charge of our own destiny, and getting Governments that we vote for—or continuing to be governed by a Tory Government at Westminster. If Drew Smith wants to defend that, he can be my guest.

Drew Smith: I actually referred to independence and separation and made a point about language, but the main thing that I tried to cover in my speech was the tone of the debate. As to how I could ever be persuaded by the Deputy First Minister’s case, does she regret referring to her fellow Scot Alistair Carmichael as “the Secretary of State against Scotland”?

Will we hear more of that in the campaign?

Nicola Sturgeon: If there was any doubt at all that Westminster does not work for Scotland, that doubt was surely dispelled this week. Scottish Labour MPs at Westminster are so used to being outvoted that they do not even bother to turn up to vote on something as important as scrapping the bedroom tax. There we have it: the price of Westminster government. The Tories impose the bedroom tax and Labour does not even bother to try to protect Scotland from it. We need powers over welfare in this Parliament.

The vote next year is a choice. If we vote no, nothing changes. The Tories will continue to dismantle our welfare state. If we vote yes, we express confidence in ourselves and in future generations. We will take our future into our own hands. We will chart a new future and better direction for our country. That is what I believe people in Scotland will vote for and when that happens, no longer will the Tories impose the bedroom tax. This Parliament will be responsible for building that better Scotland that we want to see.

That is why I take so much pleasure in asking members across the chamber to pass the Scottish Independence Referendum Bill.
Decision Time

17:01

The Presiding Officer (Tricia Marwick): There is one question to be put as a result of today’s business. The question is, that motion S4M-08239, in the name of Nicola Sturgeon, on the Scottish Independence Referendum Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Scottish Independence Referendum Bill be passed.

Meeting closed at 17:01.
Scottish Independence Referendum Bill  
[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Scottish Independence Referendum Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision, in accordance with paragraph 5A of Part 1 of Schedule 5 to the Scotland Act 1998, for the holding of a referendum in Scotland on a question about the independence of Scotland.

Referendum

1 Referendum on Scottish independence

(1) A referendum is to be held in Scotland on a question about the independence of Scotland.

(2) The question is—

“Should Scotland be an independent country?”. 

(3) The ballot paper to be used for the purpose of the referendum is to be printed—

(a) in the form set out in schedule 1, and

(b) according to the directions set out in that schedule.

(4) The date on which the poll at the referendum is to be held is 18 September 2014, unless before then an order is made under subsection (6).

(5) Subsection (6) applies if the Scottish Ministers are satisfied—

(a) that it is impossible or impracticable for the poll at the referendum to be held on 18 September 2014, or

(b) that it cannot be conducted properly if held on that date.

(6) The Scottish Ministers may by order appoint a later day (being no later than 31 December 2014) as the day on which the poll at the referendum is to be held.

(7) An order under subsection (6)—

(a) may include supplementary or consequential provision,

(b) may modify any enactment (including this Act), and

(c) is subject to the affirmative procedure.
Franchise

2 Those who are entitled to vote
Provision about who is entitled to vote in the referendum is made by the Scottish Independence Referendum (Franchise) Act 2013.

2A Declarations of local connection and service declarations: further provision
(1) The Scottish Independence Referendum (Franchise) Act 2013 is amended as follows.
(2) In section 7 (declaration of local connection: additional ground for young people), after subsection (5) insert—
“(6) For the purposes of section 5(1)(b), a declaration of local connection made by virtue of this section is to be treated as having effect also for the purpose of meeting any residence requirement for registration in a register of local government electors.”.
(3) After section 7 insert—
“7A Children etc. of people with a service qualification
(1) This section applies for the purposes of sections 14 to 17 of the 1983 Act (service declarations), as applied by this Act in relation to registration in the register of young voters.
(2) An eligible child has a service qualification for those purposes.
(3) Accordingly, any reference in an applied enactment to a person having a service qualification is to be read as including an eligible child.
(4) An “eligible child” is a person—
(a) who will be aged 16 or 17 on the date on which the poll at an independence referendum is to be held,
(b) a parent or guardian of whom has a service qualification under any of paragraphs (a) to (e) of section 14(1) of the 1983 Act, and
(c) who is residing at a particular place in order to be with that parent or guardian.
(5) Section 16 of the 1983 Act (contents of service declaration), as applied by this Act, has effect for the purposes of a service declaration by an eligible child subject to the following modifications—
(a) the references in paragraphs (b) and (d) to the United Kingdom are to be read as references to Scotland,
(b) the words from “and (except where” to the end of the section are omitted.
(6) Regulation 15 of the Representation of the People (Scotland) Regulations 2001 (contents of service declaration), as applied by this Act, has effect for the purposes of a service declaration by an eligible child as if the references in paragraphs (2), (3) and (4) to the spouse or civil partner of a person included references to—
(a) a child of the person,
(b) a child for whom the person acts as guardian,
(c) a child of the spouse or civil partner of the person,
(d) a child for whom the spouse or civil partner of the person acts as guardian.

(7) For the purposes of section 5(1)(b), a service declaration made by virtue of this section is to be treated as having effect also for the purpose of meeting any residence requirement for registration in a register of local government electors.”.

(4) In Part 2 of schedule 1 (application of provisions of the 1983 Act), for the entry relating to section 16 of the 1983 Act, substitute—

“Section 16 (contents of service declaration)

For paragraph (f) substitute—

“(f) the declarant’s date of birth.””.

Voting etc.

3 Provision about voting etc.

Schedule 2 makes provision about voting in the referendum, including—

(a) provision about the manner of voting (including provision for absent voting),
(b) provision about the register of electors,
(c) provision about postal voting, and
(d) provision about the supply of certain documents.

Conduct

4 Chief Counting Officer

(1) The Scottish Ministers must, in writing, appoint a Chief Counting Officer for the referendum.

(2) The Chief Counting Officer is to be the person who, immediately before this section comes into force, is the person appointed as the convener of the Electoral Management Board for Scotland by virtue of section 2 of the Local Electoral Administration (Scotland) Act 2011.

(3) But subsection (2) does not apply if—

(a) there is no person appointed as convener at that time, or
(b) that person is unable or unwilling to be appointed as the Chief Counting Officer.

(4) The Chief Counting Officer may resign by giving notice in writing to the Scottish Ministers.

(5) The Scottish Ministers may, by notice in writing, remove the Chief Counting Officer from office if—

(a) the Chief Counting Officer is convicted of any criminal offence, or
(b) they are satisfied that the Chief Counting Officer is unable to perform the Chief Counting Officer’s functions by reason of any physical or mental illness or disability.
(6) If the Chief Counting Officer dies, resigns or is removed from office, the Scottish Ministers must appoint another person to be the Chief Counting Officer.

(7) The Chief Counting Officer may, in writing, appoint deputies to carry out some or all of the officer’s functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to the Chief Counting Officer is to be read as including a deputy.

(8) A person may be appointed to be—
   (a) the Chief Counting Officer,
   (b) a deputy of the Chief Counting Officer,
only if the person is or has been a returning officer appointed under section 41(1) of the 1983 Act.

5 Other counting officers

(1) The Chief Counting Officer must, in writing, appoint a counting officer for each local government area.

(2) The Chief Counting Officer must notify the Scottish Ministers of each appointment made under subsection (1).

(3) A counting officer may resign by giving notice in writing to the Chief Counting Officer.

(4) The Chief Counting Officer may, by notice in writing, remove a counting officer from office if—
   (a) the Chief Counting Officer is satisfied that the counting officer is for any reason unable to perform the counting officer’s functions, or
   (b) the counting officer fails to comply with a direction given or requirement imposed by the Chief Counting Officer.

(5) If the counting officer for an area dies, resigns or is removed from office, the Chief Counting Officer must appoint another person to be the counting officer for the area.

(6) A counting officer may, in writing, appoint deputies to carry out some or all of the officer’s functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to a counting officer is to be read as including a deputy.

6 Functions of the Chief Counting Officer and other counting officers

(1) The Chief Counting Officer is responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of votes, in accordance with this Act.

(2) Each counting officer must—
   (a) conduct the poll and the counting of votes cast in the local government area for which the officer is appointed in accordance with this Act, and
   (b) certify—
      (i) the number of ballot papers counted by the officer,
      (ii) the number of votes cast in the area in favour of each answer to the referendum question, and
(iii) the number of rejected ballot papers.

(3) A counting officer—
   (a) must consult the Chief Counting Officer before making a certification under subsection (2)(b), and
   (b) must not make the certification or any public announcement of the result of the count until authorised to do so by the Chief Counting Officer.

(4) The Chief Counting Officer must, for the whole of Scotland, certify—
   (a) the total number of ballot papers counted,
   (b) the total number of votes cast in favour of each answer to the referendum question, and
   (c) the total number of rejected ballot papers.

(5) A counting officer must give the Chief Counting Officer any information which the Chief Counting Officer requires for the carrying out of the Chief Counting Officer’s functions.

(6) A counting officer must carry out the counting officer’s functions under this Act in accordance with any directions given by the Chief Counting Officer.

(7) The Chief Counting Officer must not impose a requirement or give a direction that is inconsistent with this Act.

(8) The Chief Counting Officer may—
   (a) appoint such staff,
   (b) require a council to provide, or ensure the provision of, such property, staff and services,

   as may be required by the Chief Counting Officer for the carrying out of the Chief Counting Officer’s functions.

(9) The council for the local government area for which a counting officer is appointed must provide, or ensure the provision of, such property, staff and services as may be required by the counting officer for the carrying out of the counting officer’s functions.

7 Correction of procedural errors

(1) The Chief Counting Officer or a counting officer may take such steps as the officer thinks appropriate to remedy any act or omission on the officer’s part, on the part of a deputy of the officer, or on the part of a relevant person, which—
   (a) arises in connection with any function the Chief Counting Officer, counting officer or relevant person (as the case may be) has in relation to the referendum, and
   (b) is not in accordance with the requirements of this Act relating to the conduct of the referendum.

(2) But the Chief Counting Officer or a counting officer may not under subsection (1) recount the votes cast in the referendum after the result has been declared.

(3) For the purposes of subsection (1), each of the following is a relevant person—
   (a) in relation to the Chief Counting Officer, a counting officer or a deputy of a counting officer,
(b) a registration officer,
(c) a presiding officer,
(d) a person providing goods or services to the counting officer,
(e) a deputy of any registration officer or presiding officer,
(f) a person appointed to assist or, in the course of the person’s employment, assisting any person mentioned in paragraphs (b) to (d) in connection with any function that person has in relation to the referendum.

(4) The Chief Counting Officer or a counting officer does not commit an offence under paragraph 5 of schedule 7 by virtue of an act or omission in breach of the officer’s official duty if the officer remedies that act or omission in full by taking steps under subsection (1).

(5) Subsection (4) does not affect any conviction, or any penalty imposed, before the date on which the act or omission is remedied in full.

8 Expenses of counting officers

(1) The Chief Counting Officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the Chief Counting Officer of functions under this Act.

(2) A counting officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the counting officer of functions under this Act.

(3) The amount of charges and expenses recoverable under this section is not to exceed such maximum amount as is specified in, or determined under, an order made by the Scottish Ministers.

(4) An order under subsection (3)—

(a) may make different provision for different functions, cases or areas,
(b) may include incidental and supplementary provision.

(5) If the Chief Counting Officer or a counting officer requests from the Scottish Ministers an advance on account of any charges or expenses recoverable by the officer from the Scottish Ministers under this section, the Scottish Ministers may make such advance on such terms as they think fit.

9 Conduct rules

Schedule 3 makes provision about the conduct of the referendum.

Campaign

10 Campaign rules

Schedule 4 makes provision about the conduct of campaigning in the referendum, including provision—

(a) limiting the amount of expenses that can be incurred by those campaigning in the referendum,
(b) restricting the publication of certain material,
(c) controlling donations, and the provision of loans and credit, to those campaigning in the referendum.

11 Monitoring and securing compliance with the campaign rules

(1) The Electoral Commission must—

(a) monitor compliance with the restrictions and other requirements imposed by schedule 4, and

(b) take such steps as they consider appropriate with a view to securing compliance with those restrictions and requirements.

(2) The Electoral Commission may prepare and publish guidance setting out, in relation to any restriction or requirement imposed by schedule 4, their opinion on any of the following matters—

(a) what it is necessary, or is sufficient, to do (or avoid doing) in order to comply with the restriction or requirement,

(b) what it is desirable to do (or avoid doing) in view of the purpose of the restriction or requirement.

(3) Subsection (2) does not affect the generality of section 22(3).

(4) Schedule 5 makes provision about the investigatory powers of the Electoral Commission for the purpose of subsection (1).

(5) Schedule 6 makes provision for civil sanctions in relation to—

(a) the commission of campaign offences,

(b) the failure to comply with certain requirements imposed by schedule 4.

(6) In this section, “restriction” includes a prohibition.

12 Inspection of Electoral Commission’s registers etc.

(1) This section applies to any register kept by the Electoral Commission under paragraph 4 of schedule 4.

(2) The Commission must make a copy of the register available for public inspection during ordinary office hours, either at the Commission’s offices or at some convenient place appointed by them.

(3) The Commission may make other arrangements for members of the public to have access to the contents of the register.

(4) If requested to do so by any person, the Commission must supply the person with a copy of the register or any part of it.

(5) The Commission may charge such reasonable fee as they may determine in respect of—

(a) any inspection or access allowed under subsection (2) or (3), or

(b) any copy supplied under subsection (4).

(6) Subsections (2) to (5) apply in relation to any document a copy of which the Commission are for the time being required to make available for public inspection by virtue of paragraph 24, 41B or 57B of schedule 4 as they apply in relation to any register falling within subsection (1).
(7) Where any register falling within subsection (1) or any document falling within subsection (6) is held by the Commission in electronic form, any copy—
   (a) made available for public inspection under subsection (2), or
   (b) supplied under subsection (4),
must be made available, or (as the case may be) supplied, in a legible form.

13 Campaign rules: general offences
(1) A person commits an offence if—
   (a) the person—
      (i) alters, suppresses, conceals or destroys any document to which this subsection applies, or
      (ii) causes or permits the alteration, suppression, concealment or destruction of any such document, and
   (b) the person does so with the intention of falsifying the document or enabling any person to evade any of the provisions of schedules 4 to 6.
(2) Subsection (1) applies to any book, record or other document which is or is liable to be required to be produced for inspection under paragraph 1 or 3 of schedule 5.
(3) Subsection (4) applies where the relevant person in the case of a supervised organisation, or a person acting on behalf of the relevant person, requests a person holding an office in any such organisation (“the office-holder”) to supply the relevant person with any information which the relevant person reasonably requires for the purposes of any of the provisions of schedules 4 to 6.
(4) The office-holder commits an offence if—
   (a) without reasonable excuse, the office-holder fails to supply the relevant person with that information as soon as is reasonably practicable, or
   (b) in purporting to comply with the request, the office-holder knowingly supplies the relevant person with any information which is false in a material particular.
(5) A person commits an offence if, with intent to deceive, the person withholds—
   (a) from the relevant person in the case of a supervised organisation, or
   (b) from a supervised individual,
any information required by the relevant person or that individual for the purposes of any of the provisions of schedules 4 to 6.
(6) In subsections (1) to (5) any reference to a supervised organisation or individual includes a reference to a former supervised organisation or individual.
(7) A person who commits an offence under subsection (1), (4)(b) or (5) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
(8) A person who commits an offence under subsection (4)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(9) In this section—

“supervised individual” means an individual who is a permitted participant,
“supervised organisation” means a permitted participant other than an individual,
“relevant person” means a person who is (or has been), in relation to a permitted participant, the responsible person for the purposes of this Act.

14 Campaign offences: summary proceedings

(1) Summary proceedings for a campaign offence may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken—

(a) against any body, including an unincorporated association, at any place at which it has a place of business, and

(b) against an individual at any place at which the individual is for the time being.

(2) Despite anything in section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences), summary proceedings for a campaign offence may be commenced at any time within 3 years after the commission of the offence and within 6 months after the relevant date; and subsection (3) of that section applies for the purposes of this subsection as it applies for the purposes of that section.

(3) In this section “the relevant date” means the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the prosecutor’s knowledge.

(4) For the purposes of subsection (3) a certificate of any prosecutor as to the date on which such evidence as is there mentioned came to the prosecutor’s knowledge is conclusive evidence of that fact.

15 Duty of court to report convictions to the Electoral Commission

The court by or before which a person is convicted of a campaign offence must notify the Electoral Commission of the conviction as soon as is practicable.

Referendum agents

16 Referendum agents

(1) A permitted participant may, for any local government area, appoint an individual (who may be the responsible person) to be the permitted participant’s agent (“referendum agent”).

(2) If a permitted participant appoints a referendum agent for a local government area, the responsible person must give the counting officer for that area notification of the name and address of—

(a) the permitted participant, and

(b) the referendum agent.

(3) The notification must be—

(a) in writing,

(b) signed by the responsible person, and

(c) given before noon on the twenty-fifth day before the date of the referendum.
For the purpose of subsection (3)(c), the following days are to be disregarded—
(a) a Saturday or Sunday,
(b) Christmas Eve or Christmas Day,
(c) a day which is a bank holiday in Scotland under the Banking and Financial
    Dealings Act 1971,
(d) a day appointed for public thanksgiving or mourning.

The duties imposed on a responsible person by this section may be discharged by any
person authorised in writing by the responsible person.

A counting officer who receives a notification under subsection (2) must, as soon as
practicable, publish notice of—
(a) the name of the permitted participant, and
(b) the name and address of the referendum agent.

If—
(a) a permitted participant revokes the appointment of a referendum agent or a
    referendum agent dies, and
(b) the permitted participant has notified the counting officer of the appointment of a
    polling or counting agent under rule 14 of the conduct rules,
the permitted participant must, as soon as practicable, appoint another referendum agent
under subsection (1).

The notification under subsection (2) must be made as soon as practicable after the
appointment of the new referendum agent (and subsection (3)(c) does not apply to that
notification).

Observers

Attendance of Electoral Commission at proceedings and observation of working
practices

A representative of the Electoral Commission may attend proceedings relating to the
referendum that are the responsibility of—
(a) the Chief Counting Officer, or
(b) a counting officer.

The right conferred by subsection (1) is subject to any other provision of this Act which
regulates attendance at the proceedings in question.

A representative of the Electoral Commission may observe the working practices of
each of the following in carrying out functions under this Act—
(a) a registration officer,
(b) the Chief Counting Officer,
(c) a counting officer,
(d) any person acting under the direction of a person mentioned in paragraphs (a) to
(c).

In this section, “representative of the Electoral Commission” means any of the
following—
(a) a member of the Electoral Commission,
(b) a member of staff of the Electoral Commission,
(c) a person appointed by the Electoral Commission for the purposes of this section.

18 Accredited observers: individuals

5 (1) A person who is aged 16 or over may apply to the Electoral Commission to be an accredited observer at any of the following proceedings relating to the referendum—
   (a) proceedings at the issue or receipt of postal ballot papers,
   (b) proceedings at the poll,
   (c) proceedings at the counting of votes.

10 (2) If the Commission grant the application, the accredited observer may attend the proceedings in question.

15 (3) An application under subsection (1) must be made in the manner specified by the Commission.

(4) The Commission may at any time revoke the grant of an application under subsection (1).

19 Accredited observers: organisations

25 (1) An organisation may apply to the Electoral Commission to be accredited for the purpose of nominating observers at any of the following proceedings relating to the referendum—
   (a) proceedings at the issue or receipt of postal ballot papers,
   (b) proceedings at the poll,
   (c) proceedings at the counting of votes.

30 (2) If the Commission grant the application the organisation may nominate members who may attend the proceedings in question.

(3) The Commission, in granting the application, may specify a limit on the number of observers nominated by the organisation who may attend, at the same time, specified proceedings by virtue of this section.

35 (4) An application under subsection (1) must be made in the manner specified by the Commission.

(5) The Commission may at any time revoke the grant of an application under subsection (1).

(6) If the Commission—
(a) refuse an application under subsection (1), or
(b) revoke the grant of any such application,

they must give their decision in writing and must, when doing so, give reasons for the refusal or revocation.

(7) The right conferred by this section is subject to any provision of this Act which regulates attendance at the proceedings in question.

20 Attendance and conduct of accredited observers

(1) A relevant officer may limit the number of persons who may be present at any proceedings at the same time by virtue of section 18 or 19.

(2) If a person who is entitled to attend any proceedings by virtue of section 18 or 19 commits misconduct while attending the proceedings, the relevant officer may cancel the person’s entitlement.

(3) Subsection (2) does not affect any power that a relevant officer has by virtue of any enactment or rule of law to remove a person from any place.

(4) A relevant officer is—

(a) in the case of proceedings at a polling station, the presiding officer,
(b) in the case of any other proceedings at a referendum, the Chief Counting Officer or a counting officer,
(c) any other person authorised by a person mentioned in paragraph (a) or (b) for the purposes of the proceedings mentioned in that paragraph.

20A Code of practice on attendance of observers

(1) The Electoral Commission must prepare a code of practice on the attendance of—

(a) representatives of the Commission,
(b) accredited observers, and
(c) nominated members of accredited organisations,

at proceedings relating to the referendum.

(2) The code must in particular—

(a) specify the manner in which applications under section 18(1) or 19(1) are to be made to the Commission,
(b) specify the criteria that the Commission will take into account in determining such applications,
(c) give guidance to relevant officers as to the exercise of the powers conferred by section 20(1) and (2),
(d) give guidance to such officers as to the exercise, in relation to a person entitled to attend any proceedings by virtue of section 18 or 19, of any other power under this Act to control the number of persons present at any proceedings relating to the referendum,
(e) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations as to the exercise of the rights conferred by sections 17, 18 and 19.
(3) The code may make different provision for different purposes.

(4) Before preparing the code, the Commission must consult the Scottish Ministers.

(5) The Commission must lay the code before the Scottish Parliament.

(6) The Commission must publish the code in such manner as they may determine.

(7) The following persons must have regard to the code in exercising any function or right conferred by section 17, 18, 19 or 20—
   (a) the Commission,
   (b) representatives of the Commission,
   (c) relevant officers.

(8) The Commission may at any time revise the code.

(9) Subsections (4) to (7) apply to a revision of the code as they apply to the code.

(10) In this section—
   “accredited observer” is to be construed in accordance with section 18,
   “accredited organisation” is to be construed in accordance with section 19, and
   “nominated member” is to be construed accordingly,
   “relevant officer” has the meaning given in section 20(4),
   “representative of the Commission” means a representative of the Electoral Commission within the meaning of section 17(4).

Information, guidance, advice and encouragement

21 Information for voters

The Electoral Commission must take such steps as they consider appropriate to promote public awareness and understanding in Scotland about—
   (a) the referendum,
   (b) the referendum question, and
   (c) voting in the referendum.

22 Guidance

(1) The Electoral Commission may issue guidance to the Chief Counting Officer about the exercise of the Chief Counting Officer’s functions under this Act.

(1A) The Chief Counting Officer may issue guidance to counting officers and registration officers about the exercise of their respective functions under this Act.

(2) The Electoral Commission may, with the consent of the Chief Counting Officer, issue guidance to counting officers about the exercise of their functions under this Act.

(3) The Electoral Commission may issue guidance to permitted participants and persons who may become permitted participants about the provisions set out in schedule 4 to this Act.

(4) Guidance issued under subsection (3) must include information on what may constitute a common plan or other arrangement for the purposes of paragraph 19 of schedule 4.
Advice
The Electoral Commission may, if asked to do so by any person, provide the person with advice about—

(a) the application of this Act,

(b) any other matter relating to the referendum.

Encouraging participation
(1) The Chief Counting Officer must take whatever steps the Chief Counting Officer considers appropriate to—

(a) encourage participation in the referendum, and

(b) facilitate co-operation among officers taking steps under this section.

(2) A counting officer must take whatever steps the counting officer considers appropriate to encourage participation in the referendum in the local government area for which the officer is appointed.

Report on referendum
Report on the conduct of the referendum
(1) As soon as reasonably practicable after the referendum, the Electoral Commission must prepare and lay before the Scottish Parliament a report on the conduct of the referendum.

(2) The report must include a summary of—

(a) how the Commission have carried out their functions under this Act,

(b) the expenditure incurred by the Commission in carrying out those functions.

(3) The Chief Counting Officer must provide the Commission with such information as they may require for the purposes of the report.

(4) On laying the report, the Commission must publish the report in such manner as they may determine.

(5) In the 2000 Act, in Schedule 1, in paragraph 20(1) (report on Electoral Commission’s functions), the reference to the Commission’s functions does not include a reference to the Commission’s functions under this Act.

Electoral Commission: administrative provision
Reimbursement of Commission’s costs
(1) The SPCB must reimburse the Electoral Commission for any expenditure incurred by the Commission that is attributable to the carrying out of the Commission’s functions under this Act.

(2) In the 2000 Act, in Schedule 1, paragraph 14(1) (financing of the Electoral Commission) has effect as if paragraph (a) included a reference to expenditure reimbursed under subsection (1) of this section.

Estimates of expenditure
(1) The Electoral Commission must, before the start of each financial year—
(a) prepare an estimate of the Commission’s expenditure for the year that is attributable to the carrying out of their functions under this Act, and

(b) send the estimate to the SPCB for approval.

(2) The Commission may, in the course of a financial year, prepare a revised estimate for the remainder of the year and send it to the SPCB for approval.

(3) The period from the commencement of this Act until the following 31 March is treated, for the purposes of this section, as the first financial year.

(4) Subsection (1) has effect in relation to the first financial year as if the reference to the start of the financial year were a reference to the end of the period of one month beginning with the date of the commencement of this Act.

(5) In the 2000 Act, in Schedule 1, paragraph 14(2) (Commission to prepare estimates of income and expenditure) does not apply in relation to income and expenditure of the Commission that is attributable to the exercise of their functions under this Act.

27 Maladministration

In the Scottish Public Services Ombudsman Act 2002, in section 7 (restrictions on investigations), subsection (6D) does not prevent the investigation under that Act of action taken by or on behalf of the Electoral Commission in the exercise of the Commission’s functions under this Act.

Offences

28 Offences

Schedule 7 makes provision about offences in or in connection with the referendum.

29 Offences by bodies corporate etc.

(1) Subsection (2) applies where—

(a) an offence under this Act has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, a member,
(b) in relation to a limited liability partnership, a member,
(c) in relation to a Scottish partnership, a partner,
(d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

5

Power to make supplementary etc. provision and modifications

30 Power to make supplementary etc. provision and modifications

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) The power in subsection (1) includes power to make provision in consequence of, or in connection with, any modification or proposed modification, of any enactment relating to—

(a) the conduct of any referendum or campaigning in any referendum,
(b) the conduct of elections or campaigning in elections.

(3) An order under subsection (1) may—

(a) modify any enactment (including this Act),
(b) apply any provision of any enactment (either with or without modifications),
(c) include supplementary, incidental, consequential, transitory or transitional provision or savings.

(4) An order under subsection (1) is subject to the affirmative procedure.

Legal proceedings

31 Restriction on legal challenge to referendum result

(1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast as certified by a counting officer or by the Chief Counting Officer under section 6(2)(b) or (as the case may be) (4) unless—

(a) the proceedings are brought by way of a petition for judicial review, and
(b) the petition is lodged before the end of the permitted period.

(2) In subsection (1)(b) “the permitted period” means the period of 6 weeks beginning with—

(a) the day on which the officer in question makes the certification as to the number of ballot papers counted and votes cast in the referendum, or
(b) if the officer makes more than one such certification, the day on which the last is made.

(3) In subsection (1), references to a petition for judicial review are references to an application to the supervisory jurisdiction of the Court of Session.
Final provisions

32 Interpretation
Schedule 8 provides definitions for words and expressions used in this Act.

33 Commencement
This Act comes into force on the day after Royal Assent.

34 Short title
The short title of this Act is the Scottish Independence Referendum Act 2013.
SCHEDULE 1
(introduced by section 1(3))

FORM OF BALLOT PAPER

Front of ballot paper

<table>
<thead>
<tr>
<th>BALLOT PAPER</th>
<th>[Official mark]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Vote (X) ONLY ONCE</strong></td>
<td></td>
</tr>
<tr>
<td>Should Scotland be an independent country?</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td></td>
</tr>
<tr>
<td><strong>NO</strong></td>
<td></td>
</tr>
</tbody>
</table>

Back of ballot paper

[Unique identifying number]

Area of [insert council name].

Referendum on 18 September 2014.

Directions as to printing the ballot paper

1. Nothing is to be printed on the ballot paper except as set out in this schedule.
2. So far as practicable, the instructions specified in paragraphs 3 to 6 must be observed in printing the ballot paper.
3. Words printed on the ballot paper must be printed—
   (a) in a sans serif font (for example, Arial), and
   (b) in characters of at least 14 point size.
4. The direction to “VOTE (X) ONLY ONCE” and the “YES” and “NO” options must be printed in bold capital letters.
5. The ballot paper must be at least 180mm wide.
SCHEDULE 2
(introduced by section 3)

FURTHER PROVISION ABOUT VOTING IN THE REFERENDUM

PART 1

MANNER OF VOTING

Manner of voting

1  (1) This paragraph applies to determine the manner of voting of a voter.

(2) A voter may vote in person at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules unless the voter is entitled to an absent vote in the referendum.

3  (3) A voter may vote by post if the voter is entitled to vote by post in the referendum.

(4) If a voter is entitled to vote by proxy in the referendum, the voter may so vote unless, before a ballot paper is issued for the voter to vote by proxy, the voter applies at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules for a ballot paper for the purpose of voting in person, in which case the voter may vote in person there.

(5) If a voter—

(a) is not entitled to an absent vote in the referendum, and

(b) cannot reasonably be expected to go in person to the polling station allotted to the voter under rule 9(1)(b) of the conduct rules because of the particular circumstances of the voter’s employment, either as a constable or by the counting officer, on the date of the referendum for a purpose connected with the referendum,

the voter may vote in person at any polling station in the local government area in which the polling station allotted to the voter is situated.

(6) Nothing in the preceding provisions of this paragraph applies to—

(a) a voter to whom section 7 of the 1983 Act (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, whether the voter is registered by virtue of that provision or not, and such a voter may vote—

(i) in person at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules (if granted permission to be absent from the hospital and voting in person does not breach any condition attached to the permission), or

(ii) by post or by proxy (if entitled so to vote in the referendum), or

(b) a voter to whom section 7A of that Act (person remanded in custody) applies, whether the voter is registered by virtue of that provision or not, and such a voter may only vote by post or by proxy (if entitled so to vote in the referendum).
(7) Sub-paragraph (2) does not prevent a voter, at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules, marking a tendered ballot paper in pursuance of rule 24 of those rules.

(8) For the purposes of this Act—

(a) references to a voter being entitled to an absent vote in the referendum are references to the voter being entitled to vote by post or by proxy in the referendum, and

(b) a voter is entitled to vote—

(i) by post in the referendum if the voter is shown in the postal voters list (see paragraph 4(2)) for the referendum as so entitled,

(ii) by proxy in the referendum if the voter is shown in the list of proxies (see paragraph 4(3)) for the referendum as so entitled.

Existing absent voters

(1) A person is taken to have been granted a vote by post in the referendum if the person is—

(a) shown in the record maintained under paragraph 3(4) of Schedule 4 to the Representation of the People Act 2000 as voting by post at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained under article 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by post at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

Such a person is referred to in this schedule as an “existing postal voter”.

(3) A person is taken to have been granted a vote by proxy in the referendum if the person is—

(a) shown in the record maintained under paragraph 3(4) of Schedule 4 to the Representation of the People Act 2000 as voting by proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained under article 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

Such a person is referred to in this schedule as an “existing proxy voter”.

(5) Sub-paragraph (1) does not apply to a person if the person is granted a vote by proxy by virtue of an application under paragraph 3.

(6) Sub-paragraph (3) does not apply to a person if the person is granted a vote by post by virtue of an application under paragraph 3.
Applications for absent vote

3 (1) Where a person applies to the registration officer to vote by post in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum, and

(b) the application meets the requirements set out in paragraph 7.

(2) Where a person applies to the registration officer to vote by proxy at the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted, or likely to be allotted, to the applicant under rule 9(1)(b) of the conduct rules,

(b) the registration officer is satisfied that the applicant is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum, and

(c) the application meets the requirements set out in paragraph 7.

(3) Where a person who has an anonymous entry in the register of electors maintained by a registration officer applies to the registration officer to vote by proxy in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(4) Sub-paragraphs (1) and (2) do not apply to a person who is an existing postal voter or an existing proxy voter.

(5) If an existing postal voter applies to the appropriate registration officer for the person’s ballot paper to be sent to a different address from that shown in the record referred to in paragraph 2(1) in relation to that existing postal voter, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(6) If an existing postal voter applies to the appropriate registration officer to vote by proxy in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the person cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the person under rule 9(1)(b) of the conduct rules, and

(b) the application meets the requirements set out in paragraph 7.

(7) If an existing proxy voter applies to the appropriate registration officer to vote by post in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.

(8) In sub-paragraphs (5) to (7), “appropriate registration officer” means, in relation to an existing postal voter or an existing proxy voter, the registration officer responsible for keeping the record mentioned in paragraph 2(1) or (3) by virtue of which the person is such a voter.
Absent voters lists

4 (1) Each registration officer must keep the 2 lists mentioned in sub-paragraphs (2) and (3).

(2) The first list (the "Postal voters list") is a list of—

(a) those who are existing postal voters by reason of an entry in a record mentioned in paragraph 2(1) kept by the registration officer, together with the addresses—

(i) shown in the record mentioned in that paragraph, or
(ii) provided in any application by them under paragraph 3(5),
as the addresses to which their ballot papers are to be sent, and

(b) those granted a vote by post in the referendum by the registration officer by virtue of an application under paragraph 3 together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(3) The second list (the "list of proxies") is a list of—

(a) those who are existing proxy voters by reason of an entry in a record mentioned in paragraph 2(3) kept by the registration officer, and

(b) those granted a vote by proxy in the referendum by the registration officer by virtue of an application under paragraph 3, together (in each case) with the names and addresses of those appointed as their proxies.

(4) In the case of a person who has an anonymous entry in the register of electors, any entry in the postal voters list or list of proxies must show in relation to the person only the person’s voter number.

(5) Where a person is removed from the postal voters list or the list of proxies, the registration officer must, where practicable, notify the person of the removal and the reason for it.

Proxies

5 (1) Subject to the provisions of this paragraph, any person is capable of being appointed as proxy to vote for another in the referendum and may vote in pursuance of the appointment.

(2) A person ("A") cannot have more than one person at a time appointed as proxy to vote for A in the referendum.

(3) A person is not capable of being appointed to vote, or of voting, as proxy at the referendum—

(a) if the person is subject to any legal incapacity (age apart) to vote in the referendum, or

(b) if the person is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union.

(4) A person is not capable of voting as a proxy in the referendum unless, on the date of the referendum, the person is of voting age.

(5) A person is not entitled to vote as proxy in the referendum on behalf of more than 2 others of whom that person is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
(6) If there is an existing proxy for an existing proxy voter, the existing proxy is taken to
have been appointed as proxy to vote for the existing proxy voter in the referendum.

(7) In sub-paragraph (6), “existing proxy” means, in relation to an existing proxy voter—
(a) a person appointed under paragraph 6(7) of Schedule 4 to the Representation of
the People Act 2000 as proxy to vote for the existing proxy voter at local
government elections, or
(b) if there is no such person, a person appointed under article 10(6) of the Scottish
Parliament (Elections etc.) Order 2010 (SI 2010/2999) as proxy to vote for the
existing proxy voter at Scottish parliamentary elections.

(8) Where a person applies to the registration officer for the appointment of a proxy to vote
for the person in the referendum, the registration officer must make the appointment if—
(a) the registration officer is satisfied that the applicant is or will be—
   (i) registered in the register of electors maintained by the officer, and
   (ii) entitled to vote by proxy in the referendum by virtue of paragraph 2(3) or
        an application under paragraph 3,
(b) the registration officer is satisfied that the proxy is capable of being and willing to
    be appointed, and
(c) the application meets the requirements in paragraph 7.

(9) The appointment of a proxy under this paragraph is to be made by means of a proxy
paper issued by the registration officer.

(10) The appointment of a proxy to vote for a person (“A”) in the referendum—
(a) may be cancelled by A by giving notice to the registration officer, and
(b) ceases to have effect on the issue of a proxy paper appointing a different person to
    vote for A in the referendum.

Voting as proxy

6 (1) A person entitled to vote as proxy for another (“A”) in the referendum may do so in
person at the polling station allotted to A under rule 9(1)(b) of the conduct rules unless
the person is entitled to vote by post as proxy in the referendum, in which case the
person may vote by post.

(2) Where a person is entitled to vote by post as proxy for another (“A”) in the referendum,
A may not apply for a ballot paper for the purpose of voting in person at the referendum.

(3) For the purposes of this schedule, a person entitled to vote as proxy for another in the
referendum is entitled so to vote by post if the person is included in the proxy postal
voters list (see sub-paragraph (7)).

(4) An existing proxy is taken to have been granted a vote by post as proxy if the existing
proxy is—
(a) shown in the record kept under paragraph 7(6) of Schedule 4 to the Representation
of the People Act 2000 as voting by post as proxy at local government elections
for an indefinite period or for a period which extends beyond the date of the
referendum, or
(b) shown in the record kept under article 11(5) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by post as proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

5 (5) In sub-paragraph (4), “existing proxy” means a person who is taken to have been appointed as proxy by virtue of paragraph 5(6).

(6) Where a person applies to the registration officer to vote by post as proxy for another (“A”) in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that A is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum,

(b) there is in force an appointment of the applicant as A’s proxy to vote for A in the referendum, and

(c) the application meets the requirements in paragraph 7.

15 (7) The registration officer must keep a special list (the “proxy postal voters list”) of—

(a) those taken to have been granted a vote by post as proxy by virtue of sub-paragraph (4) by reason of an entry in a record mentioned in that sub-paragraph kept by the registration officer, together with the addresses shown in the record as the addresses to which their ballot papers are to be sent, and

(b) those whose applications under sub-paragraph (6) have been granted by the registration officer, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(8) Where a person to be included in the proxy postal voters list applies to the registration officer for the person’s ballot paper to be sent to a different address, the registration officer must grant the application if it meets the requirements in paragraph 7.

(9) In the case of a person who has an anonymous entry in the register of electors, the proxy postal voters list must contain only the person’s voter number.

(10) The registration officer must keep a record in relation to those whose applications under sub-paragraph (6) have been granted showing—

(a) their dates of birth, and

(b) except in cases where the registration officer in pursuance of paragraph 7(5) (or other provision to like effect) has dispensed with the requirement to provide a signature, their signatures.

(11) The registration officer must retain the record kept under sub-paragraph (10) for the period of one year following the date of the referendum.

(12) Sub-paragraph (2) does not prevent a person (“A”), at the polling station allotted to A under rule 9(1)(b) of the conduct rules, from marking a tendered ballot paper in pursuance of rule 24 of those rules.

Requirements as to applications

7 (1) This paragraph applies in relation to applications under paragraph 3, 5(8) or 6(6) or (8).

(2) An application must—
(a) be made in writing,
(b) state the date on which it is made, and
(c) be made before the cut-off date.

(3) An application to vote by post (including an application to vote by post as a proxy) must contain—
(a) the applicant’s full name and date of birth,
(b) the applicant’s signature, and
(c) the address to which the ballot paper is to be sent.

(4) An application to vote by proxy must contain—
(a) the applicant’s full name and date of birth,
(b) the applicant’s signature,
(c) a statement of the reasons why the applicant’s circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant under rule 9(1)(b) of the conduct rules, and
(d) an application under paragraph 5(8) for the appointment of a proxy.

(4A) An application to vote by proxy made as described in sub-paragraph (8)(a) must also meet any applicable additional requirements set out in paragraph 7A.

(5) The registration officer may, in relation to any application to which sub-paragraph (3) or (4) applies, dispense with the requirement to include the applicant’s signature if the officer is satisfied that the applicant is unable—
(a) to provide a signature because—
   (i) of any disability that the applicant has, or
   (ii) the applicant is unable to read or write, or
(b) to sign in a consistent and distinctive way because of any such disability or inability.

(6) For the purposes of sub-paragraphs (3)(a) and (b) and (4)(a) and (b), the applicant’s date of birth and signature must be set out in a manner that is sufficiently clear and unambiguous as to be capable of electronic scanning and, in particular—
(a) the date of birth must be set out numerically in the sequence day, month, year (for example, the date 30 July 1965 must be set out 30071965),
(b) the signature must be written within an area of white, unlined paper no smaller than 5 centimetres by 2 centimetres.

(7) An application for the appointment of a proxy must state the full name and address of the person whom the applicant wishes to appoint as proxy, together with that person’s family relationship, if any, with the applicant and—
(a) if the application is signed only by the applicant, the application must contain a statement signed by the applicant that the applicant has consulted the person so named and that that person is capable of being and willing to be appointed to vote as the applicant’s proxy, or
(b) if the application is signed also by the person to be appointed as proxy, must contain a statement by that person that the person is capable of being and willing to be appointed as the applicant’s proxy.

(8) Sub-paragraph (9) applies in relation to an application to vote by proxy (and an application under paragraph 5(8) for the appointment of a proxy contained in such an application to vote by proxy)—

(a) made after the cut-off date and on the grounds that the applicant cannot reasonably be expected to vote in person at the polling station allotted under rule 9(1)(b) of the conduct rules because—

(i) of a disability suffered after that date,

(ii) the applicant will be, or is likely to be, unavoidably absent from the applicant’s qualifying address on the date of the referendum and the applicant only became aware of that fact after the cut-off date, or

(iii) of reasons relating to the applicant’s occupation, service or employment, of which the applicant only became aware after the cut-off date, or

(b) by a person to whom paragraph 1(6)(a) applies.

(9) Sub-paragraph (2)(c) does not apply in relation to the application and instead the application must be made before 5pm on the date of the referendum.

(10) Sub-paragraph (11) applies in relation to an application under paragraph 3(5) or 6(8) for the person’s ballot paper to be sent to a different address.

(11) Subject to sub-paragraph (12), the application must set out why the applicant’s circumstances will be or are likely to be such that the applicant requires the ballot paper to be sent to that address.

(12) The requirement in sub-paragraph (11) does not apply where an applicant has, or has applied for, an anonymous entry.

Additional requirements as to certain applications to vote by proxy

7A(1) Sub-paragraphs (2) to (5) apply in relation to an application to vote by proxy made as described in paragraph 7(8)(a)(i) or (ii).

(2) The application must contain a statement of the date on which the applicant became aware of the reasons given in the statement required by paragraph 7(4)(c).

(3) Where the application is made on or after the fifth day before the date of the referendum, the application must be signed by a person who—

(a) is aged 18 or over,

(b) knows the applicant, and

(c) is not related to the applicant.

(4) The person who signs the application in accordance with sub-paragraph (3) must certify in the application that the following information is true to the best of the person’s knowledge and belief—

(a) the information given in the statement required by sub-paragraph (2), and

(b) the reasons given in the statement required by paragraph 7(4)(c).
(5) That person must also state in the application—
   (a) the person’s name and address,
   (b) that the person—
      (i) is aged 18 or over,
      (ii) knows the applicant, and
      (iii) is not related to the applicant.

(6) Sub-paragraphs (8) to (11) apply in relation to an application to vote by proxy made as described in paragraph 7(8)(a)(iii).

(7) But sub-paragraphs (9) to (11) do not apply if the applicant is or will be registered as a service voter.

(8) The application must contain a statement of—
   (a) where the applicant is an employee, the name of the applicant’s employer,
   (b) where the applicant is not an employee, details of the applicant’s occupation or service,
   (c) the date on which the applicant became aware of the reasons given in the statement required by paragraph 7(4)(c).

(9) Where the application is made on or after the fifth day before the date of the referendum, the application must be signed—
   (a) where the applicant is an employee, by—
      (i) the applicant’s employer, or
      (ii) another employee to whom this function is delegated by the employer,
   (b) where the applicant is not an employee, by a person who—
      (i) is aged 18 or over,
      (ii) knows the applicant, and
      (iii) is not related to the applicant.

(10) The person who signs the application in accordance with sub-paragraph (9) must certify in the application that the following information is true to the best of the person’s knowledge and belief—
   (a) the information given in the statement required by sub-paragraph (8), and
   (b) the reasons given in the statement required by paragraph 7(4)(c).

(11) That person must also state in the application—
   (a) the person’s name and address,
   (b) if the applicant is an employee, either (as the case may be)—
      (i) that the person is the applicant’s employer, or
      (ii) the position that the person holds in the employment of the applicant’s employer,
   (c) if the applicant is not an employee, that the person—
      (i) is aged 18 or over,
(ii) knows the applicant, and
(iii) is not related to the applicant.

(12) For the purposes of this paragraph—

(a) a person ("A") is related to another person ("B") if A is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of B,

(b) a person is registered as a service voter if the person has made a service declaration under section 15 of the 1983 Act and is registered in the register of electors in pursuance of it.

(13) For the purposes of sub-paragraphs (3) and (9), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

Grant or refusal of applications

8 (1) This paragraph applies in relation to applications under paragraph 3, 5(8) or 6(6) or (8).

(2) Where the registration officer grants an application, the officer must notify the applicant.

(3) Where the registration officer refuses an application, the officer must notify the applicant of the decision and of the reason for it.

(4) Where an application under paragraphs 3(2) and 5(8) is granted, the registration officer must, where practicable, notify the voter of—

(a) the appointment of the proxy, and

(b) the name and address of the proxy.

Forms

9 (1) The registration officer must provide free of charge to any person who satisfies the officer of the person’s intention to use the forms in connection with the referendum as many forms for use in connection with—

(a) applications to register as a voter at the referendum, and

(b) applications for an absent vote at the referendum,

as appear to the registration officer to be reasonable in the circumstances.

(2) The forms provided under sub-paragraph (1) are to be in the form prescribed.

Personal identifiers record

10 (1) Each registration officer must keep a record in relation to persons granted applications to which paragraph 7(3) or (4) applies showing—

(a) their dates of birth, and
(b) except in cases where the officer has under paragraph 7(5) dispensed with the requirement for a signature, their signatures.

(2) The registration officer must, as soon as possible after the cut-off date, either—

(a) provide the relevant counting officer with a copy of the information contained in the record, or

(b) give the relevant counting officer access to the information.

(3) A registration officer may disclose information contained in the record to any other registration officer if the registration officer disclosing it thinks that to do so would assist the other registration officer in the carrying out of the other officer’s functions.

(4) A counting officer may disclose information contained in the record to any other person if the counting officer thinks that to do so would assist the other person in ascertaining whether postal ballot papers have been returned in accordance with rule 30(4) of the conduct rules.

Marked lists for polling stations

To indicate that a voter or a voter’s proxy is entitled to vote by post and is for that reason not entitled to vote in person, the letter “A” is to be placed against the entry of that voter in any list of voters (or any part of a list) provided for a polling station.

Appeals

(1) Where an appeal under section 56 of the 1983 Act (registration appeals) is pending when notice of the referendum is given—

(a) the appeal does not prejudice the operation as respects the referendum of the decision appealed against, and

(b) anything done in pursuance of the decision is as good as if no such appeal had been brought and is not affected by the decision on the appeal.

(2) Where, as a result of the decision on an appeal under section 56 of the 1983 Act, an alteration in the register of electors is made which takes effect under section 13(5), 13A(2), 13B(3) or (3B) or 13BB(4) or (5) of the 1983 Act on or before the date of the referendum, sub-paragraph (1) does not apply to the appeal.

PART 2
REGISTRATION

Effect of register

(1) A person registered in the register of electors or entered in the list of proxies is not to be excluded from voting in the referendum on any of the grounds set out in sub-paragraph (2), but this does not affect the person’s liability to any penalty for voting.

(2) The grounds referred to in sub-paragraph (1) are—

(a) that the person is not of voting age,

(b) that the person is not or was not at any particular time—

(i) a Commonwealth citizen,
(ii) a citizen of the Republic of Ireland, or
(iii) a relevant citizen of the European Union,
(c) that the person is or was at any particular time otherwise subject to any other legal incapacity to vote in the referendum.

Effect of misdescription

14 No misnomer or inaccurate description of any person or place named—
(a) in the register of electors, or
(b) in any list, proxy paper, ballot paper, notice or other document required for the purposes of this Act,
affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Carrying out of registration functions

15 (1) A registration officer must carry out the registration officer’s functions under this Act in accordance with any directions given by the Chief Counting Officer.
(2) The Chief Counting Officer must not give a direction that is inconsistent with this Act or any other enactment under which a registration officer exercises functions.
(3) Any of the functions of a registration officer under this Act may be carried out by a deputy for the time being approved by the council which appointed the registration officer, and the provisions of this Act apply to any such deputy so far as respects any functions to be carried out by the deputy as they apply to the registration officer.
(4) Each council must assign such officers to assist the registration officer appointed by the council as may be required for carrying out the registration officer’s functions under this Act.

Alterations in the register of electors

16 (1) An alteration in the register of electors under section 13A(2) (alteration of registers) or 56 (registration appeals) of the 1983 Act which is to take effect after the fifth day before the date of the referendum does not have effect for the purposes of the referendum.
(2) For the purposes of sub-paragraph (1), the following days are to be disregarded—
(a) a Saturday or Sunday,
(b) Christmas Eve or Christmas Day,
(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
(d) a day appointed for public thanksgiving or mourning.
(3) Section 13B(2) to (6) of the 1983 Act applies in relation to the referendum as it applies in relation to an election to which that section applies but as if—
(a) any reference to the appropriate publication date were a reference to the fifth day before the date of the referendum,
(b) any reference to the date of the poll at such an election were a reference to the date of the referendum,

(c) any reference to the relevant election area were a reference to the area for which the registration officer acts,

(d) any reference to the prescribed time on the day of the poll were a reference to 9pm on the date of the referendum,

(e) any reference to the issuing of a notice in the prescribed manner were a reference to the issuing of the notice in such manner and form as the registration officer may determine.

(4) Section 13BB of the 1983 Act applies in relation to the referendum as it applies in relation to an election mentioned in subsection (1)(b) of that section but as if—

(a) any reference to notice of such an election were a reference to notice of the referendum,

(b) any reference to the appropriate publication date for such an election were a reference to the fifth day before the date of the referendum,

(c) any reference to the issuing of a notice in the prescribed manner were a reference to the issuing of the notice in such manner and form as the registration officer may determine,

(d) subsection (2)(c) were omitted.

Preparation of the Polling List

17 (1) Each registration officer must prepare, in accordance with this paragraph, a list merging all of the entries contained in—

(a) the register of local government electors for the registration officer’s area, and

(b) the register of young voters for that area.

(2) The list is referred to in this Act as the “Polling List”.

(3) The entries in the Polling List must be arranged in such a way that it is not possible from reading the List to distinguish between those entries that are drawn from the register of local government electors, on the one hand, and those drawn from the register of young voters on the other.

(4) Each entry in the Polling List is to contain the same information as the entry in the register from which it is drawn, except that any dates of birth are to be omitted.

(5) No person to whom this sub-paragraph applies may—

(a) supply to any person a copy of the Polling List, or

(b) disclose any information contained in the List (that is not also contained in the edited version of the register of local government electors),

otherwise than in accordance with this Act.

(6) Sub-paragraph (5) applies to—

(a) a registration officer,
(b) any person appointed to assist a registration officer, or who in the course of the person’s employment is assigned to assist a registration officer, in the officer’s registration functions.

(7) Nothing in sub-paragraph (5) applies to the supply or disclosure by a person to whom that sub-paragraph applies to another such person in the connection with the person’s registration functions for the purposes of the referendum.

(8) The registration officer must ensure that the Polling List is securely destroyed no later than one year after the date of the referendum, unless otherwise directed by an order of the Court of Session or a sheriff principal.

The cut-off date

18 (1) In this Act, the cut-off date means 5pm on the eleventh day before the date of the referendum.

(2) For the purpose of ascertaining the cut-off date, the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

PART 3

POSTAL VOTING: ISSUE AND RECEIPT OF BALLOT PAPERS

Persons entitled to be present at issue and receipt of postal ballot papers

19 (1) Without prejudice to sections 17 to 19, no person may be present at the proceedings on the issue of postal ballot papers other than the counting officer and the counting officer’s staff.

(2) Without prejudice to sections 17 to 19, no person may be present at the proceedings on the receipt of postal ballot papers other than—

(a) the counting officer and the counting officer’s staff,

(b) a referendum agent or any person appointed by a referendum agent to attend in such referendum agent’s place,

(c) any agents appointed under sub-paragraph (3).

(3) Each referendum agent may appoint one or more agents to attend the proceedings on the receipt of the postal ballot papers (“postal ballot agents”).

(4) The number of postal ballot agents that may be appointed under sub-paragraph (3)—

(a) is to be determined by the counting officer, and

(b) is to be the same for each referendum agent.
(5) A referendum agent who appoints postal ballot agents must give the counting officer notice of the appointment no later than the time fixed for the opening of the postal voters box.

(6) If a postal ballot agent dies or becomes unable to perform the agent’s functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.

(7) A notice under sub-paragraph (5) or (6)—
   (a) must be given in writing, and
   (b) must give the names and addresses of the persons appointed.

(8) In this Part of this schedule, references to postal ballot agents are to agents appointed under sub-paragraph (3) or (6)—
   (a) whose appointments have been duly made and notified, and
   (b) who are within the number authorised by the counting officer.

(9) Where in this Part of this schedule anything is required or authorised to be done in the presence of postal ballot agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

Notification of requirement of secrecy

The counting officer must make such arrangements as are reasonably practicable to ensure that every person attending the proceedings in connection with the issue or receipt of postal ballot papers has been given a copy of sub-paragraphs (6), (8) and (9) of paragraph 7 of schedule 7.

Time when postal ballot papers are to be issued

The counting officer is to issue postal ballot papers (and postal voting statements) as soon as it is practicable to do so.

Issue of postal ballot papers

The number of the voter as stated in the Polling List must be marked on the corresponding number list, next to the unique identifying number of the ballot paper issued to that voter.

A mark is to be placed in the postal voters list or the proxy postal voters list against the number of the voter to denote that a ballot paper has been issued to the voter or the voter’s proxy, but without showing the particular ballot paper issued.

The number of a postal ballot paper must be marked on the postal voting statement sent with that paper.

Subject to sub-paragraph (5), the address to which the postal ballot paper, postal voting statement and the envelopes referred to in paragraph 24 are to be sent is—
   (a) in the case of a voter, the address shown in the postal voters list,
   (b) in the case of a proxy, the address shown in the proxy postal voters list.
(5) Where a person has an anonymous entry in the register of electors, the items specified in sub-paragraph (4) are to be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry to the address to which postal ballot papers should be sent—

(a) as shown in the record of anonymous entries, or

(b) as given in pursuance of an application made under paragraph 3(1) or (5) or 6(6) or (8).

Refusal to issue postal ballot paper

23 Where a counting officer is satisfied that two or more entries in the postal voters list, or the proxy postal voters list or in each of those lists relate to the same voter, the counting officer may not issue more than one ballot paper in respect of that voter.

Envelopes

24 (1) The envelope which the counting officer is required by rule 8(1) of the conduct rules to issue to a postal voter is to be marked with the letter “B”.

(2) The counting officer must also issue to a postal voter a smaller envelope which is to be marked with—

(a) the letter “A”,

(b) the words “ballot paper envelope”, and

(c) the number of the ballot paper.

Sealing up of completed corresponding number lists and security of special lists

25 (1) As soon as practicable after the issue of each batch of postal ballot papers, the counting officer must make up into a packet the completed corresponding number lists for those ballot papers which have been issued and must seal that packet.

(2) Until the counting officer has sealed the packet as described in paragraph 33(11), the counting officer must take proper precautions for the security of the marked copy of the postal voters list and the proxy postal voters list.

Payment of postage on postal ballot papers

26 (1) Where ballot papers are posted to postal voters, postage must be prepaid.

(2) Return postage must be prepaid where the address provided by the postal voter for the receipt of the postal ballot paper is within the United Kingdom.

Spoilt postal ballot papers

27 (1) If a postal voter has inadvertently dealt with a postal ballot paper or postal voting statement in such manner that it cannot be conveniently used as a ballot paper (a “spoilt ballot paper”) or a postal voting statement (a “spoilt postal voting statement”) the postal voter may return the spoilt ballot paper or (as the case may be) the spoilt postal voting statement to the counting officer (either by hand or by post).
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(2) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter must also return—

(a) the postal ballot paper or (as the case may be) the postal voting statement (whether spoilt or not), and

(b) the envelopes supplied for their return.

(3) Subject to sub-paragraph (4), on receipt of the documents referred to in sub-paragraphs (1) and (2), the counting officer must issue another postal ballot paper except where those documents are received after 5pm on the date of the referendum.

(4) Where the counting officer receives the documents referred to in sub-paragraphs (1) and (2) after 5pm on the day before the date of the referendum, the counting officer may only issue another postal ballot paper if the postal voter returns the documents by hand.

(5) The following provisions apply in relation to a replacement postal ballot paper under sub-paragraph (3) as they apply in relation to a ballot paper—

(a) paragraph 22 (except sub-paragraph (2)),

(b) paragraphs 24 and 25, and

(c) subject to sub-paragraph (8), paragraph 26.

(6) Any postal ballot paper or postal voting statement (whether spoilt or not) returned in accordance with sub-paragraphs (1) and (2) must be immediately cancelled.

(7) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (6), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(8) Where a postal voter applies in person after 5pm on the day before the date of the referendum, the counting officer may only issue a replacement postal ballot paper by handing it to the postal voter.

(9) The counting officer must enter in a list kept for the purpose (“the list of spoilt postal ballot papers”)—

(a) the name and number of the postal voter as stated in the Polling List (or, in the case of a postal voter who has an anonymous entry, that person’s voter number alone),

(b) the number of the postal ballot paper (or papers) issued under this paragraph, and

(c) where the postal voter whose ballot paper is spoilt is a proxy, the name and address of the proxy.

Lost postal ballot papers

28 (1) Where a postal voter claims either to have lost or not to have received—

(a) the postal ballot paper (a “lost postal ballot paper”),

(b) the postal voting statement, or

(c) one or more of the envelopes supplied for their return,
by the fourth day before the date of the referendum, the postal voter may apply (whether or not in person) to the counting officer for a replacement ballot paper.

(2) For the purposes of sub-paragraph (1), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial
Deals Act 1971.

(3) An application under sub-paragraph (1) must include evidence of the postal voter’s identity.

(4) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter must return any of the documents referred to in sub-paragraph (1)(a) to (c) which the postal voter has received and which have not been lost.

(5) Any postal ballot paper or postal voting statement returned in accordance with sub-
paragraph (4) must be immediately cancelled.

(6) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (5), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(7) Subject to sub-paragraph (8), where the application referred to in sub-paragraph (1) is received by the counting officer before 5pm on the date of the referendum and the counting officer—

(a) is satisfied as to the postal voter’s identity, and

(b) has no reason to doubt that the postal voter has either lost or has not received a document referred to in sub-paragraph (1)(a) to (c),

the counting officer may issue another postal ballot paper.

(8) Where the application referred to in sub-paragraph (1) is received by the counting officer after 5pm on the day before the date of the referendum, the counting officer may only issue another postal ballot paper if the postal voter applies in person.

(9) The counting officer must enter in a list kept for the purpose (“the list of lost postal ballot papers”)—

(a) the name and number of the postal voter as stated in the Polling List (or, in the case of a postal voter who has an anonymous entry, that person’s voter number alone),

(b) the number of the lost postal ballot paper and of its replacement issued under this paragraph, and

(c) where the postal voter is a proxy, the name and address of the proxy.

(10) The following provisions apply in relation to a replacement postal ballot paper under sub-paragraph (7) as they apply in relation to a ballot paper—

(a) paragraph 22 (except sub-paragraph (2)),

(b) paragraphs 24 and 25, and
Superseded postal ballot papers

28A(1) This paragraph applies where—

(a) an event mentioned in sub-paragraph (1A) occurs in relation to a voter or a voter’s proxy, and

(b) the documents mentioned in sub-paragraph (2) have previously been issued to the voter or, as the case may be, proxy.

(1A) The events are—

(a) an application by the voter is granted under paragraph 3(2), (5), (6) or (7),

(b) the voter is removed from the postal voters list,

(c) the appointment of the proxy to vote for the voter in the referendum is cancelled, or ceases to have effect, by virtue of paragraph 5(10),

(d) the proxy is removed from the proxy postal voters list,

(e) an application by the proxy is granted under paragraph 6(8).

(2) The documents are—

(a) a postal ballot paper (a “superseded postal ballot paper”),

(b) a postal voting statement,

(c) the envelopes supplied for their return.

(2A) The registration officer must notify the counting officer of the occurrence of the event.

(3) The superseded postal ballot paper is void and of no effect.

(3A) The counting officer must issue a replacement postal ballot paper where an application is granted under paragraph 3(5) or 6(8).

(4) The voter or, as the case may be, proxy must return the documents mentioned in sub-paragraph (2).

(5) Any postal ballot paper or postal voting statement returned in accordance with sub-paragraph (4) must be immediately cancelled.

(6) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (5), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

(7) The counting officer must enter in a list kept for the purpose (“the list of superseded postal ballot papers”)—
(a) the name and number of the voter as stated in the Polling List (or, in the case of a voter who has an anonymous entry, the voter’s voter number alone),

(b) the number of the superseded postal ballot paper,

(c) the number of any replacement postal ballot paper issued under sub-paragraph (3A), and

(d) where the superseded postal ballot paper was issued to a proxy, the name and address of the proxy.

Notice of opening of postal ballot paper envelopes

29 (1) The counting officer must give to each of the referendum agents appointed for the area not less than 48 hours’ notice in writing of each occasion on which a postal voters’ box and the envelopes contained in it are to be opened.

(2) That notice must specify—

(a) the time and place at which such an opening is to take place, and

(b) the number of postal ballot agents that may be appointed to attend each opening.

Boxes and receptacles

30 (1) The counting officer must provide a separate box for the reception of—

(a) the covering envelopes when returned by the postal voters, and

(b) postal ballot papers.

(2) Each such box must be marked “postal voters box” or “postal ballot box” (as the case may be) and with the name of the local government area.

(3) The postal ballot box must be shown as being empty to any postal ballot agents present on the occasion of opening the first postal voters box.

(4) The counting officer must then—

(a) lock the postal ballot box,

(b) apply the counting officer’s seal in such manner as to prevent the box being opened without breaking the seal, and

(c) allow any postal ballot agent present who wishes to affix the agent’s seal to do so.

(5) The counting officer must provide separate receptacles for—

(a) rejected votes,

(b) postal voting statements,

(c) ballot paper envelopes,

(d) rejected ballot paper envelopes,

(e) rejected votes (verification procedure), and

(f) postal voting statements (verification procedure).

(6) The counting officer must take proper precautions for the safe custody of every box and receptacle referred to in this paragraph.
Receipt of covering envelopes and collection of postal votes

31 (1) The counting officer must, immediately on receipt (whether by hand or by post) of a covering envelope (or an envelope which is stated to include a postal vote) before the close of the poll, place it unopened in a postal voters box.

(2) Where an envelope, other than a covering envelope issued by the counting officer—

(a) has been opened, and

(b) contains a ballot paper envelope, postal voting statement or ballot paper,

the envelope, together with its contents, is to be placed in a postal voters box.

(3) The counting officer may collect (or arrange to be collected) any postal ballot paper or postal voting statement which by virtue of rule 28(2)(g) of the conduct rules the presiding officer of a polling station would otherwise be required to deliver (or arrange to be delivered) to the counting officer.

(4) Where the counting officer collects (or arranges to be collected) any postal ballot paper or postal voting statement in accordance with sub-paragraph (3), the presiding officer must first make it (or them) up into a packet (or packets) sealed with the presiding officer’s seal and the seal of any polling agent present who wishes to affix the agent’s seal.

Opening of postal voters box

32 (1) Each postal voters box must be opened by the counting officer in the presence of any postal ballot agents who are present.

(2) So long as the counting officer ensures that there is at least one sealed postal voters box for the reception of covering envelopes up to the time of the close of the poll, the other postal voters boxes may be opened by the counting officer.

(3) The last postal voters box and the postal ballot box must be opened at the counting of the votes under rule 30 of the conduct rules.

Opening of covering envelopes

33 (1) When a postal voters box is opened, the counting officer must count and record the number of covering envelopes (including any envelope which is stated to include a postal vote and any envelope described in paragraph 31(2)).

(2) The counting officer must set aside for personal identifier verification not less than 20 percent of the envelopes recorded on that occasion.

(3) The counting officer must open separately each covering envelope that is not set aside (including an envelope described in paragraph 31(2)).

(4) The procedure in paragraph 35 or 36 applies where a covering envelope (including an envelope to which paragraph 31(2) applies) contains both—

(a) a postal voting statement, and

(b) a ballot paper envelope, or if there is no ballot paper envelope, a ballot paper.
(5) Where the covering envelope does not contain the postal voting statement separately, the counting officer must open the ballot paper envelope to ascertain whether the postal voting statement is inside.

(6) Where a covering envelope does not contain both—

(a) a postal voting statement (whether separately or not), and

(b) a ballot paper envelope or, if there is no ballot paper envelope, a ballot paper,

the counting officer must mark the covering envelope “provisionally rejected”, attach its contents (if any) and place it in the receptacle for rejected votes.

(7) Where—

(a) an envelope contains the postal voting statement of a voter with an anonymous entry, and

(b) sub-paragraph (6) does not apply,

the counting officer must set aside that envelope and its contents for personal identifier verification in accordance with paragraph 36.

(8) In carrying out the procedures in this paragraph and paragraphs 35 to 41, the counting officer and the counting officer’s staff—

(a) must keep the ballot papers face downwards and must take proper precautions for preventing any person from seeing the votes made on the ballot papers, and

(b) must not look at the corresponding number list used at the issue of postal ballot papers.

(9) Where an envelope opened in accordance with sub-paragraph (3) contains a postal voting statement, the counting officer must place a mark in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned.

(10) A mark made under sub-paragraph (9) must be distinguishable from and must not obscure the mark made under paragraph 22(2).

(11) As soon as practicable after the last covering envelope has been opened, the counting officer must make up into a packet the copy of the marked postal voters list and proxy postal voters list that have been marked in accordance with sub-paragraph (9) and must seal that packet.

Confirmation of receipt of postal voting statement

(1) A voter or a voter’s proxy who is shown in the postal voters list or proxy postal voters list may make a request, at any time between the first issue of postal ballots under paragraph 22 and the close of the poll, that the counting officer confirm—

(a) whether a mark is shown in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned, and

(b) whether the number of the ballot paper issued to the voter or the voter’s proxy has been recorded on either of the lists of provisionally rejected postal ballot papers kept by the counting officer under sub-paragraphs (2) and (3) of paragraph 40.
(2) Where a request is received in accordance with sub-paragraph (1) the counting officer must, if satisfied that the request has been made by the voter or the voter’s proxy, provide confirmation of the matters mentioned in sub-paragraph (1).

Procedure in relation to postal voting statements

35 (1) This paragraph applies to any postal voting statement contained in an envelope that has not been set aside for personal identifier verification in accordance with paragraph 33(2) or (7).

(2) The counting officer must determine whether the postal voting statement is duly completed.

(3) Where the counting officer determines that the postal voting statement is not duly completed, the counting officer must mark the statement “rejected”, attach to it the ballot paper envelope, or if there is no such envelope, the ballot paper, and, subject to sub-paragraph (4), place it in the receptacle for rejected votes.

(4) Before placing the statement in the receptacle for rejected votes, the counting officer must—

(a) show it to the postal ballot agents, and

(b) if any agent objects to the counting officer’s decision, add the words “rejection objected to”.

(5) The counting officer must then examine the number on the postal voting statement against the number on the ballot paper envelope and, where they are the same, must place the statement and the ballot paper envelope respectively in the receptacle for postal voting statements and the receptacle for ballot paper envelopes.

(6) Where—

(a) the number on a valid postal voting statement is not the same as the number on the ballot paper envelope, or

(b) that envelope has no number on it,

the counting officer must open the envelope.

(7) Sub-paragraph (8) applies where—

(a) there is a valid postal voting statement but no ballot paper envelope, or

(b) the ballot paper envelope has been opened under paragraph 33(5) or sub-paragraph (6).

(8) The counting officer must place—

(a) in the postal ballot box, any postal ballot paper the number on which is the same as the number on the valid postal voting statement,

(b) in the receptacle for rejected votes, any other postal ballot paper, with the valid postal voting statement attached and marked “provisionally rejected”,

(c) in the receptacle for rejected votes, any valid postal voting statement marked “provisionally rejected” where there is no postal ballot paper, and

(d) in the receptacle for postal voting statements, any valid statement not disposed of under sub-paragraph (b) or (c).
Procedure in relation to postal voting statements: personal identifier verification

36 (1) This paragraph applies to any postal voting statement contained in an envelope that has been set aside for personal identifier verification in accordance with paragraph 33(2) or (7).

(2) The counting officer must open the envelope and determine whether the postal voting statement is duly completed and, as part of that process, must compare the date of birth and the signature on the postal voting statement against the date of birth and the signature contained in the personal identifiers record relating to the person to whom the postal ballot paper was addressed.

(3) Where the counting officer determines that the statement is not duly completed, the counting officer must mark the statement “rejected”, attach it to the ballot paper envelope, or if there is no such envelope, the ballot paper, and, subject to sub-paragraph (4), place it in the receptacle for rejected votes (verification procedure).

(4) Before placing a postal voting statement in the receptacle for rejected votes (verification procedure), the counting officer must—

(a) show it to the postal ballot agents,

(b) permit the agents to view the entries in the personal identifiers record relating to the person to whom the postal ballot paper was addressed, and

(c) if any agent objects to the counting officer’s decision, add the words “rejection objected to”.

(5) The counting officer must then examine the number on the postal voting statement against the number on the ballot paper envelope and, where they are the same, the counting officer must place the statement and the ballot paper envelope respectively in the receptacle for postal voting statements (verification procedure) and the receptacle for ballot paper envelopes.

(6) Where—

(a) the number on a valid postal voting statement is not the same as the number on the ballot paper envelope, or

(b) that envelope has no number on it,

the counting officer must open the envelope.

(7) Sub-paragraph (8) applies where—

(a) there is a valid postal voting statement but no ballot paper envelope, or

(b) the ballot paper envelope has been opened under paragraph 33(5) or sub-paragraph (6).

(8) The counting officer must place—

(a) in the postal ballot box, any postal ballot paper the number on which is the same as the number on the valid postal voting statement,

(b) in the receptacle for rejected votes (verification procedure), any other ballot paper, with the valid postal voting statement attached and marked “provisionally rejected”,

...
(c) in the receptacle for rejected votes (verification procedure), any valid postal voting statement marked “provisionally rejected” where there is no postal ballot paper, and

(d) in the receptacle for postal voting statements (verification procedure), any valid statement not disposed of under sub-paragraph (b) or (c).

Postal voting statements: additional personal identifier verification

37 (1) A counting officer may on any occasion on which a postal voters box is opened in accordance with paragraph 32 undertake verification of the personal identifiers on any postal voting statement that has on a prior occasion been placed in the receptacle for postal voting statements.

(2) Where a counting officer undertakes additional verification of personal identifiers, the officer must—

(a) remove as many postal voting statements from the receptacle for postal voting statements as the officer wishes to subject to additional verification, and

(b) compare the date of birth and the signature on each such postal voting statement against the date of birth and the signature contained in the personal identifiers record relating to the person to whom the postal ballot paper was addressed.

(3) Where the counting officer is no longer satisfied that the postal voting statement has been duly completed, the officer must mark the statement “rejected” and, before placing the postal voting statement in the receptacle for rejected votes (verification procedure), must—

(a) show it to the postal ballot agents and permit them to view the entries in the personal identifiers record which relate to the person to whom the postal ballot paper was addressed, and, if any agent objects to the counting officer’s decision, add the words “rejection objected to”,

(b) open any postal ballot box and retrieve the ballot paper corresponding to the ballot paper number on the postal voting statement,

(c) show the ballot paper number on the retrieved ballot paper to the agents, and

(d) attach the ballot paper to the postal voting statement.

(4) Following the removal of a postal ballot paper from a postal ballot box the counting officer must lock and reseal the postal ballot box in the presence of the postal ballot agents.

(5) Whilst retrieving a ballot paper in accordance with sub-paragraph (3), the counting officer and the counting officer’s staff—

(a) must keep the ballot papers face downwards and take proper precautions for preventing any person from seeing the votes made on the ballot papers, and

(b) must not look at the corresponding number list used at the issue of postal ballot papers.

Opening of ballot paper envelopes

38 (1) The counting officer must open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.
(2) The counting officer must place—
   (a) in the postal ballot box, any postal ballot paper the number on which is the same
       as the number on the ballot paper envelope,
   (b) in the receptacle for rejected votes, any other postal ballot paper, which is to be
       marked “provisionally rejected” and to which is to be attached the ballot paper
       envelope, and
   (c) in the receptacle for rejected ballot paper envelopes, any ballot paper envelope
       which is to be marked “provisionally rejected” because it does not contain a postal
       ballot paper.

Retrieval of cancelled postal ballot papers

39 (1) Where it appears to the counting officer that a cancelled postal ballot paper has been
       placed—
       (a) in a postal voters box,
       (b) in the receptacle for ballot paper envelopes, or
       (c) in a postal ballot box,
       the counting officer must proceed as set out in sub-paragraphs (2) and (3).

(2) The counting officer must on the next occasion on which a postal voters box is opened
       in accordance with paragraph 32, also open any postal ballot box and the receptacle for
       ballot paper envelopes and—
       (a) retrieve the cancelled postal ballot paper,
       (b) show the ballot paper number on the cancelled postal ballot paper to the postal
           ballot agents,
       (c) retrieve the postal voting statement that relates to a cancelled paper from the
           receptacle for postal voting statements,
       (d) attach any cancelled postal ballot paper to the postal voting statement to which it
           relates,
       (e) place the cancelled documents in a separate packet and deal with that packet in the
           manner provided for in paragraph 27(7), and
       (f) unless the postal ballot box has been opened for the purposes of the counting of
           votes under rule 30 of the conduct rules, seal the postal ballot box in the presence
           of the agents.

(3) Whilst retrieving a cancelled postal ballot paper in accordance with sub-paragraph (2),
    the counting officer and the counting officer’s staff—
    (a) must keep the ballot papers face downwards and take proper precautions for
        preventing any person from seeing the votes made on the ballot papers, and
    (b) must not look at the corresponding number list used at the issue of postal ballot
        papers.
Lists of provisionally rejected postal ballot papers

40 (1) The counting officer must keep two separate lists of provisionally rejected postal ballot papers.

(2) In the first list, the counting officer must record the ballot paper number of any postal ballot paper for which no valid postal voting statement was received with it.

(3) In the second list, the counting officer must record the ballot paper number of any postal ballot paper which is entered on a valid postal voting statement where that postal ballot paper is not received with the postal voting statement.

Checking of lists kept under paragraph 40

41 (1) Where the counting officer receives a valid postal voting statement without the postal ballot paper to which it relates, the counting officer may, at any time prior to the close of the poll, check the list kept under paragraph 40(2) to see whether the number of any postal ballot paper to which the statement relates is entered in the list.

(2) Where the counting officer receives a postal ballot paper without the postal voting statement to which it relates, the counting officer may, at any time prior to the close of the poll, check the list kept under paragraph 40(3) to see whether the number of the postal ballot paper is entered in the list.

(3) The counting officer must conduct the checks required by sub-paragraphs (1) and (2) as soon as practicable after the receipt, under rule 28(1)(c) of the conduct rules, of packets from every polling station in the local government area.

(4) Where the ballot paper number in the list matches that number on a valid postal voting statement or (as the case may be) the postal ballot paper, the counting officer must retrieve that statement or paper.

(5) The counting officer must then take the appropriate steps under this Part of this schedule as though any document earlier marked “provisionally rejected” had not been so marked and must amend the document accordingly.

Sealing of receptacles

42 (1) As soon as practicable after the completion of the procedure under paragraph 41(3) and (4), the counting officer must make up into separate packets the contents of—

(a) the receptacle for rejected votes,
(b) the receptacle for postal voting statements,
(c) the receptacle for rejected ballot paper envelopes,
(d) the lists of spoilt, lost and superseded postal ballot papers,
(e) the receptacle for rejected votes (verification procedure), and
(f) the receptacle for postal voting statements (verification procedure), and must seal up such packets.

(2) Any document in those packets marked “provisionally rejected” is to be deemed to be marked “rejected”.
Forwarding of documents

43 (1) The counting officer must, at the same time as sending the documents mentioned in rule 37 of the conduct rules, send to the proper officer—

(a) any packets referred to in paragraphs 25, 27(7), 28(6), 28A(6), 33(11), 39(2)(e) and 42, endorsing on each packet a description of its contents and the date of the referendum, and

(b) a completed statement giving details of postal ballot papers issued, received, counted and rejected in the form prescribed.

(2) Where—

(a) any covering envelopes are received by the counting officer after the close of the poll (apart from those delivered in accordance with the provisions of rule 28 of the conduct rules),

(b) any envelopes addressed to postal voters are returned as undelivered too late to be re-addressed, or

(c) any spoilt postal ballot papers are returned too late to enable other postal ballot papers to be issued,

the counting officer must put them unopened in a separate packet, seal up that packet and endorse and send it at a subsequent date in the manner described in sub-paragraph (1).

(3) Rules 38 and 40 of the conduct rules apply to any packet or document sent under this paragraph as they apply for the purposes of the documents referred to in those rules.

(4) A copy of the statement referred to in sub-paragraph (1)(b) is to be provided by the counting officer to the Electoral Commission.

Power of Chief Counting Officer to prescribe

44 (1) In paragraphs 9(2) and 43(1)(b), “prescribed” means prescribed by the Chief Counting Officer.

(2) Where a form is prescribed under sub-paragraph (1), the form may be used with such variations as the circumstances may require.

Interpretation of Part

45 In this Part—

“postal ballot paper” means a ballot paper issued, or to be issued, to a postal voter,

“postal voter” means a voter or a voter’s proxy who is entitled to vote by post.

PART 4

SUPPLY OF POLLING LIST ETC.

Supply of free copy of Polling List etc. to counting officers

46 (1) Each registration officer must, at the request of the relevant counting officer, supply free of charge to the counting officer as many printed copies of—
(a) the latest version of the Polling List,  
(b) any notice setting out an alteration to the register of electors issued under—  
   (i) section 13A(2) of the 1983 Act,  
   (ii) section 13B(3), (3B) or (3D) of that Act, or  
   (iii) section 13BB(4) or (5) of that Act, and  
(c) any record of anonymous entries,  
as the counting officer may reasonably require for the purposes of the referendum.  

(2) Each registration officer must, as soon as practicable, supply free of charge to the relevant counting officer as many printed copies of—  

(a) the postal voters list,  
(b) the list of proxies, and  
(c) the proxy postal voters list,  
as the counting officer may reasonably require for the purposes of the referendum.  

(3) If, after supplyin g copies of the Polling List and notices in accordance with sub-paragraph (1), any further notices of the kind referred to in paragraph (b) of that sub-paragraph are issued by a registration officer, the registration officer must, as soon as reasonably practicable after issuing the notices, supply the relevant counting officer with as many printed copies as the counting officer may reasonably require for the purposes of the referendum.  

(4) The duty under sub-paragraph (1) to supply as many printed copies of the Polling List and notices as the counting officer may reasonably require includes a duty to supply one copy in data form.  

(5) No person to whom a copy of a document has been supplied under this paragraph may, except for the purposes of the referendum—  

(a) supply a copy of the document,  
(b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or  
(c) make use of any such information.  

Supply of free copy of Polling List etc. to Electoral Commission  

47 (1) Each registration officer must supply free of charge to the Electoral Commission one copy of—  

(a) the Polling List,  
(b) any notice setting out an alteration of the register of electors issued under—  
   (i) section 13A(2) of the 1983 Act,  
   (ii) section 13B(3), (3B) or (3D) of that Act, or  
   (iii) section 13BB(4) or (5) of that Act,  
(c) the postal voters list,  
(d) the list of proxies, and
(e) the proxy postal voters list.

(2) The duty to supply under sub-paragraph (1) is a duty to supply in data form unless the Commission have, prior to the supply, requested in writing a printed copy instead.

(3) Neither an Electoral Commissioner nor any person employed by the Commission may—

(a) supply a copy of any document supplied under sub-paragraph (1) otherwise than to another Electoral Commissioner or another such person,

(b) disclose any information contained in any such document otherwise than in accordance with sub-paragraph (5) below,

(c) make use of any such information otherwise than in connection with the Commissioner’s or the person’s functions under, or by virtue of, this Act.

(4) In sub-paragraph (3), “Electoral Commissioner” includes a Deputy Electoral Commissioner and an Assistant Electoral Commissioner.

(5) A document supplied under sub-paragraph (1), or any information contained in it, may not be disclosed otherwise than—

(a) where necessary to carry out the Commission’s functions under this Act in relation to permissible donors,

(b) by publishing information about voters which does not include the name or address of any voter.

Supply of free copy of edited Polling List etc. to designated organisations

48 (1) If a designated organisation so requests, the registration officer must supply free of charge to the organisation one copy of an edited version of—

(a) the Polling List,

(b) any notice setting out an alteration of the register of electors issued under—

(i) section 13A(2) of the 1983 Act,

(ii) section 13B(3), (3B) or (3D) of that Act, or

(iii) section 13BB(4) or (5) of that Act,

(c) the postal voters list,

(d) the list of proxies, and

(e) the proxy postal voters list.

(2) For the purposes of this paragraph, an “edited version” of a document is a version of the document with—

(a) all voter numbers removed, and

(b) all anonymous entries removed.

(3) A request under sub-paragraph (1) must—

(a) be made in writing,

(b) specify the documents requested,

(c) state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any further documents issued, and
(d) state whether a printed copy of any of the documents is requested instead of a version in data form.

(4) Unless a request has been made in advance of supply under sub-paragraph (3)(d), the copy of a document supplied under sub-paragraph (1) is to be in data form.

(5) No person employed by, or assisting (whether or not for reward) a designated organisation to which a document has been supplied under this paragraph may, except for a purpose set out in sub-paragraph (6)—

(a) supply a copy of the document to any person,

(b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or

(c) make use of any such information.

(6) The purposes are—

(a) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the organisation under paragraph 2 of schedule 4, and

(b) the purposes of complying with the controls on donations and regulated transactions in that schedule.

Supply of free copy of register of local government electors etc. to permitted participants

49 (1) If a permitted participant so requests, the registration officer must supply free of charge to the participant one copy of—

(a) the full, latest version of the register of local government electors published under section 13(1) or (3) of the 1983 Act,

(b) any notice setting out an alteration of that version of the register issued under—

(i) section 13A(2) of the 1983 Act,

(ii) section 13B(3), (3B) or (3D) of that Act, or

(iii) section 13BB(4) or (5) of that Act,

(c) the postal voters list kept by the officer under paragraph 5(2) of Schedule 4 (absent voting at parliamentary and local government elections) to the Representation of the People Act 2000,

(d) the list of proxies kept by the officer under paragraph 5(3) of that Schedule, and

(e) the proxy postal voters list kept by the officer under paragraph 7(8) of that Schedule.

(2) A request under sub-paragraph (1) must—

(a) be made in writing,

(b) specify the documents requested,

(c) state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any further documents issued, and

(d) state whether a printed copy of any of the documents is requested instead of a version in data form.
(3) Unless a request has been made in advance of supply under sub-paragraph (2)(d), the copy of a document supplied under sub-paragraph (1) is to be in data form.

(4) No person employed by, or assisting (whether or not for reward) a permitted participant to which a document has been supplied under this paragraph may, except for a purpose set out in sub-paragraph (5)—

(a) supply a copy of the document to any person,
(b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or
(c) make use of any such information.

(5) The purposes are—

(a) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the permitted participant under paragraph 2 of schedule 4, and
(b) the purposes of complying with the controls on donations and regulated transactions in that schedule.

Supply of data

50 A duty of a registration officer to supply data under this Part of this schedule is a duty only to supply the data in the form in which the officer holds it.

General restriction on use of registration documents and information contained in them

51 (1) This paragraph applies to—

(a) any person to whom a copy of a registration document is supplied under any enactment other than paragraphs 46 to 49,
(b) any person to whom information contained in a registration document has been disclosed,
(c) any person to whom a person referred to in paragraph (a) or (b) has supplied a copy of a registration document or information contained in it, and
(d) any person who has obtained access to a copy of a registration document or information contained in it by any other means.

(2) No person to whom this paragraph applies may, except for the purposes of the referendum—

(a) supply a copy of a registration document,
(b) disclose any information contained in a registration document (that is not also contained in the edited version of the register of local government electors), or
(c) make use of any such information.

(3) In this paragraph, “registration document” means a document referred to in paragraphs 46(1) and (2) and 48(1).

Offence in relation to disclosure of registration documents

52 (1) A person (“A”) commits an offence—
(a) if A contravenes any of paragraphs 17(5), 46(5), 47(3) or (5), 48(5), 49(4) or 51(2), or
(b) if A is an appropriate supervisor of another person (“B”) who contravenes any of those paragraphs and A failed to take appropriate steps.

5

(2) B does not commit an offence under sub-paragraph (1) if—

(a) B has an appropriate supervisor, and
(b) B complied with all the requirements imposed on B by the appropriate supervisor.

(3) A does not commit an offence under sub-paragraph (1) if—

(a) A is not, and does not have, an appropriate supervisor, and
(b) A took all reasonable steps to ensure that A did not contravene a provision specified in sub-paragraph (1)(a).

(4) In this paragraph—

“appropriate supervisor” means a person who is a director of a company, or concerned in the management of an organisation, in which B is employed or under whose direction or control B is,

“appropriate steps” are such steps as it was reasonable for the appropriate supervisor to take to secure the operation of procedures designed to prevent, so far as reasonably practicable, any contravention of a provision specified in sub-paragraph (1)(a).

(5) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Destruction of copies of the Polling List etc.

53 (1) This paragraph applies to any person holding a copy of a document supplied under paragraph 46(1) or (2), 48(1) or 49(1).

(2) The person must ensure that the document is securely destroyed no later than one year after the date of the referendum, unless otherwise directed by an order of the Court of Session or a sheriff principal.

(3) A person who fails to comply with sub-paragraph (2) commits an offence.

(4) A person who commits an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 5

SUPPLY OF MARKED POLLING LIST ETC.

Supply of marked Polling List etc. to designated organisations

54 (1) A designated organisation may request that a counting officer supply the organisation with copies of—

(a) the marked copy of the Polling List,
(b) the marked copy of any notice setting out an alteration of the register of electors issued under—
(i) section 13B(3B) or (3D) of the 1983 Act, or  
(ii) section 13BB(4) of that Act,  
(c) the marked copy of the postal voters list,  
(d) the marked copy of the list of proxies, and  
(e) the marked copy of proxy postal voters list.

(2) A request under sub-paragraph (1) must—  
(a) be made in writing,  
(b) specify the documents requested,  
(c) state whether a printed copy of the documents is requested or a copy in data form,  
and  
(d) state the purposes for which the documents will be used and why the supply of the unmarked copies of the documents would not be sufficient to achieve those purposes.

(3) Where a request is duly made by a designated organisation under sub-paragraph (1), the counting officer must supply the documents requested if—  
(a) the officer is satisfied that the organisation needs to see the marks on the marked copies of the documents in order to achieve the purpose for which they are requested, and  
(b) the officer has received payment of a fee calculated in accordance with paragraph 55.

(4) A designated organisation that obtains a copy of any document referred to in sub-paragraph (1) may use it—  
(a) only for—  
(i) purposes in connection with the campaign in respect of the referendum identified in the declaration made by the organisation under paragraph 2 of schedule 4, or  
(ii) the purposes of complying with the controls on donations and regulated transactions in that schedule, and  
(b) subject to any conditions that would apply to the use of the unmarked copies of the documents by virtue of paragraph 48.

(5) Where a person (“A”) has been supplied with a copy of a document referred to in sub-paragraph (1), or information contained in such a document, by a person (“B”) to whom paragraph 48(5) applies, the restrictions in that paragraph also apply to A as they apply to B.

(6) A designated organisation may—  
(a) supply a copy of a document referred to in sub-paragraph (1) to a processor for the purpose of processing the information contained in it, or  
(b) procure that a processor processes and supplies to the organisation any copy of the information in such a document that the processor has obtained under this paragraph,
for use in respect of the purposes for which the designated organisation is entitled to
obtain such document or information.

(7) A duty of a counting officer to supply data under this paragraph is a duty only to supply
the data in the form in which the officer holds it.

(8) Paragraph 53 applies to a person holding a copy of a document supplied under this
paragraph as it applies to a person holding a copy of any document supplied under
paragraph 46(1) or (2), 48(1) or 49(1) (and the reference in paragraph 53(2) to the
document is to be construed accordingly).

(9) In sub-paragraph (6) “processor” means a person who provides a service which consists
of putting information into data form and includes an employee of such a person.

(10) In this Act, “marked copy” means—

(a) in relation to the Polling List, the copy marked as mentioned in rule 21(2)(c) of
the conduct rules,

(b) in relation to a notice issued under section 13B(3B) or (3D) or 13BB(4), the copy
marked as mentioned in that rule as modified by rule 21(4),

(c) in relation to the list of proxies, the copy marked as mentioned in rule 21(2)(d),

(d) in relation to the postal voters list or proxy postal voters list, the copy marked as
mentioned in paragraph 22(2) of this schedule.

Fee for supply of marked Polling List etc.

55 (1) The fee to be paid in accordance with sub-paragraph (3)(b) of paragraph 54 by a
designated organisation requesting the supply of a document referred to in sub-
paragraph (1) of that paragraph is set out in sub-paragraph (2).

(2) The fee is £10 plus—

(a) for a copy in printed form, £2 for each 1,000 entries (or remaining part of 1,000
entries) covered by the request,

(b) for a copy in data form, £1 for each 1,000 entries (or remaining part of 1,000
entries) covered by the request.

(3) For the purposes of this paragraph, a request for a copy of the whole or the same part of
a document in both printed and data form may be treated as two separate requests.

SCHEDULE 3
(introduced by section 9)

CONDUCT RULES

Publication of notice of the referendum

1 (1) The counting officer must publish notice of the referendum not later than the twenty-
fifth day before the date of the referendum.

(2) For the purposes of paragraph (1), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,
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(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
(d) a day appointed for public thanksgiving or mourning.

(3) The notice must—

(a) be in the form prescribed, and
(b) set out—
   (i) the date of the referendum,
   (ii) the hours of polling,
   (iii) a description of who is entitled to vote at each polling station, and
   (iv) the situation of each polling station in the local government area.

(4) The notice must also state the day by which—

(a) applications to register to vote,
(b) applications to vote by post or by proxy,
(c) other applications and notices about postal or proxy voting,

must reach the registration officer in order that they may be effective for the referendum.

(5) As soon as practicable after publishing the notice under paragraph (1), the counting officer must give a copy of it to each of the referendum agents appointed for the area.

Hours of polling

The hours of polling are between 7am and 10pm.

The ballot

(1) The votes at the referendum are to be given by ballot.
(2) The ballot of every voter consists of a ballot paper.
(3) The ballot paper is to be of the prescribed colour.

Printing of ballot papers

The counting officer must arrange for the printing of the ballot papers for the counting officer’s area unless the Chief Counting Officer takes responsibility for doing so.

The corresponding number list

(1) The counting officer must prepare a list (the “corresponding number list”) which complies with paragraph (2).
(2) The corresponding number list must—
   (a) contain the unique identifying numbers of all ballot papers to be issued in accordance with rule 8(1) or provided in accordance with rule 13(1), and
   (b) be in the form prescribed.
Security marking

6 (1) Every ballot paper must bear or contain—

   (za) an official mark on the front of the ballot paper, and
   (a) a unique identifying number on the back of the ballot paper.

5 (2) The counting officer may use a different official mark for ballot papers issued for the purpose of voting by post from the official mark used for ballot papers issued for the purpose of voting in person.

(3) The counting officer may use a different official mark for different purposes.

(4) The official mark must be kept secret.

Use of schools and public rooms for polling and counting votes

7 (1) The counting officer may use, free of charge, for the purpose of taking the poll or counting the votes—

   (a) a suitable room in the premises of a school to which this rule applies in accordance with paragraph (2), and
   (b) any meeting room to which this rule applies in accordance with paragraph (3).

15 (2) This rule applies to any school maintained by an education authority.

15 (3) This rule applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—

   (a) the Scottish Ministers or any other part of the Scottish Administration, or
   (b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

20 (4) The counting officer—

   (a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and restoring the room to its usual condition after use for the referendum, and
   (b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises by reason of its being used for the purposes of taking the poll or counting the votes.

30 (5) For the purposes of this rule (except those of paragraph (4)(b)), the premises of a school are not to be taken to include any private dwelling.

(6) In this rule—

   “dwelling” includes any part of a building where that part is occupied separately as a dwelling,

   “meeting room” means any room which it is the practice to let for public meetings, and

   “room” includes a hall, gallery or gymnasium.

Postal ballot papers

8 (1) The counting officer must issue to those entitled to vote by post—
(a) a ballot paper,
(b) a postal voting statement in the form prescribed, and
(c) an envelope for their return.

(2) The counting officer must also, as soon as reasonably practicable, issue to those entitled to vote by post information about how to obtain—

(a) translations into languages other than English of any directions to or guidance for voters sent with the ballot paper,
(b) a translation into Braille of such directions or guidance,
(c) a graphical representation of such directions or guidance, and
(d) the directions or guidance in any other form (including in audible form).

**Provision of polling stations**

9 (1) The counting officer must—

(a) provide a sufficient number of polling stations, and
(b) allot the voters to the polling stations.

(2) One or more polling stations may be provided in the same room.

(3) The counting officer must provide each polling station with such number of compartments as may be necessary in which the voters can mark their votes screened from observation.

**Appointment of presiding officers and clerks**

10 (1) The counting officer must appoint and pay—

(a) a presiding officer to attend at each polling station, and
(b) such clerks as may be necessary for the purposes of the referendum.

(2) The counting officer may not appoint any person who is or has been involved in campaigning for a particular outcome in the referendum.

(3) The counting officer may preside at a polling station and the provisions of these rules relating to a presiding officer apply to a counting officer who so presides with the necessary modifications as to things done by the counting officer to the presiding officer or by the presiding officer to the counting officer.

(4) A presiding officer may authorise a clerk appointed under paragraph (1)(b) to do any act which the presiding officer is required or authorised by these rules to do at a polling station, except ordering the removal and exclusion of any person from the polling station.

**Issue of poll cards**

11 (1) The counting officer must, as soon as reasonably practicable after publishing the notice of the referendum under rule 1, send to voters whichever of the following is appropriate—

(a) an official poll card,
(b) an official postal poll card,
(c) an official poll card issued to the proxy of a voter, or
(d) an official postal poll card issued to the proxy of a voter.

(2) A voter’s official poll card is to be sent or delivered to the voter’s qualifying address.

(3) A voter’s official postal poll card is to be sent or delivered to the address to which the voter has stated that the ballot paper is to be sent.

(4) A proxy’s official poll card or official postal poll card is to be sent or delivered to the proxy’s address as shown in the list of proxies.

(5) The cards mentioned in paragraph (1) are to be in the form prescribed.

(6) The cards must set out—

(a) the voter’s name, qualifying address and number in the Polling List (unless the voter has an anonymous entry),
(b) the date of the referendum,
(c) the hours of polling, and
(d) the situation of the polling station allotted to the voter under rule 9(1)(b) (in the case of the cards mentioned in paragraph (1)(a) and (c)).

(7) Where a poll card is sent to a voter who has appointed a proxy, the card must also notify the voter of the appointment of the proxy.

(8) In the case of a voter who has an anonymous entry, the card must be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry.

Loan of equipment for referendum

12 (1) A council must, if requested to do so by a counting officer, loan to the counting officer any ballot boxes, fittings and compartments provided by or belonging to the council.

(2) Paragraph (1) does not apply if the council requires the equipment for immediate use by that council.

(3) A loan under paragraph (1) is to be on such terms and conditions as the council and the counting officer may agree.

Equipment of polling stations

13 (1) The counting officer must provide each presiding officer with such number of ballot boxes and ballot papers as the counting officer considers necessary.

(2) Each ballot box is to be constructed so that the ballot papers can be put in, but cannot be withdrawn from it, without the box being opened.

(3) The counting officer must provide each polling station with—

(a) materials to enable voters to mark the ballot papers,
(b) copies of the Polling List or such part of it as contains the entries relating to the voters allotted to the station,
(c) the parts of any lists of persons entitled to vote by post or by proxy prepared for the referendum corresponding to the Polling List or the part of it provided under sub-paragraph (b),
(d) copies of forms of declarations and other documents required for the purpose of the poll, and

(e) the part of the corresponding number list which contains the numbers corresponding to those on the ballot papers provided to the presiding officer of the polling station.

5

(4) The reference in paragraph (3)(b) to the copies of the Polling List includes a reference to copies of any notices issued under section 13B(3B) or (3D) or 13BB(4) or (5) of the 1983 Act in respect of alterations to the register of electors.

(5) A notice giving directions for the guidance of voters in voting is to be displayed—

(a) inside and outside every polling station, and

(b) in every compartment of every polling station.

(6) The notice under paragraph (5) is to be in the form prescribed.

(7) The counting officer must also provide each polling station with—

(a) an enlarged hand-held sample copy of the ballot paper for the assistance of voters who are partially-sighted, and

(b) a device for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion.

(8) The counting officer may cause to be displayed at every polling station an enlarged sample copy of the ballot paper and may include a translation of it into such other languages as the counting officer considers appropriate.

(9) The sample copy mentioned in paragraphs (7)(a) and (8) must be clearly marked as a specimen provided only for the guidance of voters in voting.

Appointment of polling and counting agents

14 (1) A referendum agent may appoint—

(a) polling agents to attend at polling stations for the purpose of detecting personation,

(b) counting agents to attend at the counting of the votes.

(2) The counting officer may limit the number of counting agents that may be appointed, so long as—

(a) the number that may be appointed by each referendum agent is the same, and

(b) the number that may be appointed by each referendum agent is not less than the number obtained by dividing the number of clerks employed on the counting by the number of referendum agents.

(3) For the purposes of paragraph (2)(b), a counting agent appointed by more than one referendum agent is to be treated as a separate agent for each of them.

(4) A referendum agent who appoints a polling or counting agent must give the counting officer notice of the appointment no later than the fifth day before the date of the referendum.

(5) For the purposes of paragraph (4), the following days are to be disregarded—

(a) a Saturday or Sunday,
(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

(6) If a polling agent or counting agent dies or becomes unable to perform the agent’s functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.

(7) A notice under paragraph (4) or (6)—

(a) must be given in writing,

(b) must give the name and address of the person appointed,

(c) in the case of a polling agent, must set out which polling stations the agent may attend,

(d) in the case of a counting agent, must set out which counts the agent may attend.

(8) In schedule 2 and these conduct rules, references to polling agents and counting agents are to agents appointed under paragraph (1) or (6)—

(a) whose appointments have been duly made and notified, and

(b) where the number of agents is restricted, who are within the permitted numbers.

(9) Any notice required to be given to a counting agent by the counting officer may be delivered at, or sent by post to, the address stated in the notice under paragraph (4) or (6).

(10) A referendum agent may do (or assist in doing) anything that a polling or counting agent appointed by that referendum agent is authorised to do.

(11) Anything required or authorised by schedule 2 or these conduct rules to be done in the presence of polling or counting agents may be done instead in the presence of the referendum agent who appointed the polling or counting agents.

(12) Where in schedule 2 or these conduct rules anything is required or authorised to be done in the presence of polling or counting agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

Admission to polling station

(1) No person other than the presiding officer and the persons mentioned in paragraph (2) may attend a polling station.

(2) Those persons are—

(a) voters,

(b) persons under the age of 16 accompanying voters,

(c) the companions of voters with disabilities,

(d) the Member of Parliament for the constituency in which the polling station is situated,

(e) the member of the Scottish Parliament for the constituency in which the polling station is situated,
(f) members of the Scottish Parliament for the region in which the polling station is situated,

(g) members of the council for the electoral ward in which the polling station is situated,

(h) members of the European Parliament for the electoral region of Scotland,

(i) the clerks appointed to attend at the polling station,

(j) the Chief Counting Officer and members of the Chief Counting Officer’s staff,

(k) the counting officer and members of the counting officer’s staff,

(l) constables on duty,

(m) persons entitled to attend by virtue of section 17, 18 or 19,

(n) referendum agents,

(o) polling agents appointed to attend at the polling station, and

(p) any other person the presiding officer permits to attend.

(3) In paragraph (2)(g), “electoral ward” has the meaning given by section 1 of the Local Governance (Scotland) Act 2004.

(4) The presiding officer may regulate the total number of voters and persons under the age of 16 accompanying voters who may be admitted to the polling station at the same time.

(5) Not more than one polling agent is to be admitted at the same time to a polling station on behalf of the same permitted participant.

(6) A constable or a member of the counting officer’s staff may only be admitted to vote in person elsewhere than at the polling station allotted under rule 9(1)(b), in accordance with paragraph 1(5) of schedule 2, on production of a certificate which satisfies the requirements set out in paragraph (7).

(7) A certificate must—

(a) be signed by—

(i) in the case of a constable, an officer of police of the rank of inspector or above, or

(ii) in the case of a member of the counting officer’s staff, the counting officer, and

(b) be in the form prescribed.

(8) A certificate produced under paragraph (6) must be immediately cancelled.

Notification of requirement of secrecy

16 (1) The counting officer must make such arrangements as are reasonably practicable to ensure that—

(a) every person attending at a polling station has been given a copy of the provisions of sub-paragraphs (1), (3), (5), (7), (8) and (9) of paragraph 7 of schedule 7,

(b) every person attending at the counting of the votes has been given a copy of sub-paragraphs (4), (8) and (9) of that paragraph.

(2) Paragraph (1) does not require the provision of that information to—
(a) a person attending the polling station for the purpose of voting,
(b) a person under the age of 16 accompanying a voter,
(c) a companion of a voter with disabilities, or
(d) a constable on duty at a polling station or at the count.

5 **Keeping of order in polling station**

17 (1) The presiding officer must keep order at the polling station.

(2) If a person—

(a) obstructs the operation of the polling station,
(b) obstructs any voter in polling, or
(c) does anything else which the presiding officer considers may adversely affect
proceedings at the polling station,

the presiding officer may order the person to be removed immediately from the polling
station.

(3) A person may be removed—

(a) by a constable, or
(b) by the presiding officer.

(4) A person removed under paragraph (2) must not enter the polling station again during
that day without the presiding officer’s permission.

(5) A person removed under paragraph (2) may, if charged with the commission in the
polling station of an offence, be dealt with as a person taken into custody by a constable
for an offence without a warrant.

(6) The power to remove a person from the polling station is not to be exercised so as to
prevent a voter who is otherwise entitled to vote at a polling station from having an
opportunity of voting at that station.

25 **Sealing of ballot boxes**

18 (1) Immediately before the commencement of the poll, the presiding officer must—

(a) show each ballot box proposed to be used for the purposes of the poll to such
persons (if any) who are present in the polling station so that they may see that
each box is empty,
(b) place the presiding officer’s seal on each box in such a manner as to prevent it
being opened without breaking the seal, and
(c) place each box in the presiding officer’s view for the receipt of ballot papers.

(2) The presiding officer must ensure that each box remains sealed until the close of the
poll.

35 **Questions to be put to voters**

19 (1) At the time a voter applies for a ballot paper (but not afterwards), the presiding officer—
(a) must put the questions mentioned in paragraph (2) to the voter if required to do so by a referendum agent or polling agent,

(b) may put the questions mentioned in paragraph (2) to the voter if the presiding officer considers it appropriate to do so.

(2) The questions referred to in paragraph (1) are—

<table>
<thead>
<tr>
<th>Type of person applying for ballot paper</th>
<th>Questions</th>
</tr>
</thead>
</table>
| 1. A person applying as a voter         | (a) “Are you the person named in the Polling List as follows (read the whole entry from the Polling List)?”  
                                      | (b) “Have you already voted in this referendum otherwise than as proxy for some other person?” |
| 2. A person applying as proxy           | (a) “Are you the person whose name appears as A.B. in the list of proxies for this referendum as entitled to vote as proxy on behalf of C.D.?”  
                                      | (b) “Have you already voted in this referendum as proxy on behalf of C.D.?”  
                                      | (c) “Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of C.D.?” |
| 3. A person applying as proxy for a voter with an anonymous entry (instead of the questions in entry 2) | (a) “Are you the person entitled to vote as proxy on behalf of the voter whose number on the Polling List is (read out the number from the Polling List)?”  
                                      | (b) “Have you already voted in this referendum as proxy on behalf of the voter whose number on the Polling List is (read out the number from the Polling List)?”  
                                      | (c) “Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the person whose number on the Polling List is (read out the number from the Polling List)?” |
| 4. A person applying as proxy if the answer to the question at 2(c) or 3(c) is not “yes” | “Have you already voted in this referendum on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild?” |
| 5. A person applying as a voter in relation to whom there is an entry in the postal voters list | (a) “Did you apply to vote by post?”  
                                      | (b) “Why have you not voted by post?” |
| 6. A person applying as proxy who is named in the proxy postal voters list | (a) “Did you apply to vote by post as proxy?”  
                                      | (b) “Why have you not voted by post as proxy?” |
(3) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act—
   (a) the first reference in each of the questions in entries 1(a) and 3(a), (b) and (c) to the Polling List is to be read as a reference to the register of electors, and
   (b) the reference in each of those questions to reading from the Polling List is to be read as a reference to reading from the notice issued under that section.

(4) A ballot paper must not be delivered to any person required to answer a question under this rule unless the person answers the question satisfactorily.

(5) Except as authorised by this rule, no enquiry is permitted as to the right of any person to vote.

Challenge of voter

20 (1) A person is not to be prevented from voting by reason only that—
   (a) a referendum agent or polling agent—
      (i) has reasonable cause to believe that the person has committed an offence of personation, and
      (ii) the agent makes a declaration to that effect, or
   (b) the person is arrested on the grounds of being suspected of committing or of being about to commit such an offence.

(2) Paragraph (1) does not affect the person’s liability to any penalty for voting.

Voting procedure

21 (1) Subject to rule 19(4), a ballot paper must be delivered to a voter who applies for one.

(2) Immediately before delivering the ballot paper to the voter—
   (a) the number and (unless paragraph (3) applies) name of the voter as stated in the Polling List is to be called out,
   (b) the number of the voter is to be marked on the list mentioned in rule 13(3)(e) beside the number of the ballot paper to be delivered to the voter,
   (c) a mark is to be placed in the Polling List against the number of the voter to note that a ballot paper has been received but without showing the particular ballot paper which has been received, and
   (d) in the case of a person applying for a ballot paper as proxy, a mark is also to be placed against that person’s name in the list of proxies.

(3) In the case of a voter who has an anonymous entry, the voter’s official poll card must be shown to the presiding officer and only the voter’s number is to be called out in pursuance of paragraph (2)(a).

(4) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (2) is modified as follows—
   (a) in sub-paragraph (a), for “Polling List” substitute “copy of the notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”,
(b) in sub-paragraph (c), for “in the Polling List” substitute “on the copy of the notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

(5) On receiving the ballot paper, the voter must without delay—
(a) proceed into a compartment in the polling station,
(b) there secretly mark the voter’s ballot paper,
(c) show the unique identifying number on the ballot paper to the presiding officer, and
(d) put the ballot paper into the ballot box in the presiding officer’s presence.

(6) Where—
(a) a voter attends the polling station before 10pm, and
(b) the voter is still waiting to vote at 10pm,
the presiding officer must permit the voter to vote without delay after 10pm and must close the poll immediately after the last such voter has voted.

(7) The voter must leave the polling station as soon as the voter has put the ballot paper into the ballot box.

**Votes marked by presiding officer**

22 (1) On the application of a voter—
(a) who is incapacitated by blindness or other disability from voting in the manner required by rule 21, or
(b) who declares orally an inability to read,
the presiding officer must, in the presence of any polling agents, cause the voter’s vote to be marked on a ballot paper in the manner directed by the voter and the ballot paper to be put into the ballot box.

(2) The name and number in the Polling List of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, is to be entered on a list (the “marked votes list”) and in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.

(3) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (2) applies as if for “in the Polling List of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

**Voting by persons with disabilities**

23 (1) If a voter applies to the presiding officer to be allowed to vote with the assistance of another person by whom the voter is accompanied (the “companion”), on the ground of—
(a) blindness or other physical disability, or
(b) inability to read,
the presiding officer must require the voter to declare (orally or in writing) whether the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance.

(2) The presiding officer must grant the application if the presiding officer—

(a) is satisfied that the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance, and

(b) is also satisfied, by a declaration made by the companion (a “companion declaration”) which complies with paragraph (3), that the companion—

(i) meets the requirements set out in paragraph (3)(c)(i) or (ii), and

(ii) has not previously assisted more than one voter with disabilities to vote at the referendum.

(3) A companion declaration must—

(a) be in the form prescribed,

(b) be made before the presiding officer at the time when the voter applies to vote with the assistance of the companion, and

(c) state that the companion—

(i) is a person who is entitled to vote as a voter at the referendum, or

(ii) is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the voter with disabilities, and has attained the age of 16.

(4) The presiding officer must sign the companion declaration and keep it.

(5) No fee or other payment may be charged in respect of the declaration.

(6) A person is a “voter with disabilities” for the purposes of paragraph (2)(b)(ii) if the person has made a declaration mentioned in paragraph (1).

(7) Where an application is granted under paragraph (2), anything which is required by these rules to be done to or by the voter in connection with the giving of that voter’s vote may be done to, or by, or with the assistance of, the companion.

(8) The name and number in the Polling List of every voter whose vote is given in accordance with this rule and the name and address of the companion is to be entered on a list (the “assisted voters list”) and, in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.

(9) Where the voter being assisted by a companion has an anonymous entry, only the voter’s number in the Polling List is to be entered on the assisted voters list.

(10) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act, paragraph (8) applies as if for “in the Polling List of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

Tendered ballot papers

24 (1) Paragraph (6) applies if any of situations A to D exist.

(2) Situation A exists if a person, claiming to be—
(a) a particular voter named on the Polling List and not named in the postal voters list or the list of proxies, or
(b) a particular person named in the list of proxies as proxy for a voter and not entitled to vote by post as proxy,

applies for a ballot paper after another person has voted in person either as the voter or the voter’s proxy.

(3) Situation B exists if—

(a) a person applies for a ballot paper claiming that the person is a particular voter named on the Polling List,
(b) the person is also named in the postal voters list, and
(c) the person claims that—

(i) no application to vote by post in the referendum was made by that person, or
(ii) the person is not an existing postal voter within the meaning of paragraph 2(2) of schedule 2.

(4) Situation C exists if—

(a) a person applies for a ballot paper claiming that the person is a particular person named as a proxy in the list of proxies,
(b) the person is also named in the proxy postal voters list, and
(c) the person claims that—

(i) no application to vote by post as proxy was made by that person, or
(ii) the person is not an existing proxy to whom paragraph 6(4) of schedule 2 applies.

(5) Situation D exists if, before the close of the poll but after the last time at which a person may apply for a replacement postal ballot paper—

(a) a person claims that the person is—

(i) a particular voter named on the Polling List who is also named in the postal voters list, or
(ii) a particular person named as proxy in the list of proxies who is also named in the proxy postal voters list, and
(b) the person claims that the person has lost or has not received a postal ballot paper.

(6) Where this paragraph applies, the person is entitled, on satisfactorily answering the questions permitted by rule 19 to be asked at the poll, to mark a tendered ballot paper in the same manner as any other voter.

(7) A tendered ballot paper must—

(a) be of a prescribed colour differing from that of the ballot paper issued in accordance with rule 8(1) or provided in accordance with rule 13(1),
(b) instead of being put into the ballot box, be given to the presiding officer and endorsed by the presiding officer with the name of the voter and the voter’s number in the Polling List, and
(c) be set aside in a separate packet.
(8) The name of the voter and the voter’s number in the Polling List is to be entered on a list (the “tendered votes list”).

(9) In the case of a person voting as proxy for a voter, the number to be endorsed or entered is to be the voter’s number.

(10) This rule applies to a voter who has an anonymous entry subject to the following modifications—

   (a) in paragraphs (7)(b) and (8), the references to the voter’s name are to be ignored, and

   (b) otherwise, a reference to a person named on the Polling List or other list is to be construed as a reference to a person whose number appears on the Polling List or other list (as the case may be).

(11) This rule applies in the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act as if—

   (a) in paragraphs (2)(a), (3)(a) or (5)(a)(i), for “named on the Polling List” there were substituted “in respect of whom a notice under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act has been issued”, and

   (b) in paragraphs (7)(b) and (8), for “the voter’s number in the Polling List” there were substituted “the number relating to that person on a notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act”.

20 Spoilt ballot papers

25 (1) A voter who has inadvertently dealt with a ballot paper in such manner that it cannot be conveniently used as a ballot paper may—

   (a) by returning it to the presiding officer, and

   (b) proving to the presiding officer’s satisfaction the fact of the inadvertence,

obtain another ballot paper in the place of the returned ballot paper (the “spoilt ballot paper”).

(2) The spoilt ballot paper must be immediately cancelled.

Correction of errors on polling day

26 (1) The presiding officer must keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13B(3B) or (3D) or 13BB(4) of the 1983 Act which takes effect on the date of the referendum.

(2) The list kept under paragraph (1) is referred to as the “polling day alterations list”.

Adjournment of poll in case of riot

27 (1) Where the proceedings at any polling station are interrupted by riot or open violence, the presiding officer must—

   (a) adjourn the proceedings until the following day, and

   (b) inform the counting officer without delay.

(2) If the counting officer is informed under paragraph (1)(b), the counting officer must inform the Chief Counting Officer without delay.
(3) Where the poll is adjourned at any polling station—

(a) the hours of polling on the day to which it is adjourned are to be the same as for
the original day, and

(b) references in these rules to the close of the poll are to be construed accordingly.

Procedure on close of poll

28 (1) As soon as reasonably practicable after the close of the poll, the presiding officer
must—

(a) in the presence of any polling agents, seal each ballot box in use at the station so
as to prevent the introduction of additional ballot papers,

(b) separate and make up into separate sealed packets the papers mentioned in
paragraph (2), and

(c) deliver the sealed ballot boxes and packets (or arrange for them to be delivered) to
the counting officer to be taken charge of by the counting officer.

(2) The papers referred to in paragraph (1) are—

(a) the unused and spoilt ballot papers (as a single packet),

(b) the tendered ballot papers,

(c) the marked copies of the Polling List (including any marked copy notices issued
under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and of the list of
proxies (as a single packet),

(d) any certificates produced under rule 15(6),

(e) the corresponding number list completed in accordance with rule 21(2)(b) (the
“completed corresponding number list”),

(f) the tendered votes list, the assisted voters list, the marked votes list, the polling
day alterations list and the companion declarations (as a single packet),

(g) any postal ballot papers or postal voting statements returned to the station.

(3) The marked copies of the Polling List and of the list of proxies are to be in one packet
but must not be in the same packet as the certificates mentioned in paragraph (2)(d) or
the lists mentioned in paragraph (2)(e).

(4) The packets must be accompanied by a statement (the “ballot paper account”) made by
the presiding officer, showing the number of ballot papers entrusted to the presiding
officer and accounting for them under the following heads—

(a) ballot papers issued and not otherwise accounted for,

(b) unused ballot papers,

(c) spoilt ballot papers, and

(d) tendered ballot papers.

(5) If the sealed ballot boxes and packets are not delivered to the counting officer by the
presiding officer personally, the arrangements for their delivery require the counting
officer’s approval.

(6) In paragraph (1), references to “sealing” mean sealing using—

(a) the presiding officer’s seal, and
(b) the seals of any polling agents who wish to affix their own seals.

Attendance at counting of votes

29 (1) The counting officer must make arrangements for counting of the votes as soon as reasonably practicable after the close of the poll.

(2) The counting officer must give notice in writing to the Chief Counting Officer, each of the referendum agents appointed for the area and any counting agents appointed to attend at the count of the time and place at which the counting officer will begin to count the votes.

(3) The counting officer must take proper precautions for the security of the ballot boxes and packets in the period between taking charge of them and the beginning of the count.

(4) No person other than the persons mentioned in paragraph (5) may attend the counting of the votes.

(5) Those persons are—

(a) the Member of Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,

(b) the member of the Scottish Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,

(c) members of the Scottish Parliament for any region which contains all or part of the area in which the votes being counted have been cast,

(d) members of the council for any local government area which contains all or part of the area in which the votes being counted have been cast,

(e) members of the European Parliament for the electoral region of Scotland,

(f) the Chief Counting Officer and members of the Chief Counting Officer’s staff,

(g) a counting officer and members of a counting officer’s staff,

(h) constables on duty,

(i) persons entitled to attend by virtue of section 17,

(j) persons entitled to attend by virtue of section 18 or 19,

(k) referendum agents,

(l) counting agents appointed to attend at the count, and

(m) any other person the counting officer permits to attend.

(6) The counting officer may exclude persons from the counting of the votes if the counting officer considers that the efficient counting of the votes would be impeded.

(7) Paragraph (6) does not permit the counting officer to exclude the persons mentioned in paragraph (5)(f) or (i).

(8) The counting officer may limit the number of counting agents who are permitted to be present at the counting of the votes on behalf of a permitted participant, but the same limit is to apply to each permitted participant.
(9) The counting officer must give any counting agents such reasonable facilities for overseeing the proceedings and such information with respect to the proceedings as the counting officer can give consistently with the orderly conduct of the proceedings and the carrying out of the counting officer’s functions in connection with them.

(10) In particular, where the votes are counted by sorting the ballot papers according to the answer for which the vote is given and then counting the number of ballot papers for each answer, the counting agents are entitled to satisfy themselves that the ballot papers are correctly sorted.

The count

30 (1) The counting officer must—

(a) in the presence of the counting agents, open each ballot box and count and record the number of ballot papers in it, checking the number against the ballot paper account,

(b) verify each ballot paper account in the presence of any referendum agents, and

(c) count such of the postal ballot papers as have been duly returned and record the number counted.

(2) For the purposes of paragraph (1)(b), a counting officer must—

(a) verify the ballot paper account by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the counting officer’s possession and the tendered votes list (opening and resealing the packets containing the unused and spoilt ballot papers and the tendered votes list), and

(b) prepare a statement as to the result of the verification (the “verification statement”).

(3) Any counting agent present at the verification may copy the verification statement.

(4) For the purposes of paragraph (1)(c), a postal ballot paper is not to be considered as having been duly returned unless it—

(a) is returned—

(i) by hand to a polling station in the same local government area, or

(ii) by hand or post to the counting officer,

before the close of the poll, and

(b) is accompanied by a postal voting statement which—

(i) is duly signed (unless the requirement for signature has been dispensed with in accordance with paragraph 7(5) of schedule 2), and

(ii) states the date of birth of the voter or the voter’s proxy.

(5) The counting officer must not count the votes given on any ballot papers until—

(a) in the case of postal ballot papers, they have been mixed with ballot papers from at least one ballot box, and

(b) in the case of ballot papers from a ballot box, they have been mixed with ballot papers from at least one other ballot box.

(6) The counting officer must not count any tendered ballot paper.
(7) The counting officer must not count any postal ballot paper if, having taken steps to verify the signature and date of birth of the voter or the voter’s proxy, the counting officer is not satisfied that the postal voting statement has been properly completed.

(8) The counting officer, while counting and recording the number of ballot papers and counting the votes, must take all proper precautions for preventing any person from identifying the voter who cast the vote.

(9) The counting officer must, so far as reasonably practicable, proceed continuously with counting the votes, allowing only time for refreshment, but the counting officer may suspend counting between 7pm on any day following the date of the referendum and 9am on the following morning.

(10) During any period when counting is suspended, the counting officer must take proper precautions for the security of the papers.

Rejected ballot papers

31 (1) Any ballot paper to which paragraph (2) applies is void and is not to be counted, subject to paragraph (3).

(2) This paragraph applies to a ballot paper—
   (a) which does not bear the official mark,
   (b) which indicates a vote in favour of both answers to the referendum question,
   (c) on which anything is written or marked by which the voter can be identified (other than by the unique identifying number), or
   (d) which is unmarked or void for uncertainty.

(3) A ballot paper on which the vote is marked—
   (a) elsewhere than in the proper place,
   (b) otherwise than by means of a cross, or
   (c) by more than one mark,

   is not for such reason to be considered to be void by reason only of indicating a vote by means of figures or words (or any other mark) instead of a cross if, in the counting officer’s opinion, the mark clearly indicates the voter’s intention.

(4) Paragraph (3) does not apply if—
   (a) the way in which the ballot paper is marked identifies the voter, or
   (b) it can be shown that the voter can be identified from it.

(5) The counting officer must—
   (a) endorse the word “rejected” on any ballot paper which falls not to be counted under this rule, and
   (b) if any counting agent objects to the counting officer’s decision, add to the endorsement the words “rejection objected to”.

(6) The counting officer must prepare a statement showing the number of ballot papers rejected under each of sub-paragraphs (a) to (d) of paragraph (2).
Counting the votes

32 The counting officer must count the votes in favour of each answer to the referendum question.

Decisions on ballot papers

33 The decision of the counting officer on any question arising in respect of a ballot paper is final, subject to any judicial review in accordance with section 31.

Re-counts

34 (1) The counting officer may have the votes re-counted (or again re-counted) if the counting officer considers it appropriate to do so.

(2) The Chief Counting Officer may require the counting officer to have the votes re-counted (or again re-counted).

Declaration of result

35 (1) After making the certification under section 6(2)(b) (results for the counting officer’s area), the counting officer must, without delay, give to the Chief Counting Officer—

(a) notice of the matters certified,

(b) details of the information contained in the verification statements prepared under rule 30, and

(c) notice of the number of rejected ballot papers under each head shown in the statement of rejected ballot papers prepared under rule 31.

(2) When authorised to do so by the Chief Counting Officer, the counting officer must—

(a) make a declaration of the matters certified under section 6(2)(b), and

(b) as soon as practicable, give public notice of those matters together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.

(3) After making the certification under section 6(4) (results for the whole of Scotland), the Chief Counting Officer must—

(a) make a declaration of the matters certified, and

(b) as soon as practicable, give public notice of those matters together with the total number of rejected ballot papers for the whole of Scotland under each head shown in the statements of rejected ballot papers.

Sealing up of ballot papers

36 (1) On the completion of the counting, the counting officer must seal up in separate packets—

(a) the counted ballot papers, and

(b) the rejected ballot papers.

(2) The counting officer must not open the sealed packets of—

(a) tendered ballot papers,
(b) the completed corresponding number lists,
(c) the certificates mentioned in rule 15(6), or
(d) marked copies of the Polling List (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and lists of proxies.

5 Delivery of papers

37 (1) After sealing the papers in accordance with rule 36, the counting officer must send the papers mentioned in paragraph (2) to the proper officer of the council for the local government area in which the votes being counted have been cast, endorsing on each packet a description of its contents and the date of the referendum.

(2) Those papers are—

(a) the packets of ballot papers in the counting officer’s possession,
(b) the ballot paper accounts, the statements of rejected ballot papers and the verification statements,
(c) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations lists and the companion declarations,
(d) the packets of the completed corresponding numbers lists,
(e) the packets of the certificates mentioned in rule 15(6), and
(f) the packets containing marked copies of the Polling List (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and of the postal voters list, of lists of proxies and of the proxy postal voters list.

Retention and public inspection of papers

38 (1) The proper officer of the council must retain for one year all papers received by virtue of rule 37.

(2) Those papers, except ballot papers, completed corresponding number lists and the certificates mentioned in rule 15(6), are to be made available for public inspection at such times and in such manner as the proper officer may determine.

(3) A person inspecting marked copies of the Polling List may not—

(a) make copies of any part of them, or
(b) record any particulars included in them, otherwise than by means of hand-written notes.

(4) A person who makes a copy of marked copies of the Polling List, or records any particulars included in them, otherwise than by means of hand-written notes commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) After the expiry of one year, the proper officer must ensure that the papers are securely destroyed, unless otherwise directed by an order of the Court of Session or a sheriff principal.

Retention and public inspection of certifications

39 (1) The Chief Counting Officer must retain for one year—
(a) certifications made by counting officers under section 6(2)(b), and
(b) certifications made by the Chief Counting Officer under section 6(4).

(2) Those certifications are to be made available for public inspection at such times and in such manner as the Chief Counting Officer may determine.

5 Orders for production of documents

40 (1) The Court of Session or a sheriff principal may make an order mentioned in paragraph (2) if the Court or the sheriff principal is satisfied by evidence on oath that the order is required for the purpose of—
(a) instituting or maintaining a prosecution for an offence in relation to ballot papers, or
(b) proceedings brought as mentioned in section 31.

(2) An order referred to in paragraph (1) is an order for—
(a) the inspection or production of any rejected ballot papers in the custody of a proper officer,
(b) the opening of a sealed packet of the completed corresponding number lists or of the certificates mentioned in rule 15(6), or
(c) the inspection of any counted ballot papers in the proper officer’s custody.

(3) An order under this rule may be made subject to such conditions as to—
(a) persons,
(b) time,
(c) place and mode of inspection, and
(d) production or opening,
as the Court or the sheriff principal considers expedient.

(4) In making and carrying out an order mentioned in paragraph (2)(b) or (c), care must be taken to ensure that the way in which the vote of any particular voter has been given will not be disclosed until it is proved—
(a) that such vote was given, and
(b) that such vote has been declared by a competent court to be invalid.

(5) Any power given to the Court of Session or a sheriff principal under this rule may be exercised by any judge of the Court, or by the sheriff principal, otherwise than in open court.

(6) An appeal lies to the Court of Session from any order of a sheriff principal under this rule.

(7) Where an order is made for the production by a proper officer of any document in that officer’s custody relating to the referendum—
(a) the production by such officer or the officer’s agent of the document ordered in such manner as may be directed by that order is conclusive evidence that the document relates to the referendum, and
(b) any endorsement on any packet of ballot papers so produced is \textit{prima facie} evidence that the ballot papers are what they are stated to be by the endorsement.

(8) The production from the proper officer’s custody of—

(a) a ballot paper purporting to have been used at the referendum, and

(b) a completed corresponding number list with a number marked in writing beside the number of the ballot paper,

is \textit{prima facie} evidence that the voter whose vote was given by that ballot paper was the person whose entry in the Polling List (or on a notice issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) at the time of the referendum contained the same number as the number marked as mentioned in sub-paragraph (b).

(9) Except as provided by this rule, no person is to be allowed to—

(a) inspect any rejected or counted ballot papers in the custody of the proper officer, or

(b) open any sealed packet of the completed corresponding number list or of the certificates mentioned in rule 15(6).

\textit{Power of Chief Counting Officer to prescribe}

41 (1) In this schedule, “prescribed” means prescribed by the Chief Counting Officer.

(2) Where a form is prescribed under paragraph (1), the form may be used with such variations as the circumstances may require.

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SCHEDULE 4
(introduced by section 10)

CAMPAIGN RULES

PART 1

INTERPRETATION
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25 \textit{Interpretation of schedule}

1 (1) In this schedule—

“bequest” includes any form of testamentary disposition,

“body”, without more, includes a body corporate or any combination of persons or other unincorporated associations,

“broadcaster” means—

(a) the holder of a licence under the Broadcasting Act 1990 or 1996, or

(b) the British Broadcasting Corporation,

“exempt trust donation” has the meaning given by section 162 of the 2000 Act,

“market value”, in relation to any property, means the price which might reasonably be expected to be paid for the property on a sale in the open market,

“property” includes any description of property, and references to the provision of property accordingly include the supply of goods,
“qualified auditor” has the meaning given by section 160 of the 2000 Act.

(2) For the purposes of this schedule, each of the following is a “permissible donor”—

(a) an individual registered in an electoral register,

(b) a company—

(i) registered under the Companies Act 2006,

(ii) incorporated within the United Kingdom or another member State, and

(iii) carrying on business in the United Kingdom,

(c) a registered party,

(d) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992 (SI 1992/807),

(e) a building society (within the meaning of the Building Societies Act 1986),

(f) a limited liability partnership—

(i) registered under the Limited Liability Partnerships Act 2000, and

(ii) carrying on business in the United Kingdom,

(g) a friendly society registered under the Friendly Societies Act 1974 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, and

(h) any unincorporated association of two or more persons which—

(i) does not fall within any of the preceding paragraphs,

(ii) carries on business or other activities wholly or mainly in the United Kingdom, and

(iii) has its main office in the United Kingdom.

(3) In this schedule, “electoral register” means any of the following—

(a) a register of parliamentary or local government electors for any area (whether or not in Scotland) maintained under section 9 of the 1983 Act,

(b) a register of relevant citizens of the European Union prepared under the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (SI 2001/1184),

(c) a register of peers prepared under regulations under section 3 of the Representation of the People Act 1985.

(4) References in this schedule (in whatever terms) to payments out of public funds are references to any of the following—

(a) payments out of—

(i) the Consolidated Fund of the United Kingdom, the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund, or

(ii) money provided by Parliament or appropriated by Act of the Northern Ireland Assembly,
payments by—

(i) a Minister of the Crown, the Scottish Ministers, a Minister within the meaning of the Northern Ireland Act 1998 or the Welsh Ministers (including the First Minister for Wales or the Counsel General to the Welsh Assembly Government), or

(ii) a government department (including a Northern Ireland department) or a part of the Scottish Administration,

(c) payments by the SPCB, the Northern Ireland Assembly Commission or the National Assembly for Wales Commission, and

(d) payments by the Electoral Commission.

References in this schedule (in whatever terms) to expenses met, or things provided, out of public funds are references to expenses met, or things provided, by means of payments out of public funds.

PART 2

PERMITTED PARTICIPANTS AND DESIGNATED ORGANISATIONS

Permitted participants

2 (1) For the purposes of this schedule, a registered party, a qualifying individual or a qualifying body may make a declaration to the Electoral Commission in accordance with this paragraph and paragraph 3 identifying the outcome for which the party, individual or body proposes to campaign at the referendum.

(2) A party, individual or body which has made a declaration in accordance with this paragraph and paragraph 3 is referred to in this Act as a “permitted participant”.

(3) A “qualifying individual” is an individual who is—

(a) resident in the United Kingdom, or

(b) registered in—

(i) an electoral register, or

(ii) the register of young voters.

(4) A “qualifying body” is a body which is—

(a) a company—

(i) registered under the Companies Act 2006,

(ii) incorporated within the United Kingdom or another member State, and

(iii) carrying on business in the United Kingdom,

(b) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992 (SI 1992/807),

(c) a building society within the meaning of the Building Societies Act 1986,

(d) a limited liability partnership—

(i) registered under the Limited Liability Partnerships Act 2000, and
(ii) carrying on business in the United Kingdom,

(e) a friendly society registered under the Friendly Societies Act 1974 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, or

(f) an unincorporated association of two or more persons which—

(i) does not fall within any of the preceding paragraphs,

(ii) carries on business or other activities wholly or mainly in the United Kingdom, and

(iii) has its main office in the United Kingdom.

Further provision about declarations under paragraph 2

3 (1) A declaration under paragraph 2 by a registered party—

(a) must be signed by the responsible officers of the party (within the meaning of section 64(7) of the 2000 Act), and

(b) if made by a minor party, must be accompanied by a notification which states the name of the person who will be responsible for compliance on the part of the party with the provisions of this schedule.

(2) A declaration under paragraph 2 by a qualifying individual must—

(a) state the individual’s full name and home address, and

(b) be signed by the individual.

(3) A declaration under paragraph 2 by a qualifying body must—

(a) state—

(i) all such details in respect of the body as are required by virtue of any of sub-paragraphs (4) and (6) to (10) of paragraph 2 of Schedule 6 to the 2000 Act to be given in respect of such a body as the donor of a recordable donation, and

(ii) the name of the person or officer who will be responsible for compliance on the part of the body with the provisions of this schedule, and

(b) be signed by the body’s secretary or a person who acts in a similar capacity in relation to the body.

(4) If, at any time before the end of the compliance period, any statement which is contained in a notification under sub-paragraph (1)(b) or, in accordance with any provision of sub-paragraph (2) or (3), is contained in a declaration under paragraph 2, ceases to be accurate, the permitted participant by whom the notification was given or declaration was made must give the Electoral Commission a notification (“a notification of alteration”) replacing the statement with another statement—

(a) contained in the notification of alteration, and

(b) conforming with sub-paragraph (1)(b), (2) or (as the case may be) (3).
(5) For the purposes of sub-paragraph (4), “the compliance period” is the period during which any provision of this schedule remains to be complied with on the part of the permitted participant.

Further provision about responsible persons

3A(1) A person who is the responsible person in relation to a permitted participant may not make a declaration under paragraph 2 as a qualifying individual or on behalf of a qualifying body.

(2) An individual who is a permitted participant ceases to be a permitted participant if the individual is the treasurer of a registered party (other than a minor party) that becomes a permitted participant.

(3) A declaration made or notification given by a minor party or a qualifying body does not comply with the requirement in paragraph 3(1)(b) or (3)(a)(ii) if the person whose name is stated—

(a) is already the responsible person in relation to a permitted participant,

(b) is an individual who makes a declaration under paragraph 2 at the same time, or

(c) is the person whose name is stated, in purported compliance with paragraph 3(1)(b) or (3)(a)(ii), in a declaration made or notification given at the same time by another minor party or qualifying body.

(4) Where a registered party (other than a minor party) makes a declaration under paragraph 2 and the treasurer of the party (“T”) is already the responsible person in relation to a permitted participant (“P”—

(a) T ceases to be the responsible person in relation to P at the end of the period of 14 days beginning with the day on which (by reason of the declaration) T becomes the responsible person for the party,

(b) P must, before the end of that period, give a notice of alteration under paragraph 3(4) stating the name of the person who is to replace T as the responsible person in relation to P.

(5) In sub-paragraphs (3) and (4), “the person”, in relation to a qualifying body, is to be read as “the person or officer”.

Register of declarations under paragraph 2

4 (1) The Electoral Commission must maintain a register of all declarations made to them under paragraph 2.

(2) The register is to be maintained by the Commission in such form as the Commission may determine.

(3) The register must contain, in relation to each declaration, all of the information supplied to the Commission in connection with the declaration in accordance with paragraph 3.

(4) Where a declaration is made to the Commission under paragraph 2, the Commission must cause the information mentioned in sub-paragraph (3) to be entered in the register as soon as is reasonably practicable.
(5) Where a notification of alteration is given to the Commission under paragraph 3(4) the Commission must cause any change required as a consequence of the notification to be made in the register as soon as is reasonably practicable.

(6) The information to be entered in the register in respect of a permitted participant who is an individual must not include the individual’s home address.

**Designated organisations**

5 (1) The Electoral Commission may, in relation to each of the two possible outcomes in the referendum, designate under this paragraph one permitted participant as representing those campaigning for the outcome in question.

10 (2) The Commission may make a designation under this paragraph only on an application made under paragraph 6.

(3) The Commission may designate a permitted participant under this paragraph in relation to one of the possible outcomes whether or not a permitted participant is designated in relation to the other possible outcome.

15 (4) A permitted participant designated under this paragraph is referred to in this Act as a “designated organisation”.

**Applications for designation under paragraph 5**

6 (1) A permitted participant seeking to be designated under paragraph 5 must make an application for that purpose to the Electoral Commission.

20 (2) An application for designation must—

(a) be accompanied by information or statements designed to show that the applicant adequately represents those campaigning for the outcome in the referendum in relation to which the applicant seeks to be designated, and

(b) be made within the application period.

25 (3) Where an application for designation has been made to the Commission in accordance with this paragraph, the application must be determined by the Commission within the decision period.

(4) If there is only one application in relation to a particular outcome in the referendum, the Commission must designate the applicant unless they are not satisfied that the applicant adequately represents those campaigning for that outcome.

30 (5) If there is more than one application in relation to a particular outcome in the referendum, the Commission must designate whichever of the applicants appears to them to represent to the greatest extent those campaigning for that outcome unless they are not satisfied that any of the applicants adequately represents those campaigning for that outcome.

35 (6) In this paragraph—

“the application period” is the period of 28 days ending with the day before the first day of the decision period, and

“the decision period” is the period of 16 days ending with the 28th day before the first day of the referendum period.
Designated organisation’s right to use rooms for holding public meetings

7 (1) Subject to the provisions of this paragraph, persons authorised by a designated organisation are entitled, for the purpose of holding public meetings in furtherance of the organisation’s referendum campaign, to the use free of charge, at reasonable times during the relevant period, of—

(a) a suitable room in the premises of a school to which this paragraph applies in accordance with sub-paragraph (2), and

(b) any meeting room to which this paragraph applies in accordance with sub-paragraph (3).

For this purpose, “the relevant period” means the period of 28 days ending with the day before the date of the referendum.

(2) This paragraph applies to any school maintained by an education authority.

(3) This paragraph applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—

(a) the Scottish Ministers or any other part of the Scottish Administration, or

(b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(4) Where a room is used for a meeting in pursuance of the rights conferred by this paragraph, the person by whom or on whose behalf the meeting is convened—

(a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting, and

(b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.

(5) A person is not entitled to exercise the rights conferred by this paragraph except on reasonable notice; and this paragraph does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

(6) For the purposes of this paragraph (except those of paragraph (b) of sub-paragraph (4)), the premises of a school are not to be taken to include any private dwelling.

(7) In this paragraph—

“dwelling” includes any part of a building where that part is occupied separately as a dwelling,

“meeting room” means any room which it is the practice to let for public meetings, and

“room” includes a hall, gallery or gymnasium.

Supplementary provisions about use of rooms for public meetings

8 (1) This paragraph has effect with respect to the rights conferred by paragraph 7 and the arrangements to be made for their exercise.
(2) Any arrangement for the use of a room in school premises is to be made with the education authority maintaining the school.

(3) Any question as to the rooms in school premises which a person authorised by a designated organisation is entitled to use, or as to the times at which the person is entitled to use them, or as to the notice which is reasonable, is to be determined by the Scottish Ministers.

(4) Any person authorised by a designated organisation is entitled at all reasonable hours to inspect—
   (a) any lists prepared in pursuance of paragraph 6 of Schedule 5 to the 1983 Act (use of rooms for parliamentary election meetings), or
   (b) a copy of any such lists,

in connection with exercising the rights conferred by paragraph 7.

PART 3

Referendum expenses

9 (1) The following provisions have effect for the purposes of this schedule.

(2) “Referendum expenses” means expenses incurred by or on behalf of any individual or body which are—
   (a) expenses falling within paragraph 10, and
   (b) incurred for referendum purposes.

(3) Expenses are incurred for referendum purposes if they are incurred—
   (a) in connection with the conduct or management of a referendum campaign, or
   (b) otherwise in connection with promoting or procuring any particular outcome in the referendum.

Expenses qualifying where incurred for referendum purposes

10 (1) For the purposes of paragraph 9(2)(a) the expenses falling within this paragraph are expenses incurred in respect of any of the matters set out in the following list—

1. Referendum campaign broadcasts.

   (Expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing and producing such broadcasts.)

2. Advertising of any nature (whatever the medium used.)

   (Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.)

3. Unsolicited material addressed to voters (whether addressed to them by name or intended for delivery to households within any particular area or areas).
(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material (including the cost of postage).)

4. Any material to which paragraph 25 applies.

(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material.)

5. Market research or canvassing conducted for the purpose of ascertaining voting intentions.

6. The provision of any services or facilities in connection with press conferences or other dealings with the media.

7. Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with a referendum campaign.

(Expenses in respect of such transport include the costs of hiring a particular means of transport for the whole or part of the period during which the campaign is being conducted.)

8. Rallies and other events, including public meetings (but not annual or other party conferences) organised so as to obtain publicity in connection with a referendum campaign or for other purposes connected with a referendum campaign.

(Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.)

(2) Nothing in sub-paragraph (1) is to be taken as extending to—

(a) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds,

(b) any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise) of the campaign organiser,

(c) any expenses incurred in respect of an individual (“A”) by way of travelling expenses (by any means of transport) or in providing for A’s accommodation or other personal needs to the extent that the expenses are paid by A from A’s own resources and are not reimbursed to A, or

(d) any expenses incurred in respect of the publication of any matter relating to the referendum (other than an advertisement) in—

(i) a newspaper or periodical,

(ii) a broadcast made by the British Broadcasting Corporation, or

(iii) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.

(3) The Electoral Commission may issue, and from time to time revise, a code of practice giving guidance as to the kinds of expenses which do, or do not, fall within this paragraph.

(4) As soon as practicable after issuing or revising a code of practice under sub-paragraph (3), the Commission must send a copy to the Scottish Ministers.
(5) The Scottish Ministers must lay before the Scottish Parliament a copy of the code or (as the case may be) the revised code.

Notional referendum expenses

11 (1) This paragraph applies where, in the case of any individual or body—

(a) either—

(i) property is transferred to the individual or body free of charge or at a discount of more than 10 per cent of its market value, or

(ii) property, services or facilities is or are provided for the use or benefit of the individual or body free of charge or at a discount of more than 10 per cent of the commercial rate for the use of the property or for the provision of the services or facilities, and

(b) the property, services or facilities is or are made use of by or on behalf of the individual or body in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the individual or body in respect of that use, they would be (or are) referendum expenses incurred by or on behalf of the individual or body.

(2) Where this paragraph applies, an amount of referendum expenses determined in accordance with this paragraph (“the appropriate amount”) is to be treated, for the purposes of this schedule, as incurred by the individual or body during the period for which the property, services or facilities is or are made use of as mentioned in sub-paragraph (1)(b).

(3) Sub-paragraph (2) is subject to sub-paragraph (13).

(4) Where sub-paragraph (1)(a)(i) applies, the appropriate amount is such proportion as is reasonably attributable to the use made of the property as mentioned in sub-paragraph (1)(b) of either—

(a) the market value of the property (where the property is transferred free of charge), or

(b) the difference between the market value of the property and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the property (where the property is transferred at a discount).

(5) Where sub-paragraph (1)(a)(ii) applies the appropriate amount is such proportion as is reasonably attributable to the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) of either—

(a) the commercial rate for the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided free of charge), or

(b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided at a discount).

(6) Sub-paragraph (7) applies where the services of an employee are made available by the employee’s employer for the use or benefit of an individual or body.
(7) For the purposes of this paragraph, the amount which is to be taken as constituting the commercial rate for the provision of those services is the amount of the remuneration or allowances payable to the employee by the employer in respect of the period for which the employee’s services are made available (but do not include any amount in respect of contributions or other payments for which the employer is liable in respect of the employee).

(8) Where an amount of referendum expenses is treated, by virtue of sub-paragraph (2), as incurred by or on behalf of an individual or body during any period the whole or part of which falls within the referendum period then—

(a) the amount mentioned in sub-paragraph (10) is to be treated as incurred by or on behalf of the individual or body during the referendum period, and

(b) if a return falls to be prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of the individual or body during that period, the responsible person must make a declaration of that amount.

(9) Sub-paragraph (8) does not apply if the amount referred to in sub-paragraph (8)(a) does not exceed £200.

(10) The amount referred to in sub-paragraph (8)(a) is such proportion of the appropriate amount (determined in accordance with sub-paragraph (4) or (5)) as reasonably represents the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) during the referendum period.

(11) A person commits an offence if the person knowingly or recklessly makes a false declaration under sub-paragraph (8)(b).

(12) A person who commits an offence under sub-paragraph (11) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(13) No amount of referendum expenses is to be regarded as incurred by virtue of sub-paragraph (2) in respect of—

(a) the transmission by a broadcaster of a referendum campaign broadcast,

(b) the provision of any rights conferred on a designated organisation (or persons authorised by such an organisation) by virtue of—

(i) paragraph 7 or 8, or

(ii) paragraph 1 of Schedule 12 (right to send referendum address post free) to the 2000 Act (as applied by article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242)), or

(c) the provision by any individual of the individual’s own services which are provided voluntarily in the individual’s own time and free of charge.

(14) Paragraph 29(5) and (6)(a) applies with any necessary modifications for the purpose of determining, for the purposes of sub-paragraph (1), whether property is transferred to an individual or body.
Restriction on incurring referendum expenses

12 (1) No amount of referendum expenses is to be incurred by or on behalf of a permitted participant except with the authority of—
   (a) the responsible person, or
   (b) a person authorised in writing by the responsible person.

(2) A person commits an offence if, without reasonable excuse, the person incurs any expenses in contravention of sub-paragraph (1).

(3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where, in the case of a permitted participant that is a registered party, any expenses are incurred in contravention of sub-paragraph (1), the expenses do not count for the purposes of paragraphs 17 to 23 as referendum expenses incurred by or on behalf of the permitted participant.

Restriction on payments in respect of referendum expenses

13 (1) No payment (of whatever nature) may be made in respect of any referendum expenses incurred or to be incurred by or on behalf of a permitted participant except by—
   (a) the responsible person, or
   (b) a person authorised in writing by the responsible person.

(2) A payment made in respect of any such expenses by a person within paragraph (a) or (b) of sub-paragraph (1) must be supported by an invoice or a receipt unless the amount of the payment does not exceed £200.

(3) Where a person within paragraph (b) of sub-paragraph (1) makes a payment to which sub-paragraph (2) applies, the person must, as soon as possible after making the payment, deliver to the responsible person—
   (a) notification that the payment has been made, and
   (b) the supporting invoice or receipt.

(4) A person commits an offence if, without reasonable excuse, the person—
   (a) makes a payment in contravention of sub-paragraph (1), or
   (b) contravenes sub-paragraph (3).

(5) A person who commits an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Restriction on making claims in respect of referendum expenses

14 (1) A claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant during the referendum period is not payable unless the claim is sent within the period of 30 days after the end of the referendum period to—
   (a) the responsible person, or
   (b) any other person authorised under paragraph 12 to incur the expenses.

(2) A claim sent in accordance with sub-paragraph (1) must be paid within the period of 60 days after the end of the referendum period.
(3) A person commits an offence if, without reasonable excuse, the person—
   (a) pays a claim which by virtue of sub-paragraph (1) is not payable, or
   (b) makes a payment in respect of a claim after the end of the period allowed under
       sub-paragraph (2).

(4) A person who commits an offence under sub-paragraph (3) is liable on summary
     conviction to a fine not exceeding level 5 on the standard scale.

(5) In the case of a claim to which sub-paragraph (1) applies—
   (a) the person making the claim, or
   (b) the person with whose authority the expenses in question were incurred,

       may apply to the Electoral Commission for leave for the claim to be paid although sent
       in after the end of the period mentioned in that sub-paragraph; and the Commission, if
       satisfied that it is appropriate to do so, may grant the leave.

(6) Nothing in sub-paragraph (1) or (2) applies in relation to any sum paid in pursuance
     of the leave granted by the Commission.

(7) Sub-paragraph (2) is without prejudice to any rights of a creditor of a permitted
     participant to obtain payment before the end of the period allowed under that sub-
     paragraph.

(8) Subsections (9) and (10) of section 77 of the 2000 Act apply for the purposes of this
     paragraph as if—

     (a) any reference to subsection (1) or (2) of that section were a reference to sub-
         paragraph (1) or (2) above,
     (b) any reference to campaign expenditure were a reference to referendum expenses,
         and
     (c) any reference to the treasurer or deputy treasurer of the registered party were a
         reference to the responsible person in relation to the permitted participant.

**Disputed claims**

15 (1) This paragraph applies where—

   (a) a claim for payment in respect of referendum expenses incurred by or on behalf of
       a permitted participant as mentioned in paragraph 14(1) is sent to—

       (i) the responsible person, or

       (ii) any other person with whose authority it is alleged that the expenses were
            incurred,

       within the period allowed under that provision, and

   (b) the responsible person or other person to whom the claim is sent fails or refuses to
       pay the claim within the period allowed under paragraph 14(2).

(2) A claim to which this paragraph applies is referred to in this paragraph as “the disputed
     claim”.

(3) The person by whom the disputed claim is made may bring an action for the disputed
     claim, and nothing in paragraph 14(2) applies in relation to any sum paid in pursuance
     of any judgment or order made by a court in the proceedings.
(4) For the purposes of this paragraph sub-paragraphs (5) and (6) of paragraph 14 apply in relation to an application made by the person mentioned in sub-paragraph (1)(b) above for leave to pay the disputed claim as they apply in relation to an application for leave to pay a claim (whether it is disputed or otherwise) which is sent in after the period allowed under paragraph 14(1).

Rights of creditors

16 Nothing in this schedule which prohibits—
   (a) payments and contracts for payments,
   (b) the payment or incurring of referendum expenses in excess of the maximum amount allowed by this schedule, or
   (c) the incurring of expenses not authorised as mentioned in paragraph 12, affects the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of that contract or expense being in contravention of this schedule.

General restriction on referendum expenses

15 (1) This paragraph applies in relation to an individual or body that is not a permitted participant.

(2) The total referendum expenses incurred by or on behalf of an individual or a body to which this paragraph applies during the referendum period must not exceed £10,000.

(3) Where, during the referendum period, any referendum expenses are incurred by or on behalf of an individual to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), the individual commits an offence if the individual knew, or ought reasonably to have known, that the expenses were being incurred in excess of that limit.

(4) An individual who commits an offence under sub-paragraph (3) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(5) Where, during the referendum period, any referendum expenses are incurred by or on behalf of a body to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), then—
   (a) the body commits an offence, and
   (b) any person who authorised the expenses to be incurred by or on behalf of the body also commits an offence if the person knew, or ought reasonably to have known, that the expenses would be incurred in excess of that limit.

(6) A body or person who commits an offence under sub-paragraph (5) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
(7) It is a defence for an individual, body or other person charged with an offence under sub-paragraph (3) or (5) to show—
   (a) that any code of practice for the time being issued under paragraph 10(3) was complied with in determining whether to incur any expenses, and
   (b) that the limit would not have been exceeded on the basis of compliance with the code of practice as it had effect at that time.

(8) Sub-paragraph (9) applies where—
   (a) before the beginning of the referendum period, any expenses are incurred by or on behalf of an individual or body to which this paragraph applies in respect of any property, services or facilities, and
   (b) the property, services or facilities is or are made use of by or on behalf of the individual or body during the referendum period in circumstances such that, had any expenses been incurred in respect of that use during that period, they would by virtue of paragraph 9(2) have constituted referendum expenses incurred by or on behalf of the individual or body during that period.

(9) The appropriate proportion of the expenses mentioned in sub-paragraph (8)(a) is to be treated for the purposes of this paragraph as referendum expenses incurred by or on behalf of the individual or body during that period.

(10) For the purposes of sub-paragraph (9) the appropriate proportion of the expenses mentioned in paragraph (a) of sub-paragraph (8) is such proportion of those expenses as is reasonably attributable to the use made of the property, services or facilities as mentioned in paragraph (b) of that sub-paragraph.

Special restrictions on referendum expenses by permitted participants

18 (1) The total referendum expenses incurred by or on behalf of a permitted participant during the referendum period must not exceed—
   (a) if the permitted participant is a designated organisation, £1,500,000,
   (b) if the permitted participant is not a designated organisation but is a registered party and has a relevant percentage, whichever is the greater of—
      (i) the sum calculated by multiplying the sum of £3,000,000 by the party’s relevant percentage, or
      (ii) £150,000, or
   (c) if the permitted participant is not a designated organisation nor such a registered party, £150,000.

(2) For the purposes of sub-paragraph (1)(b)—
   (a) a registered party has a relevant percentage if, at the general election for membership of the Scottish Parliament held in 2011 (“the 2011 election”), constituency votes were cast for one or more candidates at the election authorised to use the party’s registered name and regional votes were cast for the party, and
   (b) a registered party’s relevant percentage is equal to the sum of—
(i) the total number of constituency votes cast at the 2011 election for the candidate or candidates mentioned in paragraph (a) expressed as a percentage of the total number of constituency votes cast at that election for all candidates, multiplied by 56.6% and rounded to one decimal place, and

(ii) the total number of regional votes cast at the 2011 election for the party expressed as a percentage of the total number of regional votes cast at that election for all registered parties and individual candidates, multiplied by 43.4% and rounded to one decimal place.

(3) Sub-paragraph (4) applies in the case where, at the 2011 election, a candidate stood for return as a constituency member in the name of more than one registered party.

(4) For the purposes of sub-paragraph (2)(b)(i), the number of constituency votes cast for the candidate is to be divided equally among each of the registered parties in whose name the candidate stood.

(5) In sub-paragraphs (2) to (4)—

“constituency member” has the meaning given in section 126(1) of the Scotland Act 1998,

“constituency vote” means a vote cast for a candidate standing for return as a constituency member,

“regional vote” has the meaning given in section 6(2) of the Scotland Act 1998.

(6) Where any referendum expenses are incurred by or on behalf of a permitted participant during the referendum period in excess of the limit imposed by sub-paragraph (1), then—

(a) if the permitted participant is a registered party—

(i) the party commits an offence, and

(ii) the responsible person or any deputy treasurer of the party also commits an offence if the person or deputy treasurer authorised the expenses to be incurred by or on behalf of the party and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,

(b) if the permitted participant is an individual, that individual commits an offence if the individual knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,

(c) if the permitted participant is a body other than a registered party—

(i) the body commits an offence, and

(ii) the responsible person commits an offence if the person authorised the expenses to be incurred by or on behalf of the body and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit.

(7) A person who commits an offence under sub-paragraph (6) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

(8) It is a defence for a permitted participant or other person charged with an offence under sub-paragraph (6) to show—
(a) that any code of practice for the time being issued under paragraph 10(3) was
complied with in determining the items and amounts of referendum expenses to
be entered in the relevant return under paragraph 20, and
(b) that the limit would not have been exceeded on the basis of the items and amounts
entered in that return.

(9) Sub-paragraphs (8) to (10) of paragraph 17 apply for the purposes of this paragraph and
paragraphs 20 to 23 as they apply for the purposes of paragraph 17, but as if references
in them to an individual or body to which that paragraph applies were references to a
permitted participant.

(10) For the purposes of this paragraph and paragraphs 20 to 23 any reference to referendum
expenses incurred by or on behalf of a permitted participant during the referendum
period includes any referendum expenses so incurred at any time before the individual
or body became a permitted participant.

Referendum expenses incurred as part of common plan

19 (1) This paragraph applies where—
(a) referendum expenses are incurred by or on behalf of an individual or body during
the referendum period,
(b) the expenses are incurred as part of a common plan or other arrangement with one
or more other individuals or bodies,
(c) the common plan or arrangement is one whereby referendum expenses are to be
incurred by or on behalf of both or all of the individuals or bodies involved in the
common plan or arrangement with a view to, or otherwise in connection with,
promoting or procuring one particular outcome in the referendum, and
(d) there is a designated organisation in respect of each of the possible outcomes in
the referendum.

(2) Subject to sub-paragraph (3A), the expenses referred to in sub-paragraph (1)(a) are to be
treated for the purposes of paragraphs 17 and 18 as having also been incurred by each of
the other individuals or bodies involved in the common plan or arrangement.

(3) This paragraph applies whether or not any of the individuals or bodies involved in the
common plan or arrangement is a permitted participant.

(3A) Where a designated organisation is involved in the common plan or arrangement, the
expenses referred to in sub-paragraph (1)(a)—
(a) so far as—
(i) incurred by or on behalf of an individual or body that is not a permitted
participant, and
(ii) the total amount of such expenses incurred by or on behalf of that
individual or body does not exceed £10,000,
are to be treated for the purposes of paragraphs 17 and 18 as having been incurred
only by the designated organisation,

(b) so far as incurred by or on behalf of a permitted participant other than the
designated organisation are to be treated for the purposes of paragraphs 17 and 18
as having been incurred only by the designated organisation, and
(c) so far as incurred by or on behalf of the designated organisation, are not to be treated for any purposes as having been incurred also by or on behalf of any other individual or body.

Returns as to referendum expenses

20 (1) The responsible person in relation to a permitted participant must make a return under this paragraph in respect of any referendum expenses incurred by or on behalf of the permitted participant during the referendum period.

(2) A return under this paragraph must contain—

(a) a statement of all payments made in respect of referendum expenses incurred by or on behalf of the permitted participant during the referendum period,

(b) a statement of all disputed claims (within the meaning of paragraph 15),

(c) a statement of all the unpaid claims (if any) of which the responsible person is aware in respect of which an application has been made, or is about to be made, to the Electoral Commission under paragraph 14(5), and

(d) in a case where the permitted participant either is not a registered party or is a minor party—

(i) the statement required by paragraph 38, and

(ii) a statement of regulated transactions entered into in respect of the referendum which complies with the requirements of paragraphs 52 to 56.

(3) A return under this paragraph must be accompanied by—

(a) all invoices or receipts relating to the payments mentioned in sub-paragraph (2)(a), and

(b) in the case of any referendum expenses treated as incurred by virtue of paragraph 11, any declaration falling to be made with respect to those expenses in accordance with paragraph 11(8).

(4) Sub-paragraphs (2) and (3) do not apply to any referendum expenses incurred at any time before the individual or body became a permitted participant, but the return must be accompanied by a declaration made by the responsible person of the total amount of such expenses incurred at any such time.

(5) Sub-paragraph (6) applies where the responsible person in relation to a permitted participant makes a declaration that, to the best of the person’s knowledge and belief—

(a) no referendum expenses have been incurred by or on behalf of a permitted participant during the referendum period, or

(b) the total amount of such expenses incurred by or on behalf of a permitted participant during that period does not exceed £10,000.

(6) The responsible person in relation to the permitted participant—

(a) is not required to make a return under this paragraph, but

(b) must instead deliver the declaration referred to in sub-paragraph (5) to the Electoral Commission within the period of 3 months beginning with the end of the referendum period.

(7) The responsible person commits an offence if—
(a) without reasonable excuse, the person fails to comply with the requirements of sub-paragraph (6) in relation to a declaration, or
(b) the person knowingly or recklessly makes a false declaration under that sub-paragraph.

(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(10) The Electoral Commission may issue guidance about the form of return to be used for the purposes of this paragraph.

Auditor’s report on return

(1) Where the return prepared under paragraph 20 in respect of the referendum expenses incurred by or on behalf of a permitted participant indicates that the expenses incurred exceed £250,000, a report must be prepared by a qualified auditor on the return.

(4) An auditor appointed to carry out an audit under this paragraph—
(a) has a right of access at all reasonable times to such books, documents and other records of the permitted participant as the auditor thinks necessary for purpose of carrying out of the audit,
(b) is entitled to require from the responsible person in relation to the permitted participant such information and explanations as the auditor thinks necessary for that purpose.

(5) If a person fails to provide the auditor with any access, information or explanation to which the auditor has a right or is entitled by virtue of sub-paragraph (4), the Commission may give the person such written directions as they consider appropriate for ensuring that the failure is remedied.

(6) If the person fails to comply with the directions, the Court of Session may, on the application of the Commission, deal with the person as if the person had failed to comply with an order of the Court.

(7) A person commits an offence if the person knowingly or recklessly makes to an auditor appointed to carry out an audit under this paragraph a statement (whether written or oral) which—
(a) conveys or purports to convey any information or explanation to which the auditor is entitled by virtue of sub-paragraph (4), and
(b) is misleading, false or deceptive in a material particular.

(8) A person who commits an offence under sub-paragraph (7) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Delivery of returns to Electoral Commission

22 (1) Sub-paragraph (2) applies where—

(a) a return falls to be prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of a permitted participant, and

(b) an auditor’s report on it falls to be prepared under paragraph 21.

(2) The responsible person must deliver the return to the Electoral Commission, together with a copy of the auditor’s report, within the period of 6 months beginning with the end of the referendum period.

(3) In the case of any other return falling to be prepared under paragraph 20, the responsible person must deliver the return to the Commission within the period of 3 months beginning with the end of the referendum period.

(4) Where, after the date on which a return is delivered to the Commission under this paragraph, leave is given by the Commission under paragraph 14(5) for any claim to be paid, the responsible person must, within the period of 7 days after the payment, deliver to the Commission a return of any sums paid in pursuance of the leave.

(5) The responsible person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with the requirements of sub-paragraph (2) or (3) in relation to a return under paragraph 20,

(b) delivers a return which does not comply with the requirements of paragraph 20(2) or (3), or

(c) fails to comply with the requirements of sub-paragraph (4) in relation to a return under that sub-paragraph.

(6) A person who commits an offence under sub-paragraph (5)(a) or (c) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person who commits an offence under sub-paragraph (5)(b) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to return under paragraph 20

23 (1) Each return prepared under paragraph 20 in respect of referendum expenses incurred by or on behalf of a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—

(a) that the responsible person has examined the return in question, and

(b) that to the best of the responsible person’s knowledge and belief—

(i) it is a complete and correct return as required by law, and
(ii) all expenses shown in it as paid have been paid by the responsible person or a person authorised by the responsible person.

(3) In a case where the permitted participant either is not a registered party or is a minor party, the declaration must also—

(a) in relation to all relevant donations recorded in the return as having been accepted by the permitted participant—

(i) state that they were all from permissible donors, or

(ii) state whether or not paragraph 34(3) was complied with in the case of each of those donations that was not from a permissible donor,

(b) in relation to all regulated transactions entered in the return as having been entered into by the permitted participant—

(i) state that none of the transactions was made void by paragraph 46(2) or (6), or

(ii) state whether or not paragraph 46(3)(a) was complied with in the case of each of the transactions that was made void by paragraph 46(2) or (6).

(4) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the return relates.

(5) A person who commits an offence under sub-paragraph (4) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(6) In this paragraph—

“relevant donation” has the same meaning as in paragraph 28, and

“regulated transaction” is to be construed in accordance with paragraph 43.

Public inspection of returns under paragraph 20

(1) Where the Electoral Commission receive any return under paragraph 20 they must—

(a) as soon as reasonably practicable after receiving the return, make a copy of the return and of the documents accompanying it available for public inspection, and

(b) keep any such copy available for public inspection for the period for which the return or other document is kept by them.

(2) If the return contains a statement of relevant donations or a statement of regulated transactions in accordance with paragraph 20(2)(d) the Commission must secure that the copy of the statement made available for public inspection does not include—

(a) in the case of any donation by an individual, the donor’s address,
(b) in the case of a transaction entered into by the permitted participant with an individual, the individual’s address.

(3) At the end of the period of two years beginning with the date when any return or other document mentioned in sub-paragraph (1) is received by the Commission—

(a) they may cause the return or other document to be destroyed, but

(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the return or other document to be returned to that person.

**PART 4**

**PUBLICATIONS**

*Restriction on publication etc. of promotional material by central and local government etc.*

25 (1) This paragraph applies to any material which—

(a) provides general information about the referendum,

(b) deals with any of the issues raised by the referendum question,

(c) puts any arguments for or against any outcome, or

(d) is designed to encourage voting at the referendum.

(2) Subject to sub-paragraph (3), no material to which this paragraph applies is to be published during the relevant period by or on behalf of—

(a) the Scottish Ministers or any other part of the Scottish Administration,

(b) the SPCB, or

(c) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

(3) Sub-paragraph (2) does not apply to—

(a) material made available to persons in response to specific requests for information or to persons specifically seeking access to it,

(aa) material published—

(i) in a report of a committee, the Business Bulletin or the Official Report of the Scottish Parliament, in accordance with the Parliament’s Standing Orders,

(ii) on the Scottish Parliament official website, or

(iii) in relation to any meeting, debate, discussion or other Parliamentary event authorised by the SPCB and held in accordance with the SPCB’s rules and policies applicable during the relevant period,

(b) anything done by or on behalf of—

(i) a designated organisation,

(ii) the Electoral Commission, or

(iii) the Chief Counting Officer or any other counting officer, or

(c) the publication of information relating to the holding of the poll.
(4) In this paragraph—

“publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means (and “publication” is to be construed accordingly),

the relevant period” means the period of 28 days ending with the date of the referendum.

Details to appear on referendum material

26 (1) No material wholly or mainly relating to the referendum is to be published during the referendum period unless—

(a) in the case of material which is, or is contained in, such a printed document as is mentioned in sub-paragraph (3), (4) or (5), the requirements of that sub-paragraph are complied with, or

(b) in the case of any other material, the requirements of sub-paragraph (6) are complied with.

(2) For the purposes of sub-paragraphs (3) to (5) the following details are “the relevant details” in the case of any material falling within sub-paragraph (1)(a), namely—

(a) the name and address of the printer of the document,

(b) the name and address of the promoter of the material, and

(c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(3) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.

(4) Where the material is a printed document other than one to which sub-paragraph (3) applies, the relevant details must appear on either the first or last page of the document.

(5) Where the material is an advertisement contained in a newspaper or periodical—

(a) the name and address of the printer of the newspaper or periodical must appear on either its first or last page, and

(b) the relevant details specified in sub-paragraph (2)(b) and (c) must be included in the advertisement.

(6) In the case of material falling within sub-paragraph (1)(b), the following details, namely—

(a) the name and address of the promoter of the material, and

(b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter),

must be included in the material unless it is not reasonably practicable to include the details.

(7) Where during the referendum period any material falling within sub-paragraph (1)(a) is published in contravention of sub-paragraph (1), then the following persons commit an offence, namely—

(a) the promoter of the material,
(b) any other person by whom the material is so published, and
(c) the printer of the document.

(8) Where during the referendum period any material falling within sub-paragraph (1)(b) is published in contravention of sub-paragraph (1), then the following persons commit an offence, namely—
(a) the promoter of the material, and
(b) any other person by whom the material is so published.

(9) A person who commits an offence under sub-paragraph (7) or (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) It is a defence for a person charged with an offence under sub-paragraph (7) or (8) to show—
(a) that the offence arose from circumstances beyond the person’s control, and
(b) that the person took all reasonable steps, and exercised all due diligence, to ensure that an offence under this paragraph would not be committed.

(11) Sub-paragraph (1) does not apply to any material published for the purposes of the referendum if the publication is required under or by virtue of any enactment.

(12) In this paragraph—
“print” means print by whatever means, and “printer” is to be construed accordingly,
“the promoter”, in relation to any material falling within sub-paragraph (1), means the person causing the material to be published,
“publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means.

Display of advertisements

27 The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (SI 1984/467) have effect in relation to the display on any site in Scotland of an advertisement relating specifically to the referendum as they have effect in relation to the display of an advertisement relating specifically to a Parliamentary election.

PART 5

CONTROL OF DONATIONS

Operation and interpretation of this Part

28 (1) This Part has effect for controlling donations to permitted participants that either are not registered parties or are minor parties.

(2) The following provisions have effect for the purposes of this Part.

(3) In accordance with sub-paragraph (1) “permitted participant” does not include a permitted participant that is a registered party other than a minor party.
(4) “Relevant donation”, in relation to a permitted participant, means a donation to the permitted participant for the purpose of meeting referendum expenses incurred by or on behalf of the permitted participant.

(5) “Donation” is to be construed in accordance with paragraphs 29 to 31.

(6) In relation to donations received by a permitted participant other than a designated organisation, references to a permissible donor do not include a registered party.

(7) Where any provision of this Part refers to a donation for the purpose of meeting a particular kind of expenses incurred by or on behalf of a permitted participant—

(a) the reference includes a reference to a donation for the purpose of securing that any such expenses are not so incurred, and

(b) a donation is to be taken to be a donation for either of those purposes if, having regard to all the circumstances, it must reasonably be assumed to be such a donation.

(8) Sub-paragraphs (9) and (10) apply to any provision of this Part which provides, in relation to a permitted participant, that money spent (otherwise than by or on behalf of the permitted participant) in paying expenses incurred directly or indirectly by the permitted participant is to constitute a donation to the permitted participant.

(9) The reference in any such provision to money so spent is a reference to money so spent by a person, other than the permitted participant, out of the person’s own resources (with no right to reimbursement out of the resources of the permitted participant).

(10) Where by virtue of any such provision any amount of money so spent constitutes a donation to the permitted participant, the permitted participant is to be treated as receiving an equivalent amount on the date on which the money is paid to the creditor in respect of the expenses in question.

(11) For the purposes of this Part, it is immaterial whether a donation received by a permitted participant is so received in Scotland or elsewhere.

Donations: general rules

29 (1) “Donation”, in relation to a permitted participant, means (subject to paragraph 31)—

(a) a gift to the permitted participant of money or other property,

(b) any sponsorship provided in relation to the permitted participant (as defined by paragraph 30),

(c) any money spent (otherwise than by or on behalf of the permitted participant) in paying any referendum expenses incurred by or on behalf of the permitted participant,

(d) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the permitted participant (including the services of any person),

(e) in the case of a permitted participant other than an individual, any subscription or other fee paid for affiliation to, or membership of, the permitted participant.

(2) Where—
(a) any money or other property is transferred to a permitted participant pursuant to any transaction or arrangement involving the provision by or on behalf of the permitted participant of any property, services or facilities or other consideration of monetary value, and

(b) the total value in monetary terms of the consideration so provided by or on behalf of the permitted participant is less than the value of the money or (as the case may be) the market value of the property transferred,

the transfer of the money or property is (subject to sub-paragraph (4)) to be taken to be a gift to the permitted participant for the purposes of sub-paragraph (1)(a).

(3) In determining for the purposes of sub-paragraph (1)(d) whether any property, services or facilities provided for the use or benefit of a permitted participant is or are so provided otherwise than on commercial terms, regard must be had to the total value in monetary terms of the consideration provided by or on behalf of the permitted participant in respect of the provision of the property, services or facilities.

(4) Where (apart from this sub-paragraph) anything would be a donation both by virtue of sub-paragraph (1)(b) and by virtue of any other provision of this paragraph, sub-paragraph (1)(b) (together with paragraph 30) applies in relation to it to the exclusion of the other provision of this paragraph.

(5) Anything given or transferred to any officer, member, trustee or agent of a permitted participant in the officer’s, member’s, trustee’s or agent’s capacity as such (and not for the officer’s, member’s, trustee’s or agent’s own use or benefit) is to be regarded as given or transferred to the permitted participant (and references to donations received by a permitted participant accordingly include donations so given or transferred).

(6) In this paragraph—

(a) any reference to anything being given or transferred to a permitted participant or any other person is a reference to its being given or transferred either directly or indirectly through any third person,

(b) “gift” includes bequest.

Sponsorship

(1) For the purposes of this schedule sponsorship is provided in relation to a permitted participant if—

(a) any money or other property is transferred to the permitted participant or to any person for the benefit of the permitted participant, and

(b) the purpose (or one of the purposes) of the transfer is (or must, having regard to all the circumstances, reasonably be assumed to be)—

(i) to help the permitted participant with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the permitted participant, or

(ii) to secure that to any extent any such expenses are not so incurred.

(2) In sub-paragraph (1) “defined expenses” means expenses in connection with—

(a) any conference, meeting or other event organised by or on behalf of the permitted participant,
(b) the preparation, production or dissemination of any publication by or on behalf of
the permitted participant, or
(c) any study or research organised by or on behalf of the permitted participant.

(3) The following do not, however, constitute sponsorship by virtue of sub-paragraph (1)—

(a) the making of any payment in respect of—
   (i) any charge for admission to any conference, meeting or other event, or
   (ii) the purchase price of, or any other charge for access to, any publication,
(b) the making of any payment in respect of the inclusion of an advertisement in any
publication where the payment is made at the commercial rate payable for the
inclusion of such an advertisement in any such publication.

(4) In this paragraph “publication” means a publication made available in whatever form
and by whatever means (whether or not to the public at large or any section of the
public).

Payments etc. not to be regarded as donations

31 (1) None of the following is to be regarded as a donation—

(a) any grant provided out of public funds,
(b) the provision of any rights conferred on a designated organisation (or persons
authorised by a designated organisation) by virtue of—
   (i) paragraph 7 or 8, or
   (ii) paragraph 1 of Schedule 12 (right to send referendum address post free) to
the 2000 Act (as applied by article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242)),
(c) the transmission by a broadcaster of a referendum campaign broadcast,
(d) the provision by an individual of the individual’s own services which the
individual provides voluntarily in the individual’s own time and free of charge, or
(e) any interest accruing to a permitted participant in respect of any donation which is
dealt with by the permitted participant in accordance with paragraph 34(3)(a) or
(b).

(2) Any donation the value of which (as determined in accordance with paragraph 32) does
not exceed £500 is to be disregarded.

Value of donations

32 (1) The value of any donation falling within paragraph 29(1)(a) (other than money) is to be
taken to be the market value of the property in question.

(2) Where, however, paragraph 29(1)(a) applies by virtue of paragraph 29(2), the value of
the donation is to be taken to be the difference between—

(a) the value of the money, or (as the case may be) the market value of the property,
in question, and
(b) the total value in monetary terms of the consideration provided by or on behalf of
the permitted participant.
(3) The value of any donation falling within paragraph 29(1)(b) is to be taken to be the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 30(1) and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question is to be disregarded.

(4) The value of any donation falling within paragraph 29(1)(d) is to be taken to be the amount representing the difference between—

(a) the total value in monetary terms of the consideration that would have had to be provided by or on behalf of the permitted participant in respect of the provision of the property, services or facilities if the property, services or facilities had been provided on commercial terms, and

(b) the total value in monetary terms of the consideration (if any) actually so provided by or on behalf of the permitted participant.

(5) Where a donation such as is mentioned in sub-paragraph (4) confers an enduring benefit on the donee over a particular period, the value of the donation—

(a) is to be determined at the time when it is made, but

(b) is to be so determined by reference to the total benefit accruing to the donee over that period.

Prohibition on accepting donations from impermissible donors

33 (1) A relevant donation received by a permitted participant must not be accepted by the permitted participant if—

(a) the person by whom the donation would be made is not, at the time of its receipt by the permitted participant, a permissible donor, or

(b) the permitted participant is (whether because the donation is given anonymously or by reason of any deception or concealment or otherwise) unable to ascertain the identity of the person offering the donation.

(2) For the purposes of this schedule, any relevant donation received by a permitted participant which is an exempt trust donation is to be regarded as a relevant donation received by the permitted participant from a permissible donor.

(3) But, for the purposes of this schedule, any relevant donation received by a permitted participant from a trustee of any property (in the trustee’s capacity as such) which is not—

(a) an exempt trust donation, or

(b) a relevant donation transmitted by the trustee to the permitted participant on behalf of beneficiaries under the trust who are—

(i) persons who at the time of its receipt by the permitted participant are permissible donors, or

(ii) the members of an unincorporated association which at that time is a permissible donor,

is to be regarded as a relevant donation received by the permitted participant from a person who is not a permissible donor.
(4) Where any person ("the principal donor") causes an amount ("the principal donation") to be received by a permitted participant by way of a relevant donation—
   (a) on behalf of the principal donor and one or more other persons, or
   (b) on behalf of two or more other persons,
then for the purposes of this schedule each individual contribution by a person falling within paragraph (a) or (b) which exceeds £500 is to be treated as if it were a separate donation received from that person.

(5) In relation to each such separate donation, the principal donor must ensure that, at the time when the principal donation is received by the permitted participant, the responsible person is given—
   (a) (except in the case of a donation which the principal donor is treated as making) all such details in respect of the person treated as making the donation as are required by virtue of paragraph 39(1)(c) to be given in respect of the donor of a donation to which that paragraph applies, and
   (b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 39(1)(a).

(6) Where—
   (a) any person ("the agent") causes an amount to be received by a permitted participant by way of a donation on behalf of another person ("the donor"), and
   (b) the amount of the donation exceeds £500,
the agent must ensure that, at the time when the donation is received by the permitted participant, the responsible person is given all such details in respect of the donor as are required by virtue of paragraph 39(1)(c) to be given in respect of the donor of a donation to which that paragraph applies.

(7) A person commits an offence if, without reasonable excuse, the person fails to comply with sub-paragraph (5) or (6).

(8) A person who commits an offence under sub-paragraph (7) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
   (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Acceptance or return of donations

34 (1) Sub-paragraph (2) applies where—
   (a) a donation is received by a permitted participant, and
   (b) it is not immediately decided that the permitted participant should (for whatever reason) refuse the donation.

(2) All reasonable steps must be taken without delay by or on behalf of the permitted participant to verify (or, so far as any of the following is not apparent, ascertain)—
   (a) the identity of the donor,
   (b) whether the donor is a permissible donor, and
(c) if it appears that the donor is a permissible donor, all such details in respect of the donor as are required by virtue of paragraph 39(1)(c) to be included in a statement under paragraph 38 in respect of a relevant donation.

(3) If a permitted participant receives a donation which the permitted participant is prohibited from accepting by virtue of paragraph 33(1), or which it is decided the permitted participant should refuse, then—

(a) unless the donation falls within paragraph 33(1)(b), the donation, or a payment of an equivalent amount, must be sent back to the person who made the donation or any person appearing to be acting on that person’s behalf,

(b) if the donation falls within that paragraph, the required steps (see paragraph 35(1)) must be taken in relation to the donation, within the period of 30 days beginning with the date when the donation is received by the permitted participant.

(4) The permitted participant and the responsible person each commit an offence if—

(a) sub-paragraph (3)(a) applies in relation to a donation, and

(b) the donation is not dealt with in accordance with that sub-paragraph.

(5) It is a defence for a permitted participant or responsible person charged with an offence under sub-paragraph (4) to show that—

(a) all reasonable steps were taken by or on behalf of the permitted participant to verify (or ascertain) whether the donor was a permissible donor, and

(b) as a result, the responsible person believed the donor to be a permissible donor.

(6) The responsible person in relation to a permitted participant commits an offence if—

(a) sub-paragraph (3)(b) applies in relation to a donation, and

(b) the donation is not dealt with in accordance with that sub-paragraph.

(7) A person who commits an offence under sub-paragraph (4) or (6) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(8) For the purposes of this schedule, a donation received by a permitted participant is to be taken to have been accepted by the permitted participant unless—

(a) it is dealt with in accordance with sub-paragraph (3), and

(b) a record can be produced of the receipt of the donation and of its having been dealt in accordance with that sub-paragraph.

(9) Where a donation is received by a permitted participant in the form of an amount paid into an account held by the permitted participant with a financial institution, it is to be taken for the purposes of this schedule to have been received by the permitted participant at the time when the permitted participant is notified in the usual way of the payment into the account.
Return of donation where donor unidentifiable

35 (1) For the purposes of paragraph 34(3)(b), the required steps are—
   (a) if the donation was transmitted by a person other than the donor and the identity of that person is apparent, to return the donation to that person,
   (b) if paragraph (a) does not apply but it is apparent that the donor has, in connection with the donation, used any facility provided by an identifiable financial institution, to return the donation to that institution, or
   (c) in any other case, to send the donation to the Electoral Commission.

(2) In sub-paragraph (1) any reference to returning or sending a donation to any person or body includes a reference to sending a payment of an equivalent amount to that person or body.

(3) Any amount sent to the Electoral Commission in pursuance of sub-paragraph (1)(c) is to be paid by the Commission into the Scottish Consolidated Fund.

Forfeiture of donations made by impermissible or unidentifiable donors

36 (1) This paragraph applies to any donation received by a permitted participant—
   (a) which, by virtue of paragraph 33(1), the permitted participant is prohibited from accepting, but
   (b) which has been accepted by the permitted participant.

(2) A sheriff may, on the application of the Electoral Commission, order the forfeiture by the permitted participant of an amount equal to the value of the donation.

(3) An order may be made under this paragraph whether or not proceedings are brought against any person for an offence connected with the donation.

(4) Proceedings on an application for an order under this paragraph are civil proceedings and, accordingly, the standard of proof that applies is that applicable in civil proceedings.

(5) The permitted participant may appeal to the Court of Session against an order made under this paragraph.

(6) Rules of court may make provision—
   (a) with respect to applications and appeals under this paragraph,
   (b) for the giving of notice of such applications or appeals to persons affected by them,
   (c) for the sitting of such persons as parties,
   (d) generally with respect to procedure in such applications or appeals.

(7) An amount forfeited by virtue of an order under this paragraph is to be paid into the Scottish Consolidated Fund.

(8) Sub-paragraph (7) does not apply—
   (a) where an appeal is made under sub-paragraph (5), before the appeal is determined or otherwise disposed of, or
(b) in any other case, before the end of any period within which, in accordance with rules of court, an appeal under sub-paragraph (5) is to be made.

**Evasion of restrictions on donations**

37 (1) A person commits an offence if the person—

(a) knowingly enters into, or

(b) knowingly does any act in furtherance of,
any arrangement which facilitates or is likely to facilitate, whether by means of any concealment or disguise or otherwise, the making of relevant donations to a permitted participant by any person or body other than a permissible donor.

(2) A person commits an offence if the person—

(a) knowingly gives the responsible person in relation to a permitted participant any information relating to—

(i) the amount of any relevant donation made to the permitted participant, or

(ii) the person or body making such a donation,

which is false in a material particular, or

(b) with intent to deceive, withholds from the responsible person in relation to a permitted participant any material information relating to a matter within paragraph (a)(i) or (ii).

(3) A person who commits an offence under this paragraph is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

**Statement of relevant donations**

38 The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 20 a statement of relevant donations which complies with paragraphs 39 and 40.

**Donations from permissible donors**

39 (1) The statement must record, in relation to each relevant donation falling within sub-paragraph (2) which is accepted by the permitted participant—

(a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32,

(b) the date when the donation was accepted by the permitted participant, and

(c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in donation reports by virtue of paragraph 2 of Schedule 6 to the 2000 Act.

(2) Sub-paragraph (1) applies to a relevant donation where—
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(a) the value of the donation exceeds £7,500, or
(b) the value of it and any other relevant benefit or benefits exceeds that amount.

In paragraph (b) “relevant benefit” means any relevant donation or regulated transaction (with the meaning of paragraph 42(4)) made by or entered into with the person who made the donation.

(3) The statement must also record the total value of any relevant donations, other than those falling within sub-paragraph (2), which are accepted by the permitted participant.

(4) In the case of a donation made by an individual who has an anonymous entry in an electoral register if the statement states that the permitted participant has seen evidence that the individual has such an anonymous entry, the statement must be accompanied by a copy of the evidence.

Donations from impermissible or unidentifiable donors

40 (1) This paragraph applies to relevant donations falling within paragraph 33(1)(a) or (b).

(2) Where paragraph 33(1)(a) applies, the statement must record—

(a) the name and address of the donor,
(b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32, and
(c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with paragraph 34(3)(a).

(3) Where paragraph 33(1)(b) applies, the statement must record—

(a) details of the manner in which the donation was made,
(b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32, and
(c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with paragraph 34(3)(b).

Donation reports during referendum period

41 (1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—

(a) the period ending with the 28th day of the referendum period (including the time before the referendum period),
(b) each of the two succeeding periods of 4 weeks during the referendum period, and
(c) the period from the end of the second of the periods referred to in paragraph (b) until the end of the seventh day before the day by which the report is to be delivered to the Electoral Commission (“the final period”).

(2) The report for a period must record, in relation to each relevant donation of more than £7,500 which is received by the permitted participant during the period—
(a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 32,

(b) the date when the donation was received by the permitted participant, and

(c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in weekly donation reports by virtue of paragraph 3 of Schedule 6 to the 2000 Act.

(3) If during any period no relevant donations of more than £7,500 were received by the permitted participant, the report for the period must contain a statement of that fact.

(3A) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—

(a) a separate report under this paragraph need not be prepared in respect of any preceding period, but

(b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.

(3B) Sub-paragraphs (2) and (3) apply to a relevant donation received by a permitted participant before the start of the referendum period only if the donation was for the purpose of meeting referendum expenses to be incurred by the permitted participant during the referendum period.

(3C) References in this paragraph and in paragraph 41A to a relevant donation received by a permitted participant include any donation received at a time before the individual or body concerned became a permitted participant, if the donation would have been a relevant donation had the individual or body been a permitted participant at that time.

(4) A report under this paragraph must be delivered by the responsible person to the Electoral Commission—

(a) in the case of the report in respect of a period other than the final period, within the period of 7 days beginning with the end of the period to which the report relates,

(b) in the case of the report in respect of the final period, by the end of the fourth day before the date of the referendum.

(5) For the purpose of paragraph (4)(b), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(6) If, in relation to a donation made by an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.

(7) The responsible person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with the requirements of sub-paragraph (4) in relation to a report under this paragraph,
(b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (2), (3) or (6).

(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to donation reports under paragraph 41

41A(1) Each report prepared under paragraph 41 in respect of relevant donations received by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—

(a) that the responsible person has examined the report, and

(b) that to the best of the responsible person’s knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of donation reports under paragraph 41

41B(1) Where the Electoral Commission receive a report under paragraph 41 they must—

(a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and

(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any donation by an individual, the donor’s address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 41 or other document accompanying it is received by the Commission—

(a) they may cause the report or other document to be destroyed, or
(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

**PART 6**

**CONTROL OF LOANS AND CREDIT**

**Operation of Part**

42 (1) This Part has effect for controlling regulated transactions entered into by permitted participants that either are not registered parties or are minor parties.

(2) The following provisions have effect for the purposes of this Part.

(3) In accordance with sub-paragraph (1), “permitted participant” does not include a permitted participant which is a registered party other than a minor party.

(4) “Regulated transaction” has the meaning given by paragraph 43.

(5) In relation to transactions entered into by a permitted participant other than a designated organisation, the reference in paragraph 45(2) to a permissible donor does not include a registered party.

**Regulated transactions**

43 (1) An agreement between a permitted participant and another person by which the other person makes a loan of money to the permitted participant is a regulated transaction if the use condition is satisfied.

(2) An agreement between a permitted participant and another person by which the other person provides a credit facility to the permitted participant is a regulated transaction if the use condition is satisfied.

(3) Where—

(a) a permitted participant and another person (“A”) enter into a regulated transaction of a description mentioned in sub-paragraph (1) or (2), or a transaction under which any property, services or facilities are provided for the use or benefit of the permitted participant (including the services of any person),

(b) A also enters into an arrangement whereby another person (“B”) gives any form of security (whether real or personal) for a sum owed to A by the permitted participant under the transaction mentioned in paragraph (a), and

(c) the use condition is satisfied,

the arrangement is a regulated transaction.

(4) An agreement or arrangement is also a regulated transaction if—

(a) the terms of the agreement or arrangement as first entered into do not constitute a regulated transaction by virtue of sub-paragraph (1), (2) or (3), but

(b) the terms are subsequently varied in such a way that the agreement or arrangement becomes a regulated transaction.
(5) The use condition is that the permitted participant intends at the time of entering into a transaction mentioned in sub-paragraph (1), (2) or (3)(a) to use any money or benefit obtained in consequence of the transaction for meeting referendum expenses incurred by or on behalf of the permitted participant.

(6) For the purposes of sub-paragraph (5), it is immaterial that only part of the money or benefit is intended to be used for meeting referendum expenses incurred by or on behalf of the permitted participant.

(7) References in sub-paragraphs (1) and (2) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if that person makes the agreement as such.

(8) References in sub-paragraph (3) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if the property, services or facilities are provided to that person as such, or the sum is owed by that person as such.

(9) A reference to a connected transaction is a reference to the transaction mentioned in sub-paragraph (3)(b).

(10) In this paragraph a reference to anything being done by or in relation to a permitted participant or a person includes a reference to its being done directly or indirectly through a third person.

(11) A credit facility is an agreement whereby a permitted participant is enabled to receive from time to time from another party to the agreement a loan of money not exceeding such amount (taking account of any repayments made by the permitted participant) as is specified in or determined in accordance with the agreement.

(12) An agreement or arrangement is not a regulated transaction—

(a) to the extent that a payment made in pursuance of the agreement or arrangement falls, by virtue of paragraph 38, to be included in a return under paragraph 20, or

(b) if its value does not exceed £500.

**Valuation of regulated transaction**

44 (1) The value of a regulated transaction which is a loan is the value of the total amount to be lent under the loan agreement.

(2) The value of a regulated transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.

(3) The value of a regulated transaction which is an arrangement by which any form of security is given is the contingent liability under the security provided.

(4) For the purposes of sub-paragraphs (1) and (2), no account is to be taken of the effect of any provision contained in a loan agreement or an agreement for a credit facility at the time it is entered into which enables outstanding interest to be added to any sum for the time being owed in respect of the loan or credit facility, whether or not any such interest has been so added.

**Authorised participants**

45 (1) A permitted participant must not—
(a) be a party to a regulated transaction to which any of the other parties is not an authorised participant,

(b) derive a benefit in consequence of a connected transaction if any of the parties to that transaction is not an authorised participant.

(2) In this Part, an authorised participant is a person who is a permissible donor.

Regulated transaction involving unauthorised participant

46 (1) This paragraph applies if a permitted participant is a party to a regulated transaction to which another party is not an authorised participant.

(2) The transaction is void.

(3) Despite sub-paragraph (2)—

(a) any money received by the permitted participant by virtue of the transaction must be repaid by the responsible person to the person from whom it was received, along with interest at the rate referred to in section 71I(3)(a) of the 2000 Act,

(b) the person from whom it was received is entitled to recover the money, along with such interest.

(4) If—

(a) the money is not (for whatever reason) repaid as mentioned in sub-paragraph (3)(a), or

(b) the person entitled to recover the money refuses or fails to do so,

the Commission may apply to a sheriff to make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.

(5) An order under sub-paragraph (4) may in particular—

(a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),

(b) where any form of security is given for a sum owed under the transaction, require that security to be discharged.

(6) In the case of a regulated transaction where a party other than a permitted participant—

(a) at the time the permitted participant enters into the transaction, is an authorised participant, but

(b) subsequently, for whatever reason, ceases to be an authorised participant,

the transaction is void and sub-paragraphs (3) to (5) apply with effect from the time when the other party ceased to be an authorised participant.

Guarantees and securities: unauthorised participant

47 (1) This paragraph applies if—

(a) a permitted participant and another person (“A”) enter into a transaction of a description mentioned in paragraph 43(3)(a),
(b) A is party to a regulated transaction of a description mentioned in paragraph 43(3)(b) (“the connected transaction”) with another person (“B”), and

(c) B is not an authorised participant.

(2) Paragraph 46(2) to (5) applies to the transaction mentioned in sub-paragraph (1)(a).

(3) The connected transaction is void.

(4) Sub-paragraph (5) applies if (but only if) A is unable to recover from the permitted participant the whole of the money mentioned in paragraph 46(3)(a) (as applied by sub-paragraph (2) above), along with such interest as is there mentioned.

(5) Despite sub-paragraph (3), A is entitled to recover from B any part of that money (and such interest) that is not recovered from the permitted participant.

(6) Sub-paragraph (5) does not entitle A to recover more than the contingent liability under the security provided by virtue of the connected transaction.

(7) In the case of a connected transaction where B—

(a) at the time A enters into the transaction, is an authorised participant, but

(b) subsequently, for whatever reason, ceases to be an authorised participant,

sub-paragraphs (2) to (6) apply with effect from the time when B ceased to be an authorised participant.

(8) If the transaction mentioned in paragraph 43(3)(a) is not a regulated transaction of a description mentioned in paragraph 43(1) or (2), references in this paragraph and paragraph 46(2) to (5) (as applied by sub-paragraph (2) above) to the repayment or recovery of money are to be construed as references to (as the case may be)—

(a) the return or recovery of any property provided under the transaction,

(b) to the extent that such property is incapable of being returned or recovered or its market value has diminished since the time the transaction was entered into, the repayment or recovery of the market value at that time, or

(c) the market value (at that time) of any facilities or services provided under the transaction.

Transfer to unauthorised participant invalid

48 If an authorised participant purports to transfer the participant’s interest in a regulated transaction to a person who is not an authorised participant the purported transfer is of no effect.

Offences

49 (1) An individual who is a permitted participant commits an offence if—

(a) the individual enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and

(b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(2) A permitted participant that is not an individual commits an offence if—
(a) it enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and

(b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(3) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—

(a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant, and

(b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(4) An individual who is a permitted participant commits an offence if—

(a) the individual enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,

(b) the individual neither knew nor ought reasonably to have known that the other party is not an authorised participant, and

(c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the individual the individual fails to take all reasonable steps to repay any money which the individual has received by virtue of the transaction.

(5) A permitted participant that is not an individual commits an offence if—

(a) it enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,

(b) no officer of the permitted participant knew or ought reasonably to have known that the other party is not an authorised participant, and

(c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the responsible person the responsible person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.

(6) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—

(a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 43(1) or (2) to which another party is not an authorised participant,

(b) sub-paragraph (3)(b) does not apply to the person, and

(c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the person the person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.

(7) An individual who is a permitted participant commits an offence if—

(a) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and

(b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).
(8) A permitted participant that is not an individual commits an offence if—
   (a) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
   (b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(9) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
   (a) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
   (b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(10) An individual who is a permitted participant commits an offence if—
   (a) the individual is a party to a transaction of a description mentioned in paragraph 43(3)(a),
   (b) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
   (c) the individual neither knew nor ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and
   (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the individual the individual fails to take all reasonable steps to pay to any person who has provided the individual with any benefit in consequence of the connected transaction the value of the benefit.

(11) A permitted participant that is not an individual commits an offence if—
   (a) it is a party to a transaction of a description mentioned in paragraph 43(3)(a),
   (b) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
   (c) no officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and
   (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the responsible person the responsible person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.

(12) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
   (a) the permitted participant is a party to a transaction of a description mentioned in paragraph 43(3)(a),
   (b) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,
   (c) sub-paragraph (9)(b) does not apply to the person, and
(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the person the person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.

5 (13) A person commits an offence if the person—

(a) knowingly enters into, or

(b) knowingly does any act in furtherance of,

any arrangement which facilitates or is likely to facilitate, whether by means of concealment or disguise or otherwise, the participation by a permitted participant in a regulated transaction with a person other than an authorised participant.

10 (14) It is a defence for a person charged with an offence under sub-paragraph (3) to prove that the person took all reasonable steps to prevent the permitted participant entering into the transaction.

(15) It is a defence for a person charged with an offence under sub-paragraph (9) to prove that the person took all reasonable steps to prevent the permitted participant benefiting in consequence of the connected transaction.

(16) A reference to a permitted participant entering into a regulated transaction includes a reference to any circumstances in which the terms of a regulated transaction are varied so as to increase the amount of money to which the permitted participant is entitled in consequence of the transaction.

(17) A reference to a permitted participant entering into a transaction to which another party is not an authorised participant includes a reference to any circumstances in which another party to the transaction who is an authorised participant ceases (for whatever reason) to be an authorised participant.

Penalties

50 (1) A person who commits an offence under sub-paragraph (1), (2), (4), (7), (8) or (10) of paragraph 49 is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

(2) A person who commits an offence under sub-paragraph (3), (5), (6), (9), (11), (12) or (13) of paragraph 49 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Statement of regulated transactions

51 (1) The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 20 a statement of regulated transactions entered into by the permitted participant.

(2) The statement must comply with paragraphs 52 to 56.
For the purposes of those paragraphs a regulated transaction is a recordable transaction—

(a) if the value of the transaction exceeds £7,500, or
(b) if the aggregate value of it and any other relevant benefit or benefits exceeds that amount.

In paragraph (b) “relevant benefit” means any relevant donation (within the meaning of paragraph 28(4)) or regulated transaction made by, or entered into with, the person with whom the regulated transaction was entered into.

Identity of authorised participants

The statement must record, in relation to each recordable transaction to which an authorised participant was a party, the information about the authorised participant which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 2 of Schedule 6A to the 2000 Act.

Identity of unauthorised participants

The statement must record, in relation to each recordable transaction to which a person other than an authorised participant was a party—

(a) the name and address of the person,
(b) the date when, and the manner in which, the transaction was dealt with in accordance with sub-paragraphs (3) to (5) of paragraph 46 or those sub-paragraphs as applied by paragraph 46(6) or 47(2).

Details of transaction

The statement must record, in relation to each recordable transaction, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 5(2), (3) and (4) of Schedule 6A to the 2000 Act (read with any necessary modifications).

The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 43(1) or (2) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 6 of Schedule 6A to the 2000 Act.

The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 43(3) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 7(2)(b), (3) and (4) of Schedule 6A to the 2000 Act.

Changes

Where another authorised participant has become a party to a regulated transaction (whether in place of or in addition to any existing participant), or there has been any other change in any of the information that is required by paragraphs 52 to 54 to be included in the statement, the statement must record—
(a) the information as it was both before and after the change,
(b) the date of the change.

(2) Where a recordable transaction has come to an end, the statement must—
(a) record that fact,
(b) record the date when it happened,
(c) in the case of a loan, state how the loan has come to an end.

(3) For the purposes of sub-paragraph (2), a loan comes to an end if—
(a) the whole debt (or all the remaining debt) is repaid,
(b) the creditor releases the whole debt.

Total value of non-recordable transactions

The statement must record the total value of any regulated transactions that are not recordable transactions.

Transaction reports during referendum period

(1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—
(a) the period ending with the 28th day of the referendum period (including the time before the referendum period),
(b) each of the two succeeding periods of 4 weeks during the referendum period, and
(c) the period from the end of the second of the periods referred to in paragraph (b) until the end of the seventh day before the day by which the report is to be delivered to the Electoral Commission (“the final period”).

(2) The report for any period must record, in relation to each regulated transaction having a value exceeding £7,500 which is entered into by the permitted participant during the period—
(a) the same information about the transaction as would be required, by virtue of paragraph 54, to be recorded in the statement referred to in paragraph 51(1),
(b) in relation to a transaction to which an authorised participant is a party, the information about each authorised participant which is, in connection with recordable transactions entered into by registered parties, required to be recorded in weekly transaction reports by virtue of paragraph 3 of Schedule 6A to the 2000 Act, and
(c) in relation to a transaction to which a person who is not an authorised participant is a party, the information referred to in paragraph 53.

(3) If during any period no regulated transactions having a value exceeding £7,500 were entered into by the permitted participant, the report for the period must contain a statement of that fact.

(3A) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—
(a) a separate report under this paragraph need not be prepared for any preceding period, but

(b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.

(3B) Sub-paragraphs (2) and (3) apply to a regulated transaction entered into by a permitted participant before the start of the referendum period only if any money or benefit obtained in consequence of the transaction is to be used for meeting referendum expenses to be incurred by the permitted participant during the referendum period.

(3C) References in this paragraph and in paragraph 57A to a regulated transaction entered into by a permitted participant include any transaction entered into at a time before the individual or body concerned became a permitted participant, if the transaction would have been a regulated transaction had the individual or body been a permitted participant at that time.

(4) A report under this paragraph must be delivered by the responsible person to the Electoral Commission—

(a) in the case of the report in respect of a period other than the final period, within the period of 7 days beginning with the end of the period to which the report relates,

(b) in the case of the report in respect of the final period, by the end of the fourth day before the date of the referendum.

(5) For the purpose of paragraph (4)(b), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971.

(6) If, in relation to a regulated transaction entered into with an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.

(7) The responsible person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with the requirements of sub-paragraph (4) in relation to a report under this paragraph,

(b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (2), (3) or (6).

(8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who commits an offence under sub-paragraph (7)(b) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
Declaration of responsible person as to transaction reports under paragraph 57

57A(1) Each report prepared under paragraph 57 in respect of regulated transactions entered into by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

5 (2) The declaration must state—

(a) that the responsible person has examined the report, and
(b) that to the best of the responsible person’s knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or
(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of transaction reports under paragraph 57

57B(1) Where the Electoral Commission receive a report under paragraph 57 they must—

(a) as soon as reasonably practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and
(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any transaction entered into by the permitted participant with an individual, the individual’s address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 57 or other document accompanying it is received by the Commission—

(a) they may cause the report or other document to be destroyed, or
(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

Non-disclosure with intent to conceal

58 (1) This paragraph applies where, on an application made by the Commission, a sheriff is satisfied that any failure to comply with a requirement of paragraphs 51 to 57A in relation to—

(a) any transaction entered into by the permitted participant, or
(b) any change made to a transaction to which the permitted participant is a party, was attributable to an intention on the part of any person to conceal the existence or true value of the transaction.

(2) The sheriff may make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.

(3) An order under this paragraph may in particular—
   (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),
   (b) where any form of security is given for a sum owed under the transaction, or the transaction is an arrangement by which any form of security is given, require that the security be discharged.

**Proceedings under paragraphs 46 and 58**

59 (1) This paragraph has effect in relation to proceedings on an application under paragraph 46(4) or 58.

(2) The proceedings are civil proceedings and, accordingly, the standard of proof that applies is that applicable to civil proceedings.

(3) An order may be made whether or not proceedings are brought against any person for an offence under paragraph 23 or paragraph 49.

(4) An appeal against an order made by the sheriff may be made to the Court of Session.

(5) Rules of court may make provision—
   (a) with respect to applications or appeals from proceedings on such applications,
   (b) for the giving of notice of such applications or appeals to persons affected,
   (c) for the sisting of such persons as parties,
   (d) generally with respect to procedure in such applications or appeals.

(6) Sub-paragraph (5) does not affect any existing power to make rules.

**Interpretation**

60 (1) In this Part—
   “authorised participant” is to be construed in accordance with paragraph 45 (and see paragraph 42(5)),
   “connected transaction” has the meaning given by paragraph 43(9),
   “credit facility” has the meaning given by paragraph 43(11),
   “permitted participant” is to be construed in accordance with paragraph 42,
   “regulated transaction” is to be construed in accordance with paragraph 43.
(2) For the purposes of any provision relating to the reporting of transactions, anything required to be done by a permitted participant in consequence of its being a party to a regulated transaction must also be done by it, if it is a party to a transaction of a description mentioned in paragraph 43(3)(a), as if it were a party to the connected transaction.

SCHEDULE 5
(introduced by section 11(4))

CAMPAIGN RULES: INVESTIGATORY POWERS OF THE ELECTORAL COMMISSION

Power to require disclosure

1 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.

(2) The Electoral Commission may give a disclosure notice to a person who—

(a) is, or has been at any time in the period of 5 years ending with the day on which the notice is given, the treasurer or another officer of an organisation to which this paragraph applies, or

(b) is an individual to whom this paragraph applies.

(3) A disclosure notice is a notice requiring the person to whom it is given—

(a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents which—

(i) relate to income and expenditure of the organisation or individual in question, and

(ii) are reasonably required by the Commission for the purposes of carrying out their functions under section 11 and schedule 4, or

(b) to provide the Commission, or a person authorised by the Commission, with any information or explanation which relates to that income and expenditure and is reasonably required by the Commission for those purposes.

(4) A person to whom a disclosure notice is given must comply with the notice within such reasonable time as is specified in the notice.

Inspection warrants

2 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.

(2) A sheriff or a justice of the peace may, on the application of the Electoral Commission, issue an inspection warrant in relation to any premises occupied by an organisation or individual to whom this paragraph applies if satisfied that—

(a) there are reasonable grounds for believing that on those premises there are documents relating to the income and expenditure of the organisation or individual,

(b) the Commission need to inspect the documents for the purposes of carrying out their functions under section 11 and schedule 4 (other than their investigatory functions), and
(c) permission to inspect the documents on the premises has been requested by the Commission and has been unreasonably refused.

(3) An inspection warrant is a warrant authorising a member of the Commission’s staff—
   (a) at any reasonable time to enter the premises specified in the warrant, and
   (b) having entered the premises, to inspect any documents within sub-paragraph (2)(a).

(4) An inspection warrant also authorises the person who executes the warrant to be accompanied by any other persons who the Commission consider are needed to assist in executing it.

(5) The person executing an inspection warrant must, if required to do so, produce—
   (a) the warrant, and
   (b) documentary evidence that the person is a member of the Commission’s staff,
   for inspection by the occupier of the premises that are specified in the warrant or by anyone acting on the occupier’s behalf.

(6) An inspection warrant continues in force until the end of the period of one month beginning with the day on which it is issued.

(7) An inspection warrant may not be used for the purposes of carrying out investigatory functions.

(8) In this paragraph, “investigatory functions” means functions of investigating—
   (a) suspected campaign offences, or
   (b) suspected contraventions of restrictions or requirements imposed by schedule 4.

Powers in relation to suspected offences or contraventions

(1) This paragraph applies where the Electoral Commission have reasonable grounds to suspect that—
   (a) a person has committed a campaign offence, or
   (b) a person has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 4.

(2) In this paragraph, “the suspected offence or contravention” means the offence or contravention referred to in sub-paragraph (1).

(3) The Commission may by notice require any person (including an organisation or individual to whom paragraph 1 applies)—
   (a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents that they reasonably require for the purposes of investigating the suspected offence or contravention,
   (b) to provide the Commission, or a person authorised by the Commission, with any information or explanation that they reasonably require for those purposes.

(4) A person to whom a notice is given under sub-paragraph (3) must comply with the notice within such reasonable time as is specified in the notice.

(5) A person authorised by the Commission (“the investigator”) may require—
   (a) the person mentioned in sub-paragraph (1) (if that person is an individual), or
(b) an individual who the investigator reasonably believes has relevant information,
to attend before the investigator at a specified time and place and answer any questions
that the investigator reasonably considers to be relevant.

(6) The time specified must be a reasonable time.

(7) In sub-paragraph (5), “relevant” means relevant to an investigation by the Commission
of the suspected offence or contravention.

**Court order for delivery of documents or provision of information etc.**

4 (1) This paragraph applies where the Electoral Commission have given a notice under
paragraph 3 requiring documents to be produced.

(2) The Court of Session may, on the application of the Commission, make a document
disclosure order against a person (“the respondent”) if satisfied that—

(a) there are reasonable grounds to suspect that a person (whether or not the
respondent) has committed a campaign offence or has contravened (otherwise
than by committing an offence) any restriction or other requirement imposed by
schedule 4, and

(b) there are documents referred to in the notice under paragraph 3 which—

(i) have not been produced as required by the notice (either within the time
specified in the notice for compliance or subsequently),

(ii) are reasonably required by the Commission for the purposes of
investigating the offence or contravention referred to in paragraph (a), and

(iii) are in the custody or under the control of the respondent.

(3) A document disclosure order is an order requiring the respondent to deliver to the
Commission, within such time as is specified in the order, such documents falling within
sub-paragraph (2)(b) as are identified in the order (either specifically or by reference to
any category or description of document).

(4) For the purposes of sub-paragraph (2)(b)(iii) a document is under a person’s control if it
is in the person’s possession or if the person has a right to possession of it.

(5) A person who fails to comply with a document disclosure order may not, in respect of
that failure, be both punished for contempt of court and convicted of an offence under
paragraph 12(1).

5 (1) This paragraph applies where the Electoral Commission have given a notice under
paragraph 3 requiring any information or explanation to be provided.

(2) The Court of Session may, on the application of the Commission, make an information
disclosure order against a person (“the respondent”) if satisfied that—

(a) there are reasonable grounds to suspect that a person (whether or not the
respondent) has committed a campaign offence or has contravened (otherwise
than by committing an offence) any restriction or other requirement imposed by
schedule 4, and

(b) there is any information or explanation referred to in the notice under paragraph 3
which—

(i) has not been provided as required by the notice (either within the time
specified in the notice for compliance or subsequently),
(ii) is reasonably required by the Commission for the purposes of investigating the offence or contravention referred to in paragraph (a), and

(iii) the respondent is able to provide.

(3) An information disclosure order is an order requiring the respondent to provide to the Commission, within such time as is specified in the order, such information or explanation falling within sub-paragraph (2)(b) as is identified in the order.

(4) A person who fails to comply with an information disclosure order may not, in respect of that failure, be both punished for contempt of court and convicted of an offence under paragraph 12(1).

Retention of documents delivered under paragraph 4

6 (1) The Electoral Commission may retain any documents delivered to them in compliance with an order under paragraph 4 for a period of 3 months (or for longer if any of sub-paragraphs (3) to (8) applies).

(2) In this paragraph, “the documents” and “the 3 month period” mean the documents and the period mentioned in sub-paragraph (1).

(3) If within the 3 month period proceedings to which the documents are relevant are commenced against any person for any criminal offence, the documents may be retained until the conclusion of the proceedings.

(4) If within the 3 month period the Commission serve a notice under paragraph 2(1) of schedule 6 of a proposal to impose a fixed monetary penalty on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—

(a) until liability for the penalty is discharged as mentioned in paragraph 2(2) of that schedule (if it is),

(b) until the Commission decide not to impose a fixed monetary penalty (if that is what they decide),

(c) until the end of the period given by sub-paragraph (6) (if they do impose a fixed monetary penalty).

(5) If within the 3 month period the Commission serve a notice under paragraph 6(1) of schedule 6 of a proposal to impose a discretionary requirement on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—

(a) until the Commission decide not to impose a discretionary requirement (if that is what they decide),

(b) until the end of the period given by sub-paragraph (6) (if they do impose a discretionary requirement).

(6) If within the 3 month period—

(a) a notice is served imposing a fixed monetary penalty on any person under paragraph 2(4) of schedule 6 and the documents are relevant to the decision to impose the penalty, or

(b) a notice is served imposing a discretionary requirement on any person under paragraph 6(5) of that schedule and the documents are relevant to the decision to impose the requirement,
the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

(7) If within the 3 month period—

(a) a stop notice is served on any person under paragraph 10 of schedule 6, and

(b) the documents are relevant to the decision to serve the notice,

the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

(8) If within the 3 month period or the period given by sub-paragraph (7) (or, if applicable, by sub-paragraph (5) or (6)(b))—

(a) the Commission, having served a stop notice on any person under paragraph 10 of schedule 6, decide not to issue a completion certificate under paragraph 12 of that schedule in relation to the stop notice, and

(b) the documents are relevant to the decision not to issue the certificate,

the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

Power to make copies and records

7 The Electoral Commission or a person authorised by the Commission—

(a) may make copies or records of any information contained in—

(i) any documents produced or inspected under this schedule,

(ii) any documents delivered to them in compliance with an order under paragraph 4,

(b) may make copies or records of any information or explanation provided under this schedule.

Authorisation to be in writing

8 An authorisation of a person by the Electoral Commission under this schedule must be in writing.

Documents in electronic form

9 (1) In the case of documents kept in electronic form—

(a) a power of the Electoral Commission under this schedule to require documents to be produced for inspection includes power to require a copy of the documents to be made available for inspection in legible form,

(b) a power of a person (“the inspector”) under this schedule to inspect documents includes power to require any person on the premises in question to give any assistance that the inspector reasonably requires to enable the inspector—

(i) to inspect and make copies of the documents in legible form or to make records of information contained in them, or
(ii) to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the documents.

(2) Paragraph 7(a) applies in relation to any copy made available as mentioned in sub-paragraph (1)(a) above.

Legal professional privilege

10 Nothing in this schedule requires a person to produce or provide, or authorises a person to inspect or take possession of, anything in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.

Admissibility of statements

11 (1) A statement made by a person (“P”) in compliance with a requirement imposed under this schedule is admissible in evidence in any proceedings (as long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question).

(2) But in criminal proceedings in which P is charged with an offence other than one to which sub-paragraph (3) applies or in proceedings within sub-paragraph (4) to which both the Electoral Commission and P are parties—

(a) no evidence relating to the statement is admissible against P, and

(b) no question relating to the statement may be asked on behalf of the prosecution or (as the case may be) the Commission in cross-examination of P,

unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of P.

(3) This sub-paragraph applies to—

(a) an offence under paragraph 12(3),

(b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath).

(4) Proceedings are within this sub-paragraph if they arise out of the exercise by the Commission of any of their powers under schedule 6 other than powers in relation to an offence under paragraph 12(3) below.

Offences

12 (1) A person who fails, without reasonable excuse, to comply with any requirement imposed under or by virtue of this schedule commits an offence.

(2) A person who intentionally obstructs a person authorised by or by virtue of this schedule in the carrying out of that person’s functions under the authorisation commits an offence.

(3) A person who knowingly or recklessly provides false information in purported compliance with a requirement imposed under or by virtue of this schedule commits an offence.

(4) A person who commits an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(5) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Guidance by Commission

13A(1) Guidance (and revised guidance) published by the Electoral Commission under paragraph 14 of Schedule 19B (investigatory powers of the Commission) to the 2000 Act has effect, with any necessary modifications, for the purposes of this schedule as it has effect for the purposes of that Schedule.

(2) The Commission may publish additional guidance in relation to the application of this schedule.

(3) Where appropriate, the Commission must revise guidance published under sub-paragraph (2) and publish the revised guidance.

(4) The Commission must have regard to the guidance and revised guidance referred to in sub-paragraph (1) and any guidance or revised guidance published under sub-paragraph (2) or (3) in exercising their functions under this Act.

Information about use of investigatory powers in Commission’s report

14(1) The Electoral Commission must, in accordance with this paragraph, make a report about the use made by the Commission of their powers under this schedule.

(2) The report must, in particular, specify—

(a) the cases in which a notice was given under paragraph 1 or 3(3),

(b) the cases in which premises were entered under a warrant issued under paragraph 2,

(c) the cases in which a requirement was imposed under paragraph 3(5),

(d) the cases in which an order under paragraph 4 or 5—

(i) was applied for,

(ii) was made.

(3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—

(a) would or might be unlawful, or

(b) might adversely affect any current investigation or proceedings.

(4) The report may be made—

(a) in the report by the Commission under section 24,

(b) in a separate report made as soon as reasonably practicable after the report under section 24 is published, or

(c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(5) The Commission must—
Interpretation

15 In this schedule—

“contravention” includes a failure to comply, and related expressions are to be construed accordingly,
“documents” includes any books or records,
“restriction” includes prohibition.

SCHEDULE 6
(introduced by section 11(5))

CAMPAIGN RULES: CIVIL SANCTIONS

PART 1

FIXED MONETARY PENALTIES

Imposition of fixed monetary penalties

15 1 (1) The Electoral Commission may by notice impose a fixed monetary penalty on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 8.

(2) The Commission may by notice impose a fixed monetary penalty on a permitted participant if satisfied beyond reasonable doubt that the responsible person—

(a) has committed a campaign offence listed in Part 8, or

(b) has failed to comply with a requirement imposed by paragraph 22(2), (3) or (4) of schedule 4.

(3) For the purposes of this schedule a “fixed monetary penalty” is a requirement to pay to the Commission a penalty of £200.

Representations and appeals etc.

2 (1) Where the Electoral Commission propose to impose a fixed monetary penalty on a person, they must serve on the person a notice of what is proposed.

(2) A notice under sub-paragraph (1) must offer the person the opportunity to discharge the person’s liability for the fixed monetary penalty by payment of £200.

The following provisions of this paragraph apply if the person does not do so.

(3) The person may make written representations and objections to the Commission in relation to the proposed imposition of the fixed monetary penalty.

(4) After the end of the period for making such representations and objections (see paragraph 3(2)) the Commission must decide whether to impose the fixed monetary penalty.

If they decide to do so they must serve on the person a notice imposing the penalty.
(5) The Commission may not impose a fixed monetary penalty on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 1(1) or (2) (as applicable).

(6) A person on whom a fixed monetary penalty is imposed may appeal against the decision to impose the penalty on the ground that—

(a) it was based on an error of fact,
(b) it was wrong in law, or
(c) it was unreasonable.

(7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (4) is received.

(8) Where an appeal under sub-paragraph (6) is made, the fixed monetary penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Information to be included in notices under paragraph 2

(1) A notice under paragraph 2(1) must include information as to—

(a) the grounds for the proposal to impose the fixed monetary penalty,
(b) the effect of payment of the sum referred to in paragraph 2(2),
(c) the right to make representations and objections,
(d) the circumstances in which the Commission may not impose the fixed monetary penalty.

(2) Such a notice must also specify—

(a) the period within which liability for the fixed monetary penalty may be discharged, and
(b) the period within which representations and objections may be made.

Neither period may be more than 28 days beginning with the day on which the notice is received.

(3) A notice under paragraph 2(4) must include information as to—

(a) the grounds for imposing the fixed monetary penalty,
(b) how payment may be made,
(c) the period within which payment may be made,
(d) any early payment discounts or late payment penalties,
(e) rights of appeal,
(f) the consequences of non-payment.

Late payment

(1) A fixed monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 2(4) is received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.
(3) If the penalty (as increased by sub-paragraph (2)) is not paid within the period of 56 days beginning with the day on which the notice under paragraph 2(4) is received, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

(4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or because the appeal was withdrawn, is payable within the period of 28 days beginning with the day of determination or withdrawal of the appeal, and if not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) is not paid within the period of 56 days beginning with the day of determination or withdrawal of the appeal, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

Fixed monetary penalties: criminal proceedings and conviction

4 (1) Where a notice under paragraph 2(1) is served on a person—

(a) no criminal proceedings for a campaign offence may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period within which the person’s liability may be discharged as mentioned in paragraph 2(2) (see paragraph 3(2)),

(b) if the liability is so discharged, the person may not at any time be convicted of a campaign offence in relation to that act or omission.

(2) A person on whom a fixed monetary penalty is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the penalty.

PART 2

DISCRETIONARY REQUIREMENTS

Imposition of discretionary requirements

5 (1) The Electoral Commission may impose one or more discretionary requirements on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 8.

(2) The Commission may impose one or more discretionary requirements on a permitted participant if satisfied beyond reasonable doubt that the responsible person—

(a) has committed a campaign offence listed in Part 8, or

(b) has failed to comply with a requirement imposed by paragraph 22(2), (3) or (4) of schedule 4.

(3) For the purposes of this schedule a “discretionary requirement” is—

(a) a requirement to pay a monetary penalty to the Commission of such amount as the Commission may determine up to a maximum of £10,000, (but see also sub-paragraph (6)),

(b) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the offence or failure to comply does not continue or recur, or
(c) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence or failure to comply had not happened.

5 (4) Discretionary requirements may not be imposed on the same person on more than one occasion in relation to the same act or omission.

5 (5) In this schedule—

“variable monetary penalty” means such a requirement as is referred to in sub-paragraph (3)(a),

“non-monetary discretionary requirement” means such a requirement as is referred to in sub-paragraph (3)(b) or (c).

10 (6) In the case of a variable monetary penalty imposed under sub-paragraph (1) or (2)(a), where the offence in question is—

(a) triable summarily only, and

(b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the penalty may not exceed the maximum amount of that fine.

Representations and appeals etc.

6 (1) Where the Electoral Commission propose to impose a discretionary requirement on a person, they must serve on the person a notice of what is proposed.

20 (2) A person served with a notice under sub-paragraph (1) may make written representations and objections to the Commission in relation to the proposed imposition of the discretionary requirement.

3 (3) After the end of the period for making such representations and objections (see paragraph 7(2)) the Commission must decide whether—

(a) to impose the discretionary requirement, with or without modifications, or

(b) to impose any other discretionary requirement that the Commission have power to impose under paragraph 5.

4 (4) The Commission may not impose a discretionary requirement on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 5(1) or (2) (as applicable).

5 (5) Where the Commission decide to impose a discretionary requirement on a person, they must serve on the person a notice specifying what the requirement is.

6 (6) A person on whom a discretionary requirement is imposed may appeal against the decision to impose the requirement on the ground—

(a) that the decision was based on an error of fact,

(b) that the decision was wrong in law,

(c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
(d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable, or
(e) that the decision is unreasonable for any other reason.

(7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (5) is received.

(8) Where an appeal under sub-paragraph (6) is made, the discretionary requirement is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

**Information to be included in notices under paragraph 6**

10 (1) A notice under paragraph 6(1) must include information as to—
   (a) the grounds for the proposal to impose the discretionary requirement,
   (b) the right to make representations and objections,
   (c) the circumstances in which the Commission may not impose the discretionary requirement.

15 (2) Such a notice must also specify the period within which representations and objections may be made.
That period may not be less than 28 days beginning with the day on which the notice is received.

10 (3) A notice under paragraph 6(5) must include information as to—
   (a) the grounds for imposing the discretionary requirement,
   (b) where the discretionary requirement is a variable monetary penalty—
      (i) how payment may be made,
      (ii) the period within which payment must be made, and
      (iii) any early payment discounts or late payment penalties,
   (c) rights of appeal,
   (d) the consequences of non-compliance.

**Discretionary requirements: criminal conviction**

8 (1) A person on whom a discretionary requirement is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the requirement.

30 (2) Sub-paragraph (1) does not apply where—
   (a) a non-monetary discretionary requirement is imposed on the person,
   (b) no variable monetary penalty is imposed on the person, and
   (c) the person fails to comply with the non-monetary discretionary requirement.
Compliance and restoration certificates

8A(1) Where, after the service of a notice under paragraph 6(5) imposing a non-monetary discretionary requirement on a person, the Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect.

(2) A notice served under paragraph 6(5) ceases to have effect on the issue of a certificate relating to that notice.

(3) A person on whom a notice under paragraph 6(5) has been served may at any time apply for a certificate and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.

(4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the notice has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—

(a) the grounds for the decision not to issue a certificate, and

(b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a certificate, the notice has effect as if the certificate had not been issued.

(8) A person who has applied for a certificate under sub-paragraph (3) may appeal to a sheriff against a decision not to issue a certificate under this paragraph on the ground that the decision was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unfair or unreasonable.

(9) An appeal must be made within the period of 28 days beginning with the day on which notification of the decision is received.

Failure to comply with discretionary requirements

9 (1) The Electoral Commission may by notice impose a monetary penalty (a “non-compliance penalty”) on a person for failing to comply with a non-monetary discretionary requirement imposed on the person.

(1A) The amount of a non-compliance penalty is to be determined by the Commission, but must not exceed £10,000.

(1B) A non-compliance penalty must be paid to the Commission.

(1C) A notice under sub-paragraph (1) must include information as to—

(a) the grounds for imposing the non-compliance penalty,
(b) the amount of the penalty,
(c) how payment may be made,
(d) the period within which payment must be made, which must be not less than 28 days beginning with the day on which the notice imposing the penalty is received,
(e) rights of appeal, and
(f) the consequences of failure to make payment within the period specified.

(1D) If, before the end of the period specified for payment of a non-compliance penalty—
(a) the person on whom the penalty was imposed has taken the steps specified in the notice imposing the non-monetary discretionary requirement to which the penalty relates, and
(b) the Commission have issued a certificate under paragraph 8A(1) in respect of that notice,
the Commission may waive, or reduce the amount of, the penalty.

(3) A person served with a notice imposing a non-compliance penalty may appeal against the notice on the ground that the decision to serve the notice—
(a) was based on an error of fact,
(b) was wrong in law, or
(c) was unfair or unreasonable for any reason (for example because the amount is unreasonable).

(4) An appeal under sub-paragraph (3) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) is received.

(5) Where an appeal under sub-paragraph (3) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

**Late payment**

9A(1) A variable monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 6(5) is received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.

(3) If the penalty (as increased by sub-paragraph (2)) is not paid within 56 days of the day on which the notice under paragraph 6(5) is received, the amount payable is the amount of the penalty originally imposed increased by 50%.

(4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or varied it, or because the appeal was withdrawn, is payable within 28 days of the day of determination or withdrawal of the appeal, and if it is not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) is not paid within 56 days of the day of determination or withdrawal of the appeal the amount payable is the amount of the penalty originally imposed increased by 50%.
PART 3

STOP NOTICES

Imposition of stop notices

10 (1) Where sub-paragraph (2) or (3) applies, the Electoral Commission may serve on a person a notice (a “stop notice”) prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) This sub-paragraph applies where—
   (a) the person is carrying on the activity,
   (b) the Commission reasonably believe that the activity as carried on by the person involves or is likely to involve the person committing a campaign offence listed in Part 8, and
   (c) the Commission reasonably believe that the activity as carried on by the person is seriously damaging public confidence in the effectiveness of the controls in schedule 4, or presents a significant risk of doing so.

(3) This sub-paragraph applies where—
   (a) the person is likely to carry on the activity,
   (b) the Commission reasonably believe that the activity as carried on by the person will involve or will be likely to involve the person committing a campaign offence listed in Part 8, and
   (c) the Commission reasonably believe that the activity as likely to be carried on by the person will seriously damage public confidence in the effectiveness of the controls mentioned in sub-paragraph (2)(c), or will present a significant risk of doing so.

(4) The steps referred to in sub-paragraph (1) must be steps to secure that the activity is carried on or (as the case may be) will be carried on in a way that does not involve the person acting as mentioned in sub-paragraph (2)(b) or (3)(b).

Information to be included in stop notices

11 A stop notice must include information as to—
   (a) the grounds for serving the notice,
   (b) rights of appeal,
   (c) the consequences of not complying with the notice.

Completion certificates

12 (1) Where, after the service of a stop notice on a person, the Electoral Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect (a “completion certificate”).

(2) A stop notice ceases to have effect on the issue of a completion certificate relating to that notice.

(3) A person on whom a stop notice is served may at any time apply for a completion certificate.
The Commission must make a decision whether to issue a completion certificate within the period of 14 days of the day on which they receive such an application.

(4) An application for a completion certificate must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the stop notice has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a completion certificate they must notify the applicant and provide the applicant with information as to—
   (a) the grounds for the decision not to issue a completion certificate, and
   (b) rights of appeal.

(6) The Commission may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a completion certificate, the stop notice has effect as if the certificate had not been issued.

Appeals etc.

13 (1) A person served with a stop notice may appeal against the decision to serve it on the ground that—
   (a) the decision was based on an error of fact,
   (b) the decision was wrong in law,
   (c) the decision was unreasonable,
   (d) any step specified in the notice is unreasonable, or
   (e) the person has not acted as mentioned in paragraph 10(2)(b) or (3)(b) and would not have done so even if the stop notice had not been served.

(2) A person served with a stop notice may appeal against a decision not to issue a completion certificate on the ground that the decision—
   (a) was based on an error of fact,
   (b) was wrong in law, or
   (c) was unfair or unreasonable.

(3) An appeal under sub-paragraph (1) or (2) is to a sheriff.

(4) An appeal under sub-paragraph (1) against a decision to serve a stop notice must be made within the period of 28 days beginning with the day on which the stop notice is received.

(5) An appeal under sub-paragraph (2) against a decision not to issue a completion certificate must be made within the period of 28 days beginning with the day on which notification of the decision is received.

(6) Where an appeal under sub-paragraph (1) or (2) is made, the stop notice continues to have effect unless it is suspended or varied on the order of the sheriff.
Failure to comply with stop notice

14 (1) A person served with a stop notice who does not comply with it commits an offence.

(2) A person who commits an offence under sub-paragraph (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).

PART 4
ENFORCEMENT UNDERTAKINGS

15 (1) This paragraph applies where—

(a) the Electoral Commission have reasonable grounds to suspect that a person has committed a campaign offence listed in Part 8,

(b) the person offers an undertaking (an “enforcement undertaking”) to take such action, within such period, as is specified in the undertaking,

(c) the action so specified is—

(i) action to secure that the offence does not continue or recur,

(ii) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not happened, and

(d) the Commission accept the undertaking.

(2) Unless the person has failed to comply with the undertaking or any part of it—

(a) the person may not at any time be convicted of a campaign offence in respect of the act or omission to which the undertaking relates,

(b) the Commission may not impose on the person any fixed monetary penalty that they would otherwise have power to impose by virtue of paragraph 1 in respect of that act or omission,

(c) the Commission may not impose on the person any discretionary requirement that they would otherwise have power to impose by virtue of paragraph 5 in respect of that act or omission.

Enforcement undertakings: further provision

15A (1) An enforcement undertaking must be in writing and include—

(a) a statement that the undertaking is an enforcement undertaking regulated by this Act,

(b) the terms of the undertaking,

(c) the period within which the action specified in the undertaking must be completed,

(d) details of how and when a person is to be considered to have complied with the undertaking, and
(e) information as to the consequences of failure to comply in full or in part with the undertaking, including reference to the effect of paragraph 15(2).

(2) The enforcement undertaking may be varied or extended if the person who has given the undertaking and the Electoral Commission agree.

(3) The Commission may publish any enforcement undertaking which they accept in whatever manner they see fit.

**Compliance certificate**

15B (1) Where, after accepting an enforcement undertaking from a person, the Electoral Commission are satisfied that the undertaking has been complied with in full they must issue a certificate to that effect.

(2) An enforcement undertaking ceases to have effect on the issue of a certificate relating to that undertaking.

(3) A person who has given an enforcement undertaking may at any time apply for a certificate, and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.

(4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the undertaking has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—

(a) the grounds for the decision not to issue a certificate, and

(b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

(7) Where the Commission revoke a certificate, the enforcement undertaking has effect as if the certificate had not been issued.

**Appeals**

15C (1) A person who has given an enforcement undertaking may appeal to the sheriff against a decision not to issue a certificate under paragraph 15B on the ground that the decision was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unfair or unreasonable.

(2) An appeal must be made within the period of 28 days beginning with the day on which notification of the Electoral Commission’s decision is received.
PART 6

GENERAL AND SUPPLEMENTAL

Combination of sanctions

22 (1) The Electoral Commission may not serve on a person a notice under paragraph 2(1) (notice of proposed fixed monetary penalty) in relation to any act or omission in relation to which—
   (a) a discretionary requirement has been imposed on that person, or
   (b) a stop notice has been served on that person.

(2) The Commission may not serve on a person a notice under paragraph 6(1) (notice of proposed discretionary requirement), or serve a stop notice on a person, in relation to any act or omission in relation to which—
   (a) a fixed monetary penalty has been imposed on that person, or
   (b) the person’s liability for a fixed monetary penalty has been discharged as mentioned in paragraph 2(2).

Withdrawal or variation of notice

22A(1) The Electoral Commission may by notice in writing at any time withdraw a notice served under paragraph 2(4).

(2) The Commission may by notice in writing at any time—
   (a) withdraw a notice served under paragraph 6(5),
   (b) reduce the monetary amount payable under such a notice, or
   (c) reduce the steps to be taken under such a notice.

(3) The Commission may by notice in writing at any time withdraw a stop notice (but may serve another stop notice in respect of the same activity specified in the withdrawn notice).

Use of statements made compulsorily

23 (1) The Electoral Commission must not take into account a statement made by a person in compliance with a requirement imposed under schedule 5 in deciding whether—
   (a) to impose a fixed monetary penalty on the person,
   (b) to impose a discretionary requirement on the person,
   (c) to serve a stop notice on the person.

(2) Sub-paragraph (1)(a) or (b) does not apply to a penalty or requirement imposed in respect of an offence under paragraph 12(3) of schedule 5 (providing false information in purported compliance with a requirement under that schedule).

Unincorporated associations

24 Any amount that is payable under this schedule by an unincorporated association must be paid out of the funds of the association.
Guidance as to enforcement

25A(1) Guidance (and revised guidance) published by the Electoral Commission under paragraph 25 of Schedule 19C (civil sanctions) to the 2000 Act has effect, with any necessary modifications, for the purposes of this schedule as it has effect for the purposes of that Schedule.

(2) The Commission may publish additional guidance in relation to the application of this schedule.

(3) Where appropriate, the Commission must revise guidance published under sub-paragraph (2) and publish the revised guidance.

(4) The Commission must have regard to the guidance and revised guidance referred to in sub-paragraph (1) and any guidance or revised guidance published under sub-paragraph (2) or (3) in exercising their functions under this Act.

Recovery of penalties etc.

25B The Electoral Commission may recover as a civil debt—

(a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty, and

(b) any interest or other financial payment for late payment of such a penalty.

Payment of penalties etc into Scottish Consolidated Fund

26 Where, in pursuance of any provision contained in or made under this schedule, the Electoral Commission receive—

(a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty,

(b) any interest or other financial penalty for late payment of such a penalty, or

(c) a sum paid as mentioned in paragraph 2(2) (in discharge of liability for a fixed monetary penalty),

they must pay it into the Scottish Consolidated Fund.

Reports on use of civil sanctions

27 (1) The Electoral Commission must, in accordance with this paragraph, make a report about the use made by the Commission of their powers under this schedule.

(2) The report must, in particular, specify—

(a) the cases in which a fixed monetary penalty or discretionary requirement was imposed or a stop notice served (other than cases in which the penalty, requirement or notice was overturned on appeal),

(b) the cases in which liability for a fixed monetary penalty was discharged as mentioned in paragraph 2(2),

(c) the cases in which an enforcement undertaking was accepted.
(3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—
(a) would or might be unlawful, or
(b) might adversely affect any current investigation or proceedings.

(4) The report may be made—
(a) in the report by the Commission under section 24,
(b) in a separate report made as soon as reasonably practicable after the report under section 24 is published, or
(c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).

(5) The Commission must—
(a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and
(b) after laying, publish the report in such manner as they may determine.

Disclosure of information

28 (1) Information held by or on behalf of a procurator fiscal or a constable in Scotland may be disclosed to the Electoral Commission for the purpose of the exercise by the Commission of any powers conferred on them under or by virtue of this schedule.

(2) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the coming into effect of this schedule.

(3) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information.

(4) This paragraph does not affect a power to disclose that exists apart from this paragraph.

Powers of sheriff

28A(1) On an appeal under paragraph 2(6) the sheriff may overturn or confirm the penalty.

(2) On an appeal under paragraph 6(6), 9(3) or 13(1) the sheriff may—
(a) overturn, confirm or vary the requirement or notice,
(b) take such steps as the Electoral Commission could take in relation to the act or omission giving rise to the requirement or notice,
(c) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Commission.

(3) On an appeal under paragraph 8A(8), 13(2) or 15C(1) the sheriff may make an order requiring the Commission to issue (as appropriate)—
(a) a certificate under paragraph 8A(1),
(b) a completion certificate under paragraph 12(1), or
(c) a certificate under paragraph 15B(1).
PART 7

INTERPRETATION

29 In this schedule—

“completion certificate” has the meaning given in paragraph 12(1),
“discretionary requirement” has the meaning given in paragraph 5(3),
“enforcement undertaking” has the meaning given in paragraph 15(1)(b),
“fixed monetary penalty” has the meaning given in paragraph 1(3),
“non-compliance penalty” has the meaning given in paragraph 9(1),
“non-monetary discretionary requirement” has the meaning given in paragraph 5(5),
“responsible person”, in relation to a permitted participant, has the meaning given in schedule 8,
“restriction” includes prohibition,
“stop notice” has the meaning given in paragraph 10(1),
“variable monetary penalty” has the meaning given in paragraph 5(5).

PART 8

LISTED CAMPAIGN OFFENCES

The following table lists campaign offences for the purposes of this schedule.

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<th>General description of campaign offence</th>
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**SCHEDULE 7**

*(introduced by section 28)*

**OFFENCES**

**Personation**

1 (1) A person (“A”) commits the offence of personation in the referendum if—

(a) A votes in person or by post in the referendum as some other person, whether as a voter or as proxy, and whether that other person is living or dead or is a fictitious person, or

(b) A votes, as proxy, in person or by post in the referendum—

(i) for a person whom A knows or has reasonable grounds for supposing to be dead or to be a fictitious person, or

(ii) when A knows or has reasonable grounds for supposing that A’s appointment as proxy is no longer in force.

(2) For the purposes of this paragraph, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

(3) A person commits a corrupt practice if the person commits the offence of personation in the referendum or aids, abets, counsels or procures the commission of that offence.

**Other voting offences**

2 (1) A person (“A”) commits an offence if—
(a) A votes in person or by post in the referendum, whether as a voter or as proxy, or applies to vote by proxy or by post as a voter or as proxy in the referendum knowing that A is subject to a legal incapacity to vote in the referendum,

(b) A applies for the appointment of a proxy to vote for A in the referendum knowing that A or the person to be appointed is subject to a legal incapacity to vote in the referendum, or

(c) A votes, whether in person or by post, as proxy for some other person in the referendum, knowing that the other person is subject to a legal incapacity to vote.

(2) For the purposes of sub-paragraph (1), references to a person being subject to a legal incapacity to vote do not, in relation to things done before the date of the referendum, include the person’s being below voting age if the person will be of voting age on that date.

(3) A person (“A”) commits an offence if—

(a) A votes as a voter more than once in the referendum,

(b) A votes as a voter in person in the referendum when A is entitled to vote by post,

(c) A votes as a voter in person in the referendum knowing that a person appointed to vote as A’s proxy in the referendum either has already voted in person in the referendum or is entitled to vote by post in the referendum, or

(d) A applies for a person to be appointed as A’s proxy to vote for A in the referendum without applying for the cancellation of a previous appointment of a third person then in force in respect of the referendum or without withdrawing a pending application for such an appointment in respect of the referendum.

(4) A person (“A”) commits an offence if—

(a) A votes as proxy for the same voter more than once in the referendum,

(b) A votes in person as proxy for a voter in the referendum when A is entitled to vote by post as proxy in the referendum for that voter,

(c) A votes in person as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum, or

(d) A votes by post as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum.

(5) A person (“A”) commits an offence if A votes in the referendum as proxy for more than two persons of whom A is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

(6) A person (“A”) commits an offence if A knowingly induces or procures some other person to do an act which is, or but for that other person’s lack of knowledge would be, an offence by that other person under any of sub-paragraphs (1) to (5).

(7) For the purposes of this paragraph a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

(8) For the purpose of determining whether an application for a ballot paper constitutes an offence under sub-paragraph (5), a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper is, if the person does not exercise that right, to be disregarded.
(9) A person does not commit an offence under sub-paragraph (3)(b) or (4)(b) only by reason of the person’s having marked a tendered ballot paper in pursuance of rule 24 of the conduct rules.

(10) An offence under this paragraph is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

(11) In this paragraph “legal incapacity to vote” has the meaning given by section 2(2) of the Scottish Independence Referendum (Franchise) Act 2013.

**Imitation poll cards**

3 (1) A person commits an offence if the person, for the purpose of promoting or procuring a particular outcome in the referendum, issues any poll card or document so closely resembling an official poll card as to be calculated to deceive.

(2) An offence under sub-paragraph (1) is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

**Offences relating to applications for postal and proxy votes**

4 (1) A person (“A”) commits an offence if A—

(a) engages in an act specified in sub-paragraph (2) in connection with the referendum, and

(b) intends, by doing so, to deprive another of an opportunity to vote in the referendum or to make for A or another a gain of a vote in the referendum to which A or the other is not otherwise entitled or a gain of money or property.

(2) These are the acts—

(a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person),

(b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote or providing false information in, or in connection with, such an application,

(c) inducing the registration officer or counting officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote,

(d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.

(3) In sub-paragraph (1)(b), property includes any description of property.

(4) In sub-paragraph (2), a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or proxy postal ballot paper (as the case may be).

(5) A person commits a corrupt practice if the person commits an offence under sub-paragraph (1) or aids, abets, counsels or procures the commission of that offence.
Breach of official duty

5 (1) If a person to whom this paragraph applies without reasonable cause (and whether by act or omission) breaches the person’s official duty, the person commits an offence.

(2) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) No person to whom this paragraph applies is liable for breach of official duty to any penalty at common law and no action for damages lies in respect of the breach by such a person of the person’s official duty.

(4) The persons to whom this paragraph applies are—

(a) the Chief Counting Officer,

(b) any proper officer, registration officer, counting officer or presiding officer, and

(c) any deputy of a person mentioned in paragraph (a) or (b) or any other person appointed to assist or, in the course of the other person’s employment, assisting a person so mentioned in connection with that person’s official duties,

and “official duty” for the purpose of this paragraph is to be construed accordingly, but does not include duties imposed otherwise than by this Act.

Tampering with ballot papers etc.

6 (1) A person (“A”) commits an offence if, in connection with the referendum—

(a) A fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or official envelope used in connection with voting by post,

(b) A, without due authority, supplies any ballot paper to any person,

(c) A fraudulently puts into any ballot box any paper other than the ballot paper which A is authorised by law to put in,

(d) A fraudulently takes out of the polling station any ballot paper,

(e) A, without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the referendum, or

(f) A fraudulently or without due authority (as the case may be) attempts to do any of the acts mentioned in paragraphs (a) to (e).

(2) A person commits an offence if, in connection with the referendum, the person forges or counterfeits (or attempts to forge or counterfeit) any ballot paper or the official mark on any ballot paper.

(3) If a counting officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers in the referendum, commits an offence under this paragraph, the officer or clerk is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).
(4) If any other person commits an offence under this paragraph the person is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

**Requirement of secrecy**

7 (1) Every person (other than one mentioned in sub-paragraph (2)) attending at a polling station in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not, except for a purpose authorised by law, communicate to any person before the close of the poll the information described in sub-paragraph (3).

(2) Sub-paragraph (1) does not apply to—

(a) a person attending at the polling station for the purpose of voting,
(b) a person under the age of 16 accompanying a voter or a proxy for a voter,
(c) a companion of a voter with disabilities,
(d) a constable on duty at the polling station.

(3) The information referred to in sub-paragraph (1) is any information as to—

(a) the name of any voter or proxy for a voter who has or has not applied for a ballot paper or voted at a polling station,
(b) the number on the Polling List of any voter who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station,
(c) the official mark being used in accordance with rule 6 of the conduct rules.

(4) Every person attending at the counting of the votes in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—

(a) ascertain or attempt to ascertain at the counting of the votes the unique identifying number on the back of any ballot paper,
(b) communicate any information obtained at the counting of the votes as to the outcome for which any vote is given on any particular ballot paper.

(5) A person must not—

(a) interfere with or attempt to interfere with a voter when recording the voter’s vote in the referendum,
(b) otherwise obtain or attempt to obtain in a polling station information as to the outcome for which a voter in that station is about to vote or has voted in the referendum,
(c) communicate at any time to any person any information obtained in a polling station in the referendum as to the outcome for which a voter in that station is about to vote or has voted, or as to the unique identifying number on the back of a ballot paper given to a voter at that station, or
(d) directly or indirectly induce a voter to display a ballot paper after the voter has marked it so as to make known to any person any outcome for which the voter has or has not voted in the referendum.

(5A) In sub-paragraph (5), references to a voter include references to a proxy for a voter.
(6) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—

(a) except for a purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark,

(b) except for a purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the unique identifying number on the back of any ballot paper sent to any person,

(c) except for a purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the unique identifying number on the back of any ballot paper, or

(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the outcome for which any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(7) A companion of a voter with disabilities must not communicate at any time to any person any information as to the outcome for which that voter intends to vote or has voted, or as to the unique identifying number on the back of a ballot paper given for the use of that voter.

(8) If a person acts in contravention of this paragraph the person commits an offence.

(9) A person who commits an offence under sub-paragraph (8) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

(10) In this paragraph a voter with disabilities is a voter who has made a declaration under rule 23(1) of the conduct rules.

Prohibition on publication of exit polls

(8) No person may publish before the close of the poll—

(a) any statement relating to the way in which voters have voted in the referendum where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or

(b) any forecast as to the result of the referendum which is (or might reasonably be taken to be) based on information so given.

(2) If a person acts in contravention of this paragraph the person commits an offence.

(3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

(4) In this paragraph—

“forecast” includes estimate,

“publish” means make available to the public at large (or any section of the public), in whatever form and by whatever means,

“voters” includes proxies for voters,

any reference to the result of the referendum is a reference to the result for the whole of Scotland or the result in one or more local government areas.
Payments to voters for exhibition of referendum notices

9 (1) No payment or contract for payment may, for the purposes of promoting a particular outcome in the referendum, be made to a voter on account of—
   (a) the exhibition of, or
   (b) the use of any house, land, building or premises for the exhibition of, any bill, advertisement or notice.

(2) Sub-paragraph (1) does not apply if—
   (a) it is the ordinary business of the voter to exhibit bills, advertisements or notices for payment, and
   (b) the payment or contract is made in the ordinary course of that business.

(3) If a payment or contract for payment is knowingly made in contravention of sub-paragraph (1) (whether before, during or after the referendum), each of the following persons commits an offence—
   (a) the person who makes the payment or enters into the contract,
   (b) the person who receives the payment or is a party to the contract (if the person knows the payment or contract is in contravention of sub-paragraph (1)).

(4) An offence under sub-paragraph (3) is an illegal practice.

Treating

10 (1) A person (“A”) commits the offence of treating in connection with the referendum if A, whether before, during or after the referendum, corruptly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—
   (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting in the referendum, or
   (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting, in the referendum.

(2) Sub-paragraph (1) applies regardless of whether an act is done—
   (a) directly or indirectly,
   (b) by A or by another person on A’s behalf.

(3) A voter or proxy who corruptly accepts or takes any such meat, drink, entertainment or provision also commits the offence of treating in connection with the referendum.

(4) A person commits a corrupt practice if the person commits the offence of treating in connection with the referendum.

Undue influence

11 (1) A person (“A”) commits the offence of undue influence in connection with the referendum if—
(a) A makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, personally or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting in the referendum, or

5 on account of that person having voted or refrained from voting, in the referendum, or

(b) by abduction, duress or any fraudulent device or contrivance, A impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of a voter or proxy for a voter in the referendum, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, a voter or proxy for a voter either to vote or to refrain from voting in the referendum.

(2) Sub-paragraph (1)(a) applies regardless of whether an act is done—

(a) directly or indirectly,

(b) by the person or by another person on the person’s behalf.

15 (3) A person commits a corrupt practice if the person commits the offence of undue influence in connection with the referendum.

Bribery

12 (1) A person commits the offence of bribery in connection with the referendum if the person—

20 (a) gives any money or procures any office—

(i) to or for any voter,

(ii) to or for any other person on behalf of any voter, or

(iii) to or for any other person,

in order to induce any voter to vote or refrain from voting in the referendum,

(b) corruptly makes any gift or procurement as mentioned in paragraph (a) on account of any voter having voted or refrained from voting in the referendum,

(c) makes any gift or procurement as mentioned in paragraph (a) to or for any person in order to induce that person to procure, or endeavour to procure, any particular outcome in the referendum, or

30 (d) upon or in consequence of any such gift or procurement as mentioned in paragraph (a), procures or engages, promises or endeavours to procure any particular outcome in the referendum.

(2) A person commits the offence of bribery in connection with the referendum if the person—

35 (a) advances or pays or causes to be paid any money to or for the use of any other person with the intent that the money or any part of it is to be expended in bribery in connection with the referendum, or

(b) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or partly expended in bribery in connection with the referendum.
A voter commits the offence of bribery in connection with the referendum if, whether before or during the referendum, the voter receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment for the voter or for any other person for—

(a) voting or agreeing to vote in the referendum, or

(b) refraining or agreeing to refrain from voting in the referendum.

A person commits the offence of bribery in connection with the referendum if, after the referendum, the person receives any money or valuable consideration on account of any person—

(a) having voted or refrained from voting in the referendum, or

(b) having induced any other person to vote or refrain from voting in the referendum.

Sub-paragraphs (1) to (4) apply regardless of whether an act is done—

(a) directly or indirectly,

(b) by the person or by another person on the person’s behalf.

For the purposes of sub-paragraph (1)—

(a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or to endeavour to procure any money or valuable consideration,

(b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.

Sub-paragraphs (1) and (2) do not apply to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning the referendum.

A person commits a corrupt practice if the person commits the offence of bribery in connection with the referendum.

In this paragraph, the expression “voter” includes—

(a) a proxy for a voter, and

(b) any other person who has or claims to have a right to vote in the referendum.

A person commits an offence if the person, at a lawful public meeting to which this paragraph applies, acts (or incites others to act) in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together.

This paragraph applies to a meeting held in connection with the referendum during the referendum period.

An offence under this paragraph is an illegal practice.

A person who is a constable commits an offence if the person by word, message, writing or in any other manner, endeavours to persuade any person to give (or dissuade any person from giving) the person’s vote in the referendum.
(2) A person is not liable under sub-paragraph (1) for anything done in the discharge of the person’s duty as a constable.

(3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Prosecutions for corrupt practices

15 (1) A person who commits a corrupt practice under any provision of this schedule is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment—

(i) in the case of a corrupt practice under paragraph 1 or 4, to imprisonment for a term not exceeding 2 years or to a fine (or both),

(ii) in any other case, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Prosecutions for illegal practices

16 (1) A person who commits an illegal practice under any provision of this schedule is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) On a prosecution for such an illegal practice it is sufficient to allege that the person charged has committed an illegal practice.

Conviction of illegal practice on charge of corrupt practice etc.

17 A person charged with a corrupt practice under any provision of this schedule may, if the circumstances warrant such finding, be convicted of an illegal practice (which offence is for that purpose to be an indictable offence), and a person charged with an illegal practice may be convicted of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

Incapacity to hold public or judicial office in Scotland

18 (1) A person convicted of a corrupt or illegal practice under any provision of this schedule—

(a) is for the period of 5 years beginning with the date of the person’s conviction, incapable of holding any public or judicial office in Scotland (within the meaning of section 185 of the 1983 Act), and

(b) if already holding such an office, vacates it as from that date.

(2) Sub-paragraph (1) applies in addition to any punishment imposed on the person under paragraph 15 or 16.

Prohibition of paid canvassers

19 If a person is, whether before or during the referendum, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting a particular outcome in the referendum—
(a) the person so engaging or employing the canvasser, and
(b) the canvasser,
commits the offence of illegal employment.

Providing money for illegal purposes

20 If a person knowingly provides money—
(a) for any payment which is contrary to the provisions of this Act,
(b) for any expenses incurred in excess of the maximum amount allowed by this Act, or
(c) for replacing any money expended in any such payment or expenses,
the person commits the offence of illegal payment.

Prosecutions for illegal employment or illegal payment

21 (1) A person who commits an offence of—
(a) illegal employment under paragraph 19,
(b) illegal payment under paragraph 20,
is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) On a prosecution for such an illegal employment or illegal payment it is sufficient to allege that the person charged has committed the offence of illegal employment or illegal payment (as the case may be).

(3) A person charged with an offence of illegal employment or illegal payment may be convicted of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

SCHEDULE 8
(introduced by section 32)

INTERPRETATION

In this Act—

“the 1983 Act” means the Representation of the People Act 1983,
“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000,
“absent vote” is to be construed in accordance with paragraph 1(8)(a) of schedule 2,
“anonymous entry” in relation to a register of electors, is to be construed in accordance with section 9B of the 1983 Act, and “record of anonymous entries” means the record prepared under regulation 45A of the Representation of the People (Scotland) Regulations 2001 (SI 2001/497),
“assisted voters list” has the meaning given in rule 23(8) of the conduct rules,
“ballot paper account” has the meaning given in rule 28(4) of the conduct rules,
“campaign offence” means an offence under section 13 or any of schedules 4 to 6,
“campaign organiser”, in relation to referendum expenses, means the individual or body by whom or on whose behalf the expenses are incurred,

“Chief Counting Officer” means the person appointed under section 4(1) or (6),

“companion” has the meaning given in rule 23(1) of the conduct rules,

“companion declaration” has the meaning given in rule 23(2) of the conduct rules,

“completed corresponding number list” has the meaning given in rule 28(2)(e) of the conduct rules,

“conduct rules” means the rules set out in schedule 3,

“corresponding number list” means the list prepared in accordance with rule 5 of the conduct rules,

“council” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994,

“cut-off date” has the meaning given in paragraph 18(1) of schedule 2,

“data form” means information which is in a form which is capable of being processed by means of equipment operating automatically in response to instructions given for that purpose,

“date of the referendum” means the date on which the poll at the referendum is to be held in accordance with section 1(4) or (6),

“designated organisation” means a permitted participant that has been designated under paragraph 5 of schedule 4,

“education authority” has the same meaning as in the Education (Scotland) Act 1980,

“list of proxies” means the list kept under paragraph 4(3) of schedule 2,

“local government area” is to be construed in accordance with section 1 of the Local Government etc. (Scotland) Act 1994,

“marked copy” has the meaning given in paragraph 54(10) of schedule 2,

“marked votes list” has the meaning given in rule 22(2) of the conduct rules,

“members of the Chief Counting Officer’s staff” means staff appointed or provided under section 6(8),

“members of the counting officer’s staff” means staff provided under section 6(9),

“minor party” has the same meaning as in the 2000 Act,

“money” and “pecuniary reward” (except in schedule 4 and paragraph 12 of schedule 7) include—

(a) any office, place or employment,

(b) any valuable security or other equivalent of money, and

(c) any valuable consideration,

and expressions referring to money are to be construed accordingly,
“organisation” includes any body corporate and any combination of persons or other unincorporated association,

“outcome” means a particular outcome in relation to the referendum question,

“payment” includes any pecuniary or other reward,

“permissible donor” is to be construed in accordance with paragraph 1(2) of schedule 4,

“permitted participant” has the meaning given in paragraph 2 of schedule 4,

“personal identifiers record” means the record kept by a registration officer under paragraph 10 of schedule 2,

“polling agent” has the meaning given by rule 14(8) of the conduct rules,

“polling day alterations list” has the meaning given in rule 26(2) of the conduct rules,

“Polling List” has the meaning given in paragraph 17(2) of schedule 2,

“postal ballot agent” has the meaning given by paragraph 19(8) of schedule 2,

“postal ballot paper” has the meaning given in paragraph 45 of schedule 2,

“postal voters list” means the list kept under paragraph 4(2) of schedule 2,

“postal voting statement” means the statement referred to in rule 8(1)(b) of the conduct rules,

“presiding officer” means an officer appointed under rule 10(1)(a) of the conduct rules,

“proper officer” has the meaning given in section 235(3) of the Local Government (Scotland) Act 1973,

“proxy postal voters list” means the list kept under paragraph 6(7) of schedule 2,

“qualifying address” in relation to a person registered in the register of electors, is the address in respect of which that person is entitled to be so registered,

“referendum agent” has the meaning given in section 16,

“referendum campaign” means a campaign conducted with a view to promoting or procuring a particular outcome in the referendum,

“referendum campaign broadcast” means a broadcast the purpose (or main purpose) of which is or may reasonably be assumed to be—

(a) to further any referendum campaign, or

(b) otherwise to promote or procure any particular outcome in the referendum,

“referendum expenses” is to be construed in accordance with paragraph 9 of schedule 4,

“referendum period” means the period of 16 weeks ending with the date of the referendum,

“referendum question” means the question to be voted on in the referendum (as set out in section 1(2)),

“register of electors” means (as the case may be)—

(a) the register of local government electors for any area, or
(b) the register of young voters for any area,

"register of local government electors" means the register of local government electors maintained under section 9(1)(b) of the 1983 Act for any area in Scotland,

"register of young voters" means the register of young voters maintained under section 4 of the Scottish Independence Referendum (Franchise) Act 2013 for any area,

"registered party" means a party registered under Part 2 of the 2000 Act other than a Gibraltar party (within the meaning of that Act),

"registration officer" means a registration officer appointed under section 8(3) of the 1983 Act,

"regulated transaction" is to be construed in accordance with paragraph 43 of schedule 4,

"relevant citizen of the European Union" means a citizen of the Union who is not a Commonwealth citizen or a citizen of the Republic of Ireland,

"relevant counting officer", in relation to a registration officer, means the counting officer for the local government area for which the registration officer is appointed,

"relevant donation" has the meaning given in paragraph 28 of schedule 4,

"responsible person” means, in relation to a permitted participant—

(a) if the permitted participant is a registered party—

(i) the treasurer of the party, or

(ii) in the case of a minor party, the person for the time being notified to the Electoral Commission by the party in accordance with paragraph 3(1)(b) of schedule 4,

(b) if the permitted participant is an individual, that individual, and

(c) otherwise, the person or officer for the time being notified to the Electoral Commission by the permitted participant in accordance with paragraph 3(3)(a)(ii) of schedule 4,

"SPCB" means the Scottish Parliamentary Corporate Body,

"spoilt ballot paper” has the meaning given in rule 25(1) of the conduct rules,

"tendered ballot paper” means a ballot paper referred to in rule 24(6) of the conduct rules,

"tendered votes list” has the meaning given in rule 24(8) of the conduct rules,

"treasurer”, in relation to a registered party, has the same meaning as in the 2000 Act,

"unique identifying number” means the number on the back of a ballot paper which is unique to that ballot paper and which identifies that ballot paper as a ballot paper to be issued by the counting officer,

"verification statement” has the meaning given in rule 30(2) of the conduct rules,

"voter” (except in the conduct rules) means a person entitled to vote in the referendum in the person’s own right (as opposed to a person entitled to vote as proxy for another),
“voter” (in the conduct rules) means a person voting at the referendum and includes (except where the context requires otherwise) a person voting as proxy and “vote” (whether as noun or verb) is to be construed accordingly except that any reference to a voter voting or a voter’s vote includes a reference to a voter voting by proxy or a voter’s vote given by proxy,

“voter number” means, in relation to a person registered in the register of local government electors, the person’s electoral number,

“voting age” means age 16 or over.
Scottish Independence Referendum Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision, in accordance with paragraph 5A of Part 1 of Schedule 5 to the Scotland Act 1998, for the holding of a referendum in Scotland on a question about the independence of Scotland.

Introduced by: Nicola Sturgeon
On: 21 March 2013
Bill type: Government Bill