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 the 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