Introduction

The Electoral Commission is an independent body established in 2000. 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.

We work to support well-run elections and referendums in Scotland, offering support and guidance to those involved. For local government elections in Scotland we undertake a number of roles, including reporting on the administration of the elections and the provision of guidance and advice to Returning Officers (ROs) and candidates and agents, for which we report directly to the Scottish Parliament.

We welcome the opportunity to submit evidence as part of the Local Government and Communities Committee’s inquiry into the purpose and appropriateness of providing payments or fees to ROs in Scotland in relation to local government, Scottish Parliament, UK Parliament and European Parliament elections, and Counting Officers (COs) in relation to referendums.

The role of Returning Officers and Counting Officers

ROs play a central role in the democratic process. They ensure that elections are administered effectively and impartially and that, as a result, the experience of voters and those standing for election is positive.

Returning Officers and Counting Officers are personally responsible for the conduct of the election or referendum poll in their area, a responsibility which cannot be delegated. Their responsibilities include:

- Giving public notice of the election
- The administration of the nomination process
- The provision of polling stations and the appointment of polling station staff
- The management of the postal voting process
- The management of the count and the declaration of the results
- Activities to encourage the participation of electors in elections.
Independent

ROs and COs are therefore critical to delivering well-run elections and referendums which produce results in which voters can have confidence. ROs and COs are not employed by councils when they deliver official election or referendum duties. They are independent statutory office-holders and they are accountable to the courts for the delivery of their official duties.

The Electoral Commission continues to support the important principle that ROs and COs should be independent from both local and national governments when delivering their statutory electoral administration duties. We believe it is important that electoral administration should be solely in the hands of the RO and their staff, rather than local authorities. This is necessary to ensure that elections are effectively administered and in voters’ best interests, to secure the impartial administration of elections and avoid any perception of bias and to promote public confidence and trust in the process.

Any changes to the current management framework for the delivery of elections and referendums in Scotland, including any changes to the funding of ROs and COs, would need to be considered carefully to ensure that the independence and accountability of those responsible for delivering polls is maintained and not weakened.

Breach of official duty

ROs and COs are accountable to the courts, and not the council they are employed by, for the delivery of their statutory duties in accordance with the relevant legal framework for each election.

ROs and COs (and their appointed deputes) may be liable, if they are found guilty of any act or omission in breach of their official duties, to a fine not exceeding £5,000. The actions of the ROs and COs may also be challenged by judicial review.

Funding for Returning Officers and Counting Officers

Funding for the administration of parliamentary elections and referendums in Scotland, including the amounts eligible to be claimed by ROs and COs as fees for their services, is provided for in legislation for each set of polls, via a fees and charges order. The funding for council elections is provided by the councils themselves.

The fees ROs and COs are able to claim for the administration of elections and referendums in Scotland varies between the different polls. The maximum amount available for the fees for Returning Officers and Counting Officers are set out in various different pieces of legislation depending on the election or referendum being held, see appendix. RO and CO fees for UK-wide polls are set out in a Fees and Charges Order for that specific election/referendum and are met by the UK Government from the Consolidated Fund, and administered and accounted for by the Scotland Office.

For UK Parliament elections, the Electoral Commission may recommend to the Secretary of State that an RO’s personal fee for conducting the poll can be reduced or withheld if, in the Commission’s view, the service rendered by the RO was performed inadequately.

For Scottish Parliamentary elections, Constituency Returning Officers and Regional Returning Officers fees are funded by the Scottish Government. The fees available for ROs for local government elections in Scotland are paid by individual councils, according to a scale set by the Scottish Joint Negotiating Committee for Local Authorities Services.

The costs of conducting the 2014 Scottish independence referendum, including the fees available for Counting Officers, were met by the Scottish Government.
Appendix: Appointment and funding for Returning Officers and Counting Officers in Scotland

Local government elections

The Representation of the People Act 1983 requires every local authority to appoint an officer of the council to be the Returning Officer for the election of councillors to their local authority.

The Electoral Management Board for Scotland (EMB) was established by the Local Electoral Administration (Scotland) Act 2011 following the 2007 Scottish Parliament and local government elections. The EMB has a statutory duty to coordinate the administration of Scotland’s council elections. The Convener of the EMB is a serving RO, and the role is currently held by the RO for Falkirk Council, Mary Pitcaithly OBE. There are no fees associated with this role. The EMB comprises a further five ROs and three Electoral Registration Officers (EROs). The EMB coordinates the administration of the elections in the way it believes most appropriate. To aid it in its duty, the Elections Convener has a power to issue directions to all ROs and EROs in Scotland in relation to council elections.

Under the Representation of the People Act 1983, all expenditure properly incurred by an RO in relation to the holding of an election of a councillor to a local authority shall be paid by the council of that authority, but only (in cases where there is a scale fixed for the purposes of this section by that council) in so far as it does not exceed that scale.

The fees for ROs for local government elections in Scotland are set by the Scottish Joint Negotiating Committee for Local Authorities Services.

The fees for ROs at local government elections in Scotland were last set in 2010. The fee available is set at £56.63 per seat in their council where the election is contested, and £27.03 per seat where the election is uncontested.

The Electoral Commission does not hold data about the total amounts paid to ROs for local government elections in 2012.

Scottish Parliament elections

Constituency Returning Officers (CROs) are responsible for administering the nomination process for candidates for each Scottish Parliament constituency election, and for the conduct of the poll and the counting of votes for both the constituency election and that part of the regional contest that is included within the constituency.
Under The Scottish Parliament (Elections etc.) Order 2015 local government Returning Officers are designated as CRO for a Scottish Parliament constituency which falls within the local government area for which they are responsible. In the case of any constituency that crosses more than one local government area, the CRO is designated by an Order made by Scottish Ministers.

Regional Returning Officers (RROs) are responsible for administering the nomination process for parties and independent candidates for each Scottish Parliament electoral region, and for calculating and declaring the regional election result. The RRO is designated by an Order made by Scottish Ministers and will be one of the CROs from within that electoral region.

For the 2016 Scottish Parliament elections, CROs and RROs fees were funded by the Scottish Government. The Scottish Parliamentary Elections (Returning Officer Fees and Charges) Regulations 2016 set the maximum recoverable amounts for CROs and RROs at the 2016 Scottish Parliamentary elections.

For Scottish Parliament elections prior to 2016, ROs fees were funded by the Scotland Office of the UK Government.

The maximum fee available for Regional Returning Officers at the May 2016 Scottish Parliament elections was set at £4,950. An amount of £400 was set for where the election was not contested.

The maximum fee available for Constituency Returning Officers at the 2016 Scottish Parliamentary election was based on expenditure in previous elections and referendums with adjustments to take account of specific local issues.

The fee available ranged from £3,875 to £4,677. The average amount available as a fee was £4,123. A fee of £600 was available where the election was not contested.

We continue to recommend that the Scottish Government publicly report on the final costs of Scottish Parliament elections (including the actual fee amounts claimed by ROs) and the administration of the fees and charges process, in order to ensure transparency.

**UK Parliament elections**

Under the Representation of the People Act 1983, the Returning Officer for a UK Parliamentary election in Scotland is the person who has been appointed as the Returning Officer for local government elections in that area. Where a constituency crosses more than one local government area, the RO is designated by an Order made by the Secretary of State.
The costs of conducting UK Parliament elections are met by the UK Government from the Consolidated Fund. The funding of fees for ROs in Scotland is administered and accounted for by the Scotland Office.

The Parliamentary Elections (Returning Officers’ Charges) Order 2015 set the maximum recoverable amounts for Returning Officers at the 2015 UK Parliamentary general election.

The maximum fee available for Returning Officers at the 2015 UK Parliamentary general election was calculated at £475 per 10,000 electors, with a minimum fee of £2,500.

The maximum fee available in Scotland ranged from the minimum available fee of £2,500 to £4,062. The average amount available as a fee in Scotland was £3,377.

We continue to recommend that the UK Government publicly report on the final costs of UK Parliament elections (including the actual fee amounts claimed by ROs) and the administration of the fees and charges process, in order to ensure transparency.

**European Parliament elections**

The conduct of the poll and the counting of votes for European Parliament elections is administered by local Returning Officers. The RO for European Parliament elections in Scotland is the same person who has been appointed as RO for local government elections for each local authority.

In addition, a Regional Returning Officer (RRO) is appointed for each of the European Parliament electoral regions in Great Britain, of which Scotland is one. Each RRO is responsible for administering the nomination process for parties and independent candidates for the electoral region, and has overall responsibility for the conduct of the European Parliamentary election within their electoral region. RROs can direct ROs to undertake certain functions, and ROs have a duty to comply with such directions.

The Deputy Prime Minister, as Lord President of the Council, was responsible in law for appointing RROs for each of the 11 electoral regions for the 2014 elections. For the 2014 elections the RRO in Scotland was the Convener of the EMB.

The costs of conducting European Parliament elections have been met by the UK Government from the Consolidated Fund. The fees for ROs and RROs in Scotland have been administered and accounted for by the Scotland Office.
The European Parliamentary Elections (Returning Officers’ and Local Returning Officers’ Charges) (Great Britain and Gibraltar) Order 2014 set the maximum recoverable amount for ROs and RROs.

The available fee for Local Returning Officers was calculated at a rate of £475 per 10,000 electors. Where this amount would be less than £2,500 they were entitled to a minimum of £2,500 to recognise a minimum level of work that is required regardless of the size of the electorate.

The maximum fee available ranged from £2,500 to £22,300. The average amount available as a fee in Scotland was £6,162.

A ‘flat rate’ fee of £12,000 was available for all Regional Returning Officers.

We continue to recommend that the UK Government publicly report on the final costs of the 2014 European Parliament elections (including the actual fee amounts claimed by ROs) and the administration of the fees and charges process, in order to ensure transparency. We understand that the UK Government intend to do so before the end of 2016.

**2014 Scottish independence Referendum**

The Scottish Independence Referendum Act 2013 (SIRA) provided for the appointment of Counting Officers (COs) and the Chief Counting Officer (CCO) for the 2014 Scottish independence referendum.

SIRA required Scottish Ministers to appoint the Convener of the Electoral Management Board for Scotland (EMB) as CCO for the referendum. The CCO appointed the Chief Executive of The City of Edinburgh Council as Deputy Chief Counting Officer. The CCO also appointed COs for each of the 32 local government areas in Scotland, who in turn were entitled to appoint deputies to carry out some or all of their functions as appropriate.

Although SIRA made the CCO responsible for ensuring the proper and effective conduct of the referendum, the CO for each local government area was responsible for the conduct of the poll and the counting of votes cast in favour of each referendum outcome within their local government area.

The costs of conducting the 2014 Scottish independence referendum were met by the Scottish Government. The Scottish Independence Referendum (Chief Counting Officer and Counting Officer Charges and Expenses) Order 2015 provided for payment by the Scottish Government of the charges and expenses incurred by the CCO and COs in exercising their functions in relation to the referendum, and included the maximum amounts that were recoverable.
The maximum fee available for Counting Officers at the 2014 Scottish independence referendum was based on expenditure in previous elections and referendums with adjustments to take account of specific local issues.

The maximum fee available ranged from the minimum available fee of £2,500 to £22,648. The average amount available as a fee was £6,426.

A ‘flat rate’ fee for the Chief Counting Officer was set at a maximum of £25,000.

**2016 EU referendum**

The European Union Referendum Act 2015 provided that the Chief Counting Officer (the Chair of the Electoral Commission) could appoint a Regional Counting Officer for each of the eleven electoral regions in Great Britain used for European Parliamentary elections.

There were 32 COs for the referendum in Scotland who were designated, under the EU Referendum Act, by virtue of their existing appointment as Returning Officers for local government elections in each local government area.

Regional Counting Officers (RCOs) were responsible for coordinating the delivery of the referendum in their electoral region, and collating the local totals into a regional total for approval of the CCO. They were given specific statutory responsibilities under the EU Referendum Act for certifying the total number of ballot papers counted in the region for which they were appointed, and the total number of votes cast in favour of each answer to the question asked in the referendum for the region as a whole. In Scotland, the CCO appointed the Convener of the Electoral Management Board for Scotland as the RCO.

The costs of conducting UK-wide referendums have been met by the UK Government from the Consolidated Fund. The funding for COs and RCOs in Scotland at the 2016 EU referendum is being administered by the Electoral Commission.

The European Union Referendum (Counting Officers’ and Regional Counting Officers’ Charges) Regulations 2016 set the maximum recoverable amount for RCOs and COs.

There are no fees set for the CCO.

The maximum fee available for Counting Officers was calculated at £475 per 10,000 electors, with a minimum fee of £2,500. The maximum fee available ranged from £2,500 to £21,111. The average amount available as a fee in Scotland was £5,926.
A ‘flat rate’ fee of £12k was available for all Regional Counting Officers, including the Convener of the EMB.

The Commission will publish a report on the final costs of the EU referendum (including the actual fee amounts claimed by COs) and the administration of the fees and charges process in autumn 2017.