Public Grant & Spending limits in the 2014 Referendum

The Section 30 Order leaves these issues open to the Scottish Government, Scottish Parliament and the Electoral Commission. As informed consent is the distinguishing feature of a good referendum, they should be an important element of the committee’s work. This note offers my experience of 1997 and subsequent referendums.

In some referendums voters have largely made up their minds beforehand reducing the importance of the information flowing to them and it could be argued that 1997 was one such referendum. But 2014 is clearly different, making information a central, vital part of the referendum process.

Currently the Scottish Government is proposing some quite substantial deviations from PPERA despite its referendum law being drawn directly from the 1997 experience.

By 2014, inflation will have halved the real value of all the cash figures in the referendum section of PPERA. The Scottish Government proposes to reduce these depleted sums further to the point that threatens the ability of the campaigns to adequately inform the voters many of whom only come to the issue in the formal campaign.

In 1997, the YES side although spending over £600,000 had insufficient money to inform voters. It mattered less because voters had largely made up their minds and because the direct spending from the Scottish Office complemented their efforts with its information leaflet mailed to every household at public expense.

Scottish Government information leaflet v Public grant

The Scottish Government proposes to publish during the referendum a factual information leaflet about the process of a referendum in the same way that was done by the Scottish Office did in 1997. This is above and beyond any White papers.

But in 1997, the 8 page colour leaflet dealt with the case for a devolved Parliament and only one page dealt with process. The leaflet was produced in English and six other languages and mailed to every household at public expense. It was also accompanied by Braille, audio and video editions. The whole exercise cost between £400,000 and £700,000 in 1997 and if adjusted for inflation, the equivalent expenditure would be around £1 million pounds in 2014.

There was no information about the NO case against the Scottish Parliament. In order to avoid controversy, the presentation of the YES case was deliberately
anodyne. Nevertheless Lord Neill subsequently deprecated the public spending on one side of the referendum. It lead his committee to recommend that each side be given a grant to make its case widely known and government should stay out of the process.

This recommendation was enacted in PPERA and the figure in the Act of £600,000 was the £125,000 bilateral grant of the 1975 EU referendum (the first use of bilateral grants in the UK) adjusted for inflation to 1999 when the Bill was going through Westminster. The Scottish Government is proposing to withdraw this public grant while publishing an information leaflet during the referendum costing up to £1m. In effect going back to the status quo ante the Neill report while claiming it is following PPERA as closely as possible.

The role of Governments in referendums

All campaigners except the two governments will be regulated throughout the proposed four month campaign. The two exceptions - the UK and Scottish Government - need only comply with PPERA for the last 28 days of the campaign. For the other three months, the governments are free to do what they wish within their normal operating codes.

In 2003, the NO euro campaign sought legal opinion that this special treatment 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 challenge is therefore untested and could arise again.

The Labour Government remained sensitive on the point. Before the North East referendum in 2004, it offered to date the 28 date purdah (as it became known) from postal voting day rather than referendum day. Then in 2010, it responded to a Lords inquiry that it would consider the issue on a ‘case by case’ basis.

The Neill Committee recommended that government should play no part in referendum campaigns except as individuals through their political Parties. Though he cited other countries where this is a longstanding practice without problems, his recommendation was not adopted.

But it is now accepted by those who have campaigned under the Act in three referendums and repeatedly recommended by the Electoral Commission that this special treatment should cease. Nevertheless the Edinburgh Agreement appears to endorse this privileged treatment creating a novel situation for the UK of a referendum with a government on both sides.

Spending levels

In 2014, the designated campaigns will be allowed to spend around half of the money spent in 1997 in a much more difficult and open referendum. Far from halving the real value, spending should, in real terms, be double 1997 if informed consent is to be achieved.
The combined spending of YES in 1997 and the public leaflet was somewhere between a minimum of £1,027,000 and £1,520,000 in real terms. With this range in mind, the Scottish Government’s proposal of a spending limit of £750,000 for the designated lead campaigns is substantially too low for a much more demanding referendum than 1997.

I repeat, by 2014 inflation will have almost halved the values in PPERA. Apart from the designated campaigns, other registered campaigners will be allowed to spend only £50,000 not the £100,000 in PPERA. About 25% of the Act’s real original value.

The practical effect can be easily illustrated. If a registered campaign sends a single page mailshot to only 40% of the households in Scotland, it will have reached its spending limit and can spend no more in the campaign. This seems to be the sort of restriction on free speech that Lord Neill warned of in his report and worth your attention.

Referendum Spending – actual and adjusted for inflation\(^1\)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>EU UK stay in referendum - public grant for UK</td>
<td>£125,000(^a)</td>
<td>£600,000(^2)</td>
<td>£946,000</td>
<td></td>
</tr>
<tr>
<td>HMG 8 Page 1997 Devolution leaflet - minimum(^3) and 6</td>
<td>£400,000</td>
<td>£657,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes-Yes Scotland Forward spend</td>
<td>£225,000</td>
<td>£370,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Combined HMG5 minimum + Scotland Forward spend</td>
<td>£625,000</td>
<td>£1,027,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other YES (Political Parties)</td>
<td>£375,00</td>
<td>£616,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Think Twice (NO) Spend</td>
<td>£250,000</td>
<td>£410,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Designated Registered Campaign</td>
<td></td>
<td>£100,000</td>
<td>£157,000</td>
<td></td>
</tr>
</tbody>
</table>

Notes
1 - Bank of England Inflation figures - actuals to 2011 and 10% forecast to 2014
2 - 1975 inflation adjusted to 1999 when PPERA in progress thro Parliament
3 - included audio, braille, video and 6 language editions plus mail costs to all Scottish voters/households - deemed unfair by Neill Committee
4 - The public grant given to both sides in the 1975 referendum and used by Neill as basis for future public grants in PPERA and to be withdrawn by Scottish Government
5 - HMG Scottish Office was routinely spending more than £1m per public information campaign in the years up to 1997
6 - FOI requests have not returned the accurate costs hence the min and max

| HMG 8 Page 1997 Devolution leaflet – maximum spent³ | £700,000 | £1,045,000 | £1,150,000 |

Max spending for a non-designated registered campaign is £100,000 in PPERA – to be reduced to £50,000 by the Scottish Government

**Nigel Smith** chaired the cross party campaign for a Yes vote in the Scottish Devolution referendum in 1997, advised the Yes campaign in the Northern Ireland referendum in 1998 and chaired the UK Euro No campaign from 2002 to 2004. In the latter role, he worked with the Electoral Commission for two years interpreting PPERA in preparation for the Euro referendum and then beyond its abandonment in June 2003 to the conduct of the NE Regional Assembly referendum in November 2004.

Since then he has visited referendums and initiatives in many countries including Switzerland, the US – notably California and Colorado – and several of the EU Accession referendums. He has taken a special interest in how broadcasting balance is achieved during referendums talking to experts in UK, Ireland, Switzerland and Denmark.

He served on the Wilson Committee reviewing the fairness of the BBC’s coverage of the EU. He has extensive contacts among practitioners & academics working in IR around the World.

9 November 2012