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