SCOTTISH INDEPENDENCE REFERENDUM (FRANCHISE) BILL

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.

2. 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.

3. For the independence referendum we have provided advice to the Scottish Government during the drafting of legislation and we will continue to offer advice and assistance as their proposals develop at the same time as setting out our views on the bill to Parliament.

General Comments

4. This submission sets out our current views on the Scottish Independence Referendum (Franchise) Bill (hereafter referred to as the ‘Referendum (Franchise) Bill’). Some of the provisions related to the electoral registration of 16 and 17 year olds for the purposes of the referendum will be legislated for in the Scottish Independence Referendum Bill (hereafter referred to as the ‘Referendum Bill’). This includes, for example, the rules on who can access the Register of Young Voters. We therefore offer these comments subject to the qualification that we may review them following our detailed consideration of the Referendum Bill.

5. The franchise for the independence referendum is a matter for the Scottish Parliament to determine and we take no position on who should, or should not, be included in the franchise. Our priority is that there should be no barriers to participation in the referendum by all eligible electors, and that the registers used to administer the poll are complete and accurate, regardless of the particular franchise in use. The purpose of this written evidence is to help ensure that these principles are achieved in the legislation.

6. In our March 2012 response\(^1\) to the Scottish Government's consultation, ‘Your Scotland, Your Referendum’, we expressed our concern that if the Scottish Government's policy intention was to lower the voting age to 16 it might not be achieved via the proposals set out at that time. We welcome the clarity provided by the Referendum (Franchise) Bill in seeking to ensure that all those who are 16 or over on the referendum polling day will be able to vote.

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Commencement – applications to register

7. The intention of the Scottish Government, as set out in paragraph 15 of the Policy Memorandum that accompanies the Referendum (Franchise) Bill, is for the young voters’ canvass form to be distributed to households at the same time as the annual canvass form, in order to “keep administration to a minimum and help ensure that the registration of young voters is as streamlined as possible”.

8. The UK Parliament is currently legislating for the next annual canvass in Scotland to commence no earlier than 1 October 2013 (with publication of the new register on 10 March 2014). However, Clause 13(2) of the Referendum (Franchise) Bill as currently drafted states that no application for registration in the register of young voters may be made before 1 December 2013. This provides for the possibility of a period of up to two months between the issuing of the canvass forms and the first date at which an application for the young voters’ register can be made. Any young voter’s canvass form returned to the Electoral Registration Officer (ERO) in this period could not be accepted and the applicant would have to apply again after 1 December.

9. We understand from the Scottish Government that the date of 1 December 2013 in Clause 13 is based on previous planned timings for the introduction of individual electoral registration by the UK Government, and that their intention is to amend this date to bring it into line with the first date at which the canvass would be commenced by any ERO in Scotland (either 1 October 2013 or any such later date which might be agreed with Scotland’s EROs). This amendment will be necessary to minimise the risk of young voters’ applications to register being rejected due to a misalignment of the date of potential first issue of the canvass forms and the date by which the first application may be made to the young voters register.

10. The Commission and other organisations concerned with the registration of 16 and 17 year olds will be raising awareness, through the media and other stakeholders, to support the canvass. This will focus on encouraging young people and their parents to take appropriate action when they receive their canvass form to ensure young voters are included on the register. The impact of this activity will be most effective if all EROs in Scotland began the dispatch of canvass forms on the same date or within the window of one week, to ensure that publicity messages reach people at the point at which they are best able to act on them. We encourage the Scottish Government to seek agreement with Scotland’s EROs on a suitable timeframe between the date of the issue of the first and last canvass forms in Scotland.

Date of the referendum on the young voters canvass form

11. The canvass form included in Schedule 2 to the Referendum (Franchise) Bill includes space to include the date of the referendum once it is made known. This will be a tool to enable young people to establish whether they will meet the age qualification for the referendum and therefore whether their details should be included on the canvass form. However, the date of the referendum is provided
for in the Referendum Bill, which is not anticipated to receive Royal Assent until December 2013. This means that the young voters’ canvass forms will need to be printed and issued to households before the date of the referendum has been settled in legislation.

12. We understand the reason for providing the date of the referendum poll in the young voters registration form and believe this would be beneficial to young voters and their parents in establishing their eligibility for inclusion on the form. However, we would wish give further consideration to this issue once we have seen the results of the Scottish Government’s user testing for the young voters canvass form along with the provisions in the Referendum Bill for setting the date of the poll.

Access and supply of the register

13. In our January 2013 response to the Scottish Government’s consultation on its draft proposals for a Referendum Franchise (Scotland) Bill[^2], we noted that the proposals raised several issues about campaigners’ access to the electoral register which would need to be addressed. These included ensuring that all registered campaigners at the referendum are able to comply with their obligations to check the permissibility of donations and loans, and are able to put their views to voters[^3]. At referendums held under the Political Parties, Elections and Referendums Act 2000 (PPERA) the relevant electoral register is made available to all those referendum campaigners that register with us. There are strict legal controls on campaigners’ use of the register. They can only use the data in the register for two purposes – to campaign in the referendum, and to check that individuals giving donations (and loans where regulated) are on the register, and are therefore permissible donors under PPERA.

14. We now understand that the Scottish Government intends that individuals will only be permissible donors in relation to the referendum if they are included in the register of local government electors, and that this register will be made available to all registered campaigners at the referendum. Campaigners will therefore be able to check that donations and loans they receive from individuals are permissible. This will address the issues about permissibility checking that we highlighted in January 2013.

15. Paragraph 18 of the Policy Memorandum that accompanies the Referendum (Franchise) Bill states that the merged register containing details of voters on both the Register of Young Voters and the register of local government electors will be made available to the designated lead campaigners, but not to other registered campaigners. This is to allow the lead campaigners to send every voter or household a postal communication setting out their position on the referendum. However, if the lead campaigners can only obtain access to the merged register after they are designated – a step which under the PPERA timetable would take place between four and six weeks after the start of the sixteen week referendum period – they may find it difficult to process the data of

[^2]: Our views on the Referendum Franchise (Scotland) Bill paragraph 1.24
those voters who are not included in the register of local government electors in
good time to issue postal communications to them before postal votes are
distributed.

16. The proposed restrictions on availability of the merged register will also mean
that registered campaigners other than the designated lead campaigners will not
have access to the names and addresses of those voters on the Register of
Young Voters. In our view it is important, if possible (see below), that all those
people and organisations that register as campaigners at the referendum should
have access to the contact details of all those registered to vote at the
referendum. This would enable campaigners to put their arguments to all voters,
in the same way as campaigners at PPERA referendums, and political parties at
elections. It would therefore help both voters and registered campaigners to
participate in the referendum.

17. We recognise that the Scottish Government proposes to limit access to the
contact details of those on the Register of Young Voters. We understand this is
in order to keep the details of those on that Register as secure as possible, given
the need to treat data on young people sensitively. We fully support this policy
intention and have previously stressed to the Scottish Government the
importance of ensuring that any child and data protection associated with
registering young people to vote are discussed with the appropriate
organisations and experts.

18. We do, however, have some questions about the proposals. For example we
would welcome clarification as to why, if there are data protection issues
associated with giving access to the register to some registered campaigners,
this might not also apply to the designated organisations.

19. We would therefore like to better understand the reasons for this decision and
will be discussing the policy in detail with the Scottish Government. Once we
have done this we will advise the Committee if we have any concerns about
what is proposed.

**Transition to individual electoral registration (IER) in Scotland**

20. The Electoral Registration and Administration (ERA) Act 2013, recently passed
by the UK Parliament, provides for a fundamental change to the registration of
electors in Great Britain. The UK Government’s current proposals envisage that
from summer 2014 the transition from household to individual registration will
begin, with the aim of the transition to IER being completed in time for the 2015
UK Parliamentary elections.

21. We support the introduction of IER because we believe it will address
vulnerabilities in the current electoral registration process. It is also right that
people are able to take individual responsibility for their own vote. However, it
requires careful planning and implementation and needs to be done in a way that
puts the voter first and does not present any barriers to voters’ participation in the independence referendum.

22. We are aware that discussions are on-going between the Scottish Government and the Cabinet Office of the UK Government on the practical implementation of the transition to IER in Scotland. As the date of the referendum is now known, we expect both Governments to identify and plan for any risks which arise from the coincidence of the referendum timetable and any planned IER transition activities. These discussions should also include Electoral Registration Officers and the Commission.

March 2013