

## SPICe Briefing

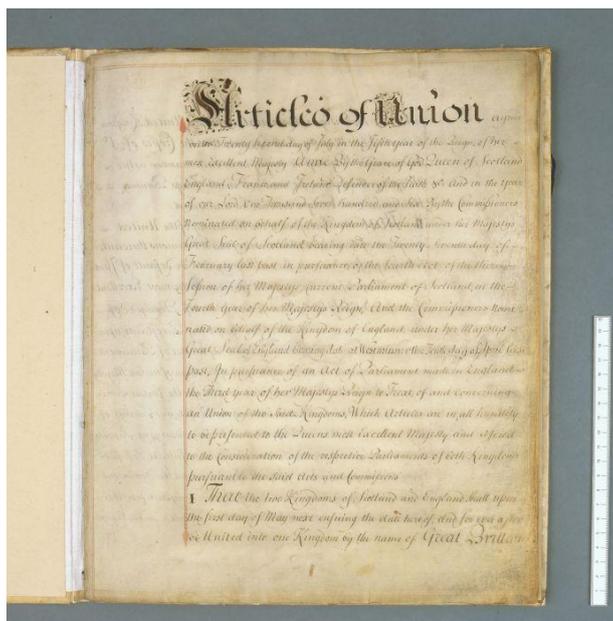
# Scottish Independence Referendum Bill

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The Scottish Independence Referendum Bill is the second piece of legislation introduced by the Scottish Government in relation to the referendum on Scottish independence to be held on 18 September 2014. The Bill sets out the rules which will govern the conduct of the campaign and referendum.



Page one of the Articles of the Treaty of Union between the Parliaments of England and Scotland , July 22 1706. © National Archive of Scotland.



The Scottish Parliament  
Pàrlamaid na h-Alba

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## EXECUTIVE SUMMARY

On 5 December 2012, the Scottish Parliament approved a Section 30 Order, made under the Scotland Act 1998, in relation to the holding in Scotland of a referendum on independence. The Section 30 Order was intended to put beyond doubt that the Scottish Parliament has the power to legislate for a referendum on Scottish Independence.

On 23 October 2012, the Deputy First Minister, Nicola Sturgeon MSP, stated the Government's intention to introduce a 'paving' bill to extend the franchise to allow 16 and 17 year olds to register for and vote in the referendum (Scottish Parliament 2012 col 12406). Subsequently, the Scottish Government introduced the Scottish Independence Referendum (Franchise) Bill on 11 March 2013. This Bill, which was subject to an accelerated timetable in the Parliament and received Royal Assent on 7 August 2013, extended the franchise for the independence referendum to include 16 and 17 year olds.

The Scottish Government introduced the Scottish Independence Referendum Bill on 21 March 2013. The Bill, which was also subject to a quicker than usual timetable, provides for the holding of a single question referendum and deals with the practicalities of holding the referendum including:

- the date of the referendum
- the wording of the question
- the form of the ballot paper
- the functions of the Chief Counting Officer and counting officers
- the setting of campaign rules
- the functions of the Electoral Commission
- the procedures for the ballot and the count.

# SCOTTISH INDEPENDENCE REFERENDUM BILL

The Deputy First Minister, Nicola Sturgeon, introduced the Scottish Independence Referendum Bill on 21 March 2013. This Bill was the second piece of primary legislation introduced by the Scottish Government in relation to the referendum on Scottish independence.

Provisions in the Scottish Independence Referendum Bill will be discussed later in this briefing.

## BACKGROUND

The following information is provided as background to the Bill.

## SCOTTISH GOVERNMENT CONSULTATION

### Your Scotland: your Referendum

In January 2012, the Scottish Government published *Your Scotland: your Referendum: a consultation document*. As well as proposing a draft referendum bill and ballot paper the consultation paper posed nine questions:

1. What are your views on the referendum question and the design of the ballot paper?
2. What are your views on the proposed timetable and voting arrangements?
3. What are your views on the inclusion of a second question in the referendum and the voting system that could be used?
4. What are your views on the proposal to give the Electoral Management Board and its Convener responsibility for the operational management of the referendum?
5. What are your views on the proposed division of roles between the Electoral Management Board and the Electoral Commission?
6. What are your views on the idea that the referendum could be held on a Saturday or on other ways which would make voting easier?
7. What are your views on extending the franchise to those aged 16 and 17 years who are eligible to be registered on the electoral register?
8. What are your views on the proposed spending limits?
9. Do you have any other comments about the proposals in the draft Referendum (Scotland) Bill?

The consultation also sought to gather quantitative data for several of these questions, “to explore (through quantitative analysis) the broad balance of opinion” (Griesbach 2012 p. 1) in relation to: the referendum question; the proposed timetable; the inclusion of a second question; Saturday voting; and extension of the franchise.

## **Responses to consultation**

The consultation, which closed on 11 May 2012, received 26,219 valid responses. The Scottish Government published an analysis of those responses in October 2012 (Griesbach 2012).

The consultation report states that the main aims of the qualitative analysis were to gather information on the range of issues arising from the consultation and to identify the key themes which emerged (Griesbach 2012 p.15). However, as the questions asked were open-ended (see above) and most responses were discursive and wide ranging in nature, it is at times difficult to discern from the report what the key findings of the consultation actually were.

In addition, the report's authors highlight incidences when respondents appeared to be confused by the concepts in some parts of the consultation document. For example, the analysis of the responses to questions 4 and 5, on the roles of the Electoral Management Board and the Electoral Commission, found that, in more than 18,000 responses received, the comments from individuals,

“were often unclear or inconsistent, and these inconsistencies appeared to be based on misunderstandings of the proposals set out in the consultation document.”

(Griesbach 2012 p.34)

In relation to the quantitative data provided in the report, the report's authors caution that the fact that respondents were not specifically asked whether they agreed or disagreed with the Government's proposals limits the usefulness of this data in measuring public opinion as

“their responses were discursive and in some cases, ambiguous or inconclusive in relation to their agreement or disagreement with the proposals”

(Griesbach 2012 p.16)

Nevertheless, the consultation report provides valuable public comment on the referendum and its organisation. This briefing draws from the report throughout.

## **EDINBURGH AGREEMENT**

The Edinburgh Agreement was signed by the Prime Minister and First Minister on 15 October 2012. The details of the agreement between the Governments was set out in a draft Section 30 Order and a Memorandum of Agreement (MoA) (HM Government and Scottish Government 2012), which formed part of the agreement.

In the MoA the UK and Scottish Governments agreed that the principles underpinning the framework for referendums held in the UK should apply to the Scottish independence referendum. The referendum rules set out in the UK Political Parties, Elections and Referendums Act 2000 (PPERA), therefore, would be the basis for the legislation providing for the regulation of the referendum on Scottish independence.

## **POLITICAL PARTIES, ELECTIONS AND REFERENDUMS ACT 2000**

Part VII of PERPA sets out a framework for referendums held under the provisions of an Act of the UK Parliament, including rules on campaign finance, referendum regulation, oversight and conduct.

The MoA also accepted that, while the referendum rules in the Referendum Bill should be based on PPERA, they should also reflect the current Scottish context including the existence of the Electoral Management Board for Scotland and its interaction with the Electoral Commission.

## **SECTION 30 ORDER**

The draft Scotland Act 1998 (Modification of Schedule 5) Order 2013 (the Section 30 Order) was laid, for approval, before the UK and Scottish Parliaments on 22 October 2012. The Scottish Parliament approved the draft Order on 5 December 2012; the House of Commons approved it on 15 January 2013 and the House of Lords gave its approval on 16 January 2013. The Order was then made by the Privy Council on 12 February 2013.

As well as putting beyond doubt that the Scottish Parliament has the power to legislate for the independence referendum, the Order also provided the Scottish Parliament with the power to legislate on referendum campaign broadcasts and the sending of free mail-shots which would otherwise be outwith its competence.

Once the Order was made the Scottish Government was able to introduce the bills required ahead of the independence referendum.

## **REFERENDUM (SCOTLAND) BILL COMMITTEE**

The Referendum (Scotland) Bill Committee was established by the Scottish Parliament on 23 October 2012 and will continue until the end of 2014. Its remit is to “consider matters relating to The Scotland Act 1998 (Modification of Schedule 5) Order 2013, the Referendum (Scotland) Bill, its implementation and any associated legislation”.

## **SCOTTISH INDEPENDENCE REFERENDUM (FRANCHISE) ACT**

In the MoA, the two Governments agreed that the franchise of the referendum would be based on the existing franchise for the Scottish Parliament and for Scottish local government elections.

In addition, the Edinburgh Agreement acknowledged that the Scottish Government had consulted on the possible extension of that franchise to those aged 16 and 17 years who are eligible to be registered on the electoral register (Scottish Government 2012a p. 22).

In her statement on the Edinburgh Agreement on 23 October 2012, the Deputy First Minister, Nicola Sturgeon, told the Scottish Parliament that

“As the First Minister announced on Saturday, the Scottish Government will also introduce a paving bill to ensure that all 16 and 17-year-olds can register for and vote in the referendum, should that be the franchise agreed by this Parliament.”

(Official Report 23 October 2012 col 12406)

Therefore, the first bill to be introduced on 11 March 2013 was the Scottish Independence Referendum (Franchise) Bill.

This Bill, which was subject to an accelerated timetable in the Parliament, extended the franchise for the independence referendum to include everyone who fulfils the residency requirement for eligibility for inclusion in the electoral register for Scottish local elections and who will be at least 16 years old on the date of the referendum.

The Bill, which was passed in the Parliament on 27 June 2013 and received Royal Assent on 7 August 2013, also made provision for the secure registration of the eligible 16 and 17 year olds starting with the annual household canvas in autumn 2013.

## **SCOTTISH INDEPENDENCE REFERENDUM BILL**

The Scottish Independence Referendum Bill, introduced on 21 March 2013, provides for the holding of a single question referendum on Scottish independence and prescribes:

- the date of the referendum, Thursday 18 September 2014
- the question to be asked
- the ballot paper to be used
- the conduct of the referendum, including the functions of the Chief Counting Officer and other counting officers
- the rules on the conduct of the campaign, including the role of the Electoral Commission
- the offences relating to the conduct of the referendum
- the information and guidance for voters.

The Bill has been the subject to a quicker than usual parliamentary timetable. The Referendum (Scotland) Bill Committee held five oral evidence sessions and received 31 written submissions from its call for evidence, which ran from 21 March 2013 to 6 June 2013.

The Committee published its [Stage 1 Committee report](#) (Scottish Parliament Referendum (Scotland) Bill Committee 2013) on 26 August 2013.

## **QUESTION AND BALLOT**

### **QUESTION**

#### **Scottish Government consultation on the referendum question**

In its consultation paper (Scottish Government 2012) the Government asked for comments on its proposed referendum question – “Do you agree that Scotland should be an independent country?” – and on the design of the draft ballot paper.

In the analysis of the 25,533 responses on the consultation question and on the ballot paper (Griesbach 2012) the researchers found that of the 22,473 respondents who commented on the proposed referendum question,

“64% broadly agreed with the wording of the question and 28% did not; the remainder had unclear or mixed views.”

(Griesbach 2012 p.2)

The analysis identified three main groups who did not agree with the proposed question:

“(i) those who believed the question should include a reference to separation, or leaving the United Kingdom; (ii) those who believed the question’s proposition should be based on the status quo (that is, remaining in the United Kingdom) and (iii) those who felt that the referendum vote should **not** be a Yes-or-No vote, but rather the propositions for independence and for remaining in the Union should both be stated positively and voters should be asked to vote for the proposition they favoured.”

(Griesbach 2012 p.2)

Three hundred respondents gave specific comments on the ballot paper including suggestions about:

- Translating it into other languages (Gaelic was mentioned most often)
- The need to use non-white paper (blue or yellow were mentioned), and to avoid using block capital letters, for people with dyslexia.

(Griesbach 2012 p.20)

## **Electoral Commission testing of the question**

On 9 November 2012, in line with the MoA, the Scottish Government submitted its proposed referendum question to the Electoral Commission for independent assessment. Testing of the intelligibility of the question is one of the Commission’s statutory responsibilities in overseeing referendums under the terms of PPERA.

The Electoral Commission used Ipsos MORI Scotland to test public opinion on the question ‘Do you agree that Scotland should be an independent country?’ which was submitted by the Scottish Government.

The Commission also sought opinions and expert advice on the proposed question from targeted groups and relevant stakeholders. These included experts on accessibility and plain language and representatives of the political parties represented in the Scottish Parliament and would-be campaigners. The Commission reported back to the Government in January 2013 (Electoral Commission 2013a).

The public opinion testing, carried out between 17 November and 15 December 2012, used a combination of depth interviews (203 participants) and focus groups (62 participants in 10 groups) (Murray 2013 p. i)

The sample included a broad range of people in terms of age, sex, ethnicity, educational attainment and socio-economic status. This sample included native Gaelic speakers and people with English as an additional language. The Commission was not asked by the Government to test a Gaelic language version of the question.

In testing the proposed question, the report stated that the main problem to emerge was the issue of potential bias. In particular, the phrase ‘Do you agree...’ was seen by participants to be potentially leading towards a ‘Yes’ vote.

However the report points out that:

“It is worth noting that participants’ concern was that the question wording would subtly nudge some other people towards ‘Yes’. Participants did not generally think that they

themselves had been influenced and, across all testing, there was only one instance where the phrase ‘Do you agree...’ appeared to lead someone to vote the opposite way from how they intended.”

(Murray 2013 p. iv)

In addition to testing the Scottish Government’s question, the team also tested three other questions:

- ‘Should Scotland be an independent country?’
- ‘Should Scotland become an independent country?’
- ‘Do you want Scotland to be an independent country?’

The first alternative question, which omitted the words ‘Do you agree’, was, as a result of this omission, largely seen as being more neutral than the Government’s proposed question. For this reason it was the most favoured question in all rounds of testing.

In its report to the Scottish Government, the Electoral Commission recommended the use of this alternative question as it considered this wording to be:

- “a more neutral formulation than ‘Do you agree ..?’
- one which does not ask for a judgement of someone else’s view or decision
- direct
- short and simple.”

(Electoral Commission 2013a p. 33)

## **Scottish Independence Referendum Bill**

On 30 January 2013 the Scottish Government announced that it accepted all of the Electoral Commission’s recommendations relating to the referendum question (Scottish Government 2013a). As a result, the Bill provides for the question ‘Should Scotland be an independent country?’ (Section 1(2))

### **Gaelic version of the question**

The Bill provides for the question to be in English only but there have been calls for the ballot paper to be bilingual.

In February 2013, Angus MacDonald MSP lodged a parliamentary question (PQ) which asked the Scottish Government whether it planned to provide a Gaelic language version of the independence referendum ballot paper.

In her response to the PQ, the Deputy First Minister confirmed that the Scottish Government did not plan to provide a Gaelic language version of the ballot paper.

She pointed out that, as part of the question assessment process, the Electoral Commission had tested the proposed referendum question with native Gaelic speakers and found that those

participants could understand the question easily and experienced no difficulties in completing the ballot paper.

The Deputy First Minister also confirmed that, on request, voter information will be available in other languages, including Gaelic. In addition, following standard practice for all elections, if they consider it appropriate, counting officers may also choose to display a translation of the ballot paper at polling stations.

In response to its call for evidence at Stage 1 the Referendum (Scotland) Bill Committee received four written responses which concentrated on the absence of Gaelic on the ballot paper.

In its submission, Bòrd na Gàidhlig expressed its disappointment at the Deputy First Minister's response to the PQ and the fact that the Electoral Commission had not consulted the Bòrd.

The Bòrd's submission included a draft version of what a bilingual Independence Referendum ballot paper might look like.

The other submissions from Arthur Cormack, Jamie Wallace and John Macleod (the sponsor of a public petition on the same subject (PE01483) which to date has received 733 signatures) also concentrated on the lack of a bilingual ballot paper. These individuals were concerned that Gaelic was not being given the respect due to its legal status as an 'official' language in Scotland.

In its Stage 1 report on the Bill the Committee, responding to the evidence it had received on the issue of Gaelic, acknowledged the views of those who would like to see the question set out in Gaelic as well as English on the ballot paper but, concluded:

"We don't consider that a persuasive case has been made for a bilingual ballot paper. One of the great virtues of the ballot paper set out in the Bill is that it is simple and clear. As witnesses have pointed out, a Gaelic translation will be available to those who wish to refer to it."

## **BALLOT PAPER**

### **Electoral Commission's comment on the ballot paper**

While the Commission did not specifically test the ballot paper prepared by the Scottish Government, in its advice to the Government on the question (Electoral Commission 2013a p. 33), it presented its preferred question in the form of a slightly amended ballot paper. The layout was in line with the Commission's published guidance on voter material (Electoral Commission 2009).

In its advice, the Commission also stated that further work would be needed to test the design of the ballot paper once the wording of the question had been agreed.

### **The Ballot Paper in the Bill**

The ballot paper set out in Schedule 1 of the Bill is the one which the Scottish Government plans to use for the referendum. This is the version which the Commission recommended in its advice to the Government (Electoral Commission 2013a p.33)

No evidence is provided in the Explanatory Notes or the Policy Memorandum, which accompany the Bill, that testing of the ballot paper has taken place. Concerns were raised with the Referendum (Scotland) Bill Committee, by electoral professionals, that the official mark on the proposed ballot paper was on the reverse of the paper, contrary to normal practice which is to have the official mark on the front (Scottish Parliament Referendum (Scotland) Bill Committee 2013 p. 9-10). These concerns relate to the count and the ease of confirming the validity of ballot paper during the count.

In its Stage 1 report, the Committee noted the concerns expressed about the placement of the official mark, and invited the Scottish Government to clarify whether it will be lodging an amendment to address the concern (Scottish Parliament Referendum (Scotland) Bill Committee 2013 p. 10).

## **REFERENDUM CONDUCT RULES**

Sections 4-9 and Schedule 3 of the Bill relate to the conduct of the referendum, including:

- the appointment of the Chief Counting Officer (CCO) and counting officers for each local government area
- responsibilities of the CCO
- functions of the counting officers
- providing details of the polling procedures, including postal ballot papers, provision of and conduct at polling stations and voting procedures
- providing details of the count, including re-counts and rejection of ballot papers
- providing details of post count procedure, including retention of ballot papers.

## **COUNTING OFFICERS**

### **Chief Counting Officer**

For referendums conducted in the UK, under the provisions of PPERA, the Chair of the Electoral Commission acts as the Chief Counting Officer (CCO).

The Bill (Section 4) provides for the Scottish Government to appoint the convener of the Electoral Management Board for Scotland (EMB) as the CCO for the referendum. The EMB was established by the Local Electoral Administration (Scotland) Act 2011. Its establishment had been recommended by the Electoral Commission following issues which had arisen during the combined 2007 Scottish Parliament and local government elections.

While the Commission did not wish to take a more active role in relation to the delivery of electoral administration, it believed that its independent role in monitoring performance, providing advice and guidance to statutory officers and evaluating the administration of elections was a key element required to ensure effective delivery of services for electors.

The Commission, therefore, proposed the setting up of the EMB to support and encourage greater coordination and a more consistent approach to electoral administration.

The Board comprises a convener, appointed by Scottish Ministers, who must be a Returning Officer (RO), plus eight other members, comprising five ROs or Depute ROs and three Electoral Registration Officers. The responsibilities of the Board include co-ordinating the administration of local government elections in Scotland. The 2011 Act gives the Board a number of functions including assisting local authorities in carrying out their tasks in relation to local government elections and promoting best practice by providing information, advice or training. The Board also works to co-ordinate the excellent delivery of other elections in Scotland on a statutory and voluntary basis.

Under the provisions of Section 6 of the Bill, the CCO will be responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of the votes.

## **Counting Officers**

The provisions in Section 5 of the Bill state that the CCO must appoint a counting officer for each local government area. This is in line with PPERA which states that the CCO will appoint a counting officer for each relevant area in Great Britain. In Scotland, the relevant areas are local government areas. The counting officers are usually the ROs for the local authorities.

## **REFERENDUM CAMPAIGN RULES**

The provisions in Sections 10-15 and Schedule 4 of the Bill deal with the conduct of the referendum campaign, based on the referendum regulations set out in Part VII of PPERA, including:

- establishing the campaign rules, including setting the limits on expenses incurred by campaigners, control of donations, loans and credit to campaigners
- setting out the Electoral Commission's functions with regard to monitoring compliance with the campaign rules and reporting on the campaign
- providing for investigatory powers for the Commission
- setting out campaign offences and providing civil sanctions to deal with the offences
- setting out the criteria for identifying 'permitted participants' (bodies and individuals) and for the 'designated organisations'
- setting out the restriction on publication of promotional material by central and local government and other public bodies during the 28 days before the referendum, the 'relevant period'.

## **ELECTORAL COMMISSION**

In addition to its existing statutory roles, the Bill also gives Electoral Commission a statutory role which reflects the Commission's role vis-à-vis referendums set out in PPERA.

The Commission is required to carry out a range of functions including:

- providing guidance to voters, permitted participants and electoral officials

- registering permitted participants
- monitoring, recording and making publically available information on the donations received and money spent by permitted participants
- observing the conduct of the referendum at the polling stations and of the count
- accrediting observers
- publishing and laying before the Scottish Parliament a report on the conduct and administration of the referendum
- powers to investigate possible breaches of the campaign rules, with civil sanctions available to deal with any offences.

## **DESIGNATED ORGANISATIONS AND PERMITTED PARTICIPANTS**

Under the terms of PPERA, the Electoral Commission is responsible for registering referendum campaigners (known as 'permitted participants') and designating the lead campaign organisations for a UK referendum. For referendums with two possible outcomes, the Commission may designate from the permitted participants a lead organisation for each side, but, if an organisation does not put itself forward to represent one of the sides, there can be no designated organisation for either side.

Designation is important under PPERA as those bodies are entitled to financial and other support. The lack of a designated 'No' campaign organisation for the 2011 Welsh Referendum meant that the 'Yes' campaign could not be designated and therefore did not receive assistance in the form of finance, referendum campaign broadcasts, free use of rooms for public meetings and free mailings, This has been seen as a tactical decision on the part of the no campaigners, resulting in a lack of spending power and free assistance for the yes supporters.

In order to limit similar tactics, the Bill permits the Electoral Commission to designate for one of the sides of the campaign even if the other side does not put forward an organisation for designation.

Another difference from PPERA is that there is no public financial support for the designated bodies. This is in line with the Scottish Government proposals in its consultation *Your Scotland, Your Referendum* (Scottish Government 2012a p. 24)

## **CAMPAIGN FINANCE: SPENDING LIMITS**

### **Edinburgh Agreement**

Both Governments recognise that the issue of campaign funding is an important one for campaigners, the Electoral Commission as the regulator, and for the people in Scotland. The MoA, which accompanied the Edinburgh Agreement, stated that it was vital that the campaign funding rules were fair and provided a 'level playing field'.

This concern was reflected in the consultation responses where many respondents who commented on this aspect of the referendum felt that the spend on campaigning, "...should be 'equitable' and that there must be high levels of transparency and accountability" (Scottish Government 2012a p. 46)

The Referendum Bill was expected to provide the spending limits which would have to be adhered to during the 'regulated period' for the referendum, with both Governments agreeing that the PPERA rules and standards would be the basis for setting the Scottish limits.

In its consultation, the Scottish Government proposed that the 'referendum period' (the regulated period) for the referendum would be 16 weeks (Scottish Government 2012a p. 15). The referendum period, as described by the Electoral Commission (2010a p. 4) is the formal campaigning period before a referendum is held. During this period, rules on campaigning, spending and finances apply. PPERA does not state a specific length of time for this referendum period, although it has to be more than ten weeks and less than six months. The 1997 Scottish referendum had a regulated period of 119 days (17 weeks). The AV referendum, which was legislated for under PPERA rules, only had a referendum period of 11 weeks.

The spending limits for sub-UK referendums are usually set by the Secretary of State, through secondary legislation, using a mechanism set out in PPERA. In setting the limits the Secretary of State would consult the Electoral Commission, although the UK Government is not statutorily obliged to accept the Commission's recommendations. If the Secretary of State does not accept the Commission's suggestions on limits they are statutorily required to lay a statement before the House of Parliaments explaining why they have not followed the recommendations.

The MoA stated that in deciding the spending limits the Scottish Government would make recommendations following its consideration of the responses to its consultation (Scottish Government 2012a), which had proposed the following spending limits:

Type of Organisation	Proposed Spending Limit
Designated Organisation	£750,000
Political Party in Scottish Parliament	£250,000
Other Permitted Participants	£50,000
Individuals/Bodies, Not Permitted Participants	£5,000

The Scottish Government also stated in the MoA that it would consult with the two lead campaigning bodies, which had both come into existence after its 2012 consultation had closed, and that it would also have regard to the views of the Electoral Commission. The Government stated that it would then set out its proposed spending limits, and the evidence base for them, before the Referendum Bill was considered by the Parliament.

The Government also confirmed that the Policy Memorandum which would accompany the Bill, would, if necessary, explain any departure from the Commission's advice on the limits.

As donations to registered political parties are already regulated, under the provisions in Part IV of PPERA, the two Governments saw no need to include any further rules for such parties with regard to the independence referendum. However, it was expected that the Bill would expand the rules to cover other permitted participants, including minor parties not presently covered by PPERA.

Also in line with PPERA, these rules would not allow these participants to accept certain anonymous donations or certain donations from individuals or organisations from outside the UK.

## Electoral Commission

In its report, detailing its modified advice on the spending limits for the independence referendum, the Electoral Commission (2013b p. 1) suggested that the spending limits for the regulated period should be:

Designated lead campaigners <sup>2</sup>	£1,500,000
Political parties represented in the Scottish Parliament:	
Scottish National Party	£1,344,000
Scottish Labour	£834,000
Scottish Conservative & Unionist Party	£396,000
Scottish Liberal Democrats	£201,000
Scottish Green Party	£150,000
Other registered campaigners	£150,000
Threshold for registration	£10,000

The Commission stated that its recommendations on the spending limits for designated campaigners were made in order to:

“allow the lead campaigners to put their arguments to voters during the last 16 weeks of campaigning at a referendum on independence for Scotland on a similar scale to political parties campaigning at a Scottish Parliament election.”

(Electoral Commission 2013a p. 2)

Its advice on the spending limits for political parties was based on:

“their actual share of the vote at the 2011 Scottish Parliament election. This will allow each of the parties to campaign on a similar scale as they did at the 2011 election in putting across their party messages. The total cumulative value of the limits for the parties that have expressed support for each outcome at the referendum will be similar.”

(Electoral Commission 2013a p. 2)

In deciding on its recommended limits for other permitted participants the Commission had applied the principles for well-run referendums (Electoral Commission 2010b), thereby, setting a limit of 10% of the limit for designated lead campaigners. The spending limit of £10,000, as the threshold required to register with the Commission, is in line with PPERA.

## Campaign spending limits in the Bill

In setting the spending limits in the Bill the Scottish Government accepted the Electoral Commission’s advice and used the limits it had recommended.

The provisions in the Bill (Schedule 4, Part 3) define the referendum expenses which may be incurred by permitted participants. These include:

- referendum campaign broadcasts
- unsolicited material

- advertising
- market research or canvassing
- rallies.

## **RELEVANT PERIOD (PURDAH)**

Section 125 of PPERA sets out the restrictions which apply to Ministers, and public bodies, during the 28 day period preceding referendums. This 28 day period – known as the ‘relevant period’ or, informally, as the ‘purdah period’ – is treated in a way similar to the 28 day period prior to elections, when Ministers and public bodies refrain from publishing material which could have a bearing on the election.

## **SCOTTISH GOVERNMENT AND OTHER SCOTTISH PUBLIC BODIES**

Part 4 of Schedule 4 to the Bill contains details of the restrictions on the activities of Scottish Ministers, the Scottish Parliament and devolved public bodies during the relevant period for the Scottish referendum, which will run from 21 August to 17 September 2014 (inclusive). These restrictions relate to publication, i.e. making available to the public, of:

- general information on the referendum
- any issues relating Scotland becoming an independent country
- any arguments for or against either of the outcomes to the referendum
- anything designed to encourage voting at the referendum.

There are exceptions to the public bodies subject to these restrictions, namely, the:

- Electoral Commission
- Designated organisations
- CCO or counting officers.

It is expected that the affected bodies will provide guidance on how their staff should operate during the relevant period. In order to address some of the restrictions on its work, the Scottish Parliament has already agreed an alteration to its usual recess pattern to include the majority of the relevant period. Motion SM4-07156, agreed on 26 June 2013, means that next summer the Parliament will be in recess from 28 June to 3 August 2014 (inclusive) and 23 August to 21 September 2014 (inclusive). This motion leaves two days of overlap between the Parliament’s non recess days and the relevant period. This apparent anomaly was highlighted by the Referendum (Scotland) Bill Committee in its Stage 1 report (Scottish Parliament Referendum (Scotland) Bill Committee 2013 paragraph 190), drawing the overlap to the attention of the Parliamentary authorities.

## UK GOVERNMENT

Although not subject to the Scottish legislation, the UK Government has committed to abide by any rules which the Scottish Government introduce for that 28 day period. This undertaking was given in paragraph 29 of the Memorandum of Agreement:

“Both governments recognise the importance of respecting the 28-day period prior to a referendum, in the same way that both governments already respect each other’s pre-election period for Parliamentary elections. The Scottish Government will set out details of restricted behaviour for Scottish Ministers and devolved public bodies in the Referendum Bill to be introduced into the Scottish Parliament. These details will be based on the restrictions set out in PPERA. The UK Government has committed to act according to the same PPERA-based rules during the 28-day period.”

(HM Government and Scottish Government 2012)

In her evidence to the Referendum (Scotland) Bill Committee the Deputy First Minister confirmed that

“The UK Government agreed to include a provision in the Edinburgh agreement to make clear its intention voluntarily to submit to the same rules. I have no reason to question its good faith on that. I fully expect the UK Government to honour that commitment in full, and I have no reason to expect that it will not do so.”

(Scottish Parliament Referendum (Scotland) Bill Committee 2013b cols 554).

## TIMELINE FOR THE REFERENDUM

The following table sets out some of the key dates, past and future, relating to the referendum

Date		
May 2007		Following the 2007 Scottish Parliament election the Scottish National Party (SNP) established a minority Government. In its 2007 Scottish Parliament election manifesto the SNP referred to holding a referendum on independence with a likely date in 2010.
August 2007	National Conversation	First Minister announced the start of the National Conversation with the publication of, <i>Choosing Scotland's future: a national conversation</i> .
26 March 2008		Scottish Government (SG) launched Phase 2 of the National Conversation
30 November 2009		SG published a white paper, <i>Your Scotland your voice: a national conversation</i> (Scottish Government 2009). It identified four basic options for Scotland's future. Namely: the status quo, Calman Commission recommendations, devolution max or independence.
February 2010	Scottish Government consultation	SG published <i>Scotland's Future: Draft Referendum (Scotland) Bill Consultation</i>
May 2010	UK Government	UK Coalition Government formed
30 November 2010		As promised in its Coalition Agreement the UK Government introduced the Scotland Bill to implement the Calman recommendations.
		UK and Scottish Parliaments scrutinised the Scotland Bill
May 2011	Scottish Government formed	After the Scottish Parliament election the SNP were able to form a majority Government. The SNP had campaigned to bring forward a Referendum Bill in the next Parliament.
January 2012	Scottish Government consultation	Scottish Government launched its <i>Your Scotland: your Referendum</i> consultation
15 October 2012	Edinburgh Agreement	Agreement signed by UK and Scottish

		Government
23 October 2012	Scottish Parliament	Referendum (Scotland) Bill Committee established
22 October 2012	Section 30 Order	Order laid in Scottish and UK Parliaments
5 December 2012		Order approved by the Scottish Parliament
House of Commons 15 January 2013		Order approved by the UK Parliament
House of Lords 16 January 2013		
12 February 2013	Privy Council make the Order	
11 March 2013	Scottish Independence Referendum (Franchise) Bill	Scottish Government introduce the Bill to extend the franchise to 16 and 17 year olds
21 March 2013	Scottish Independence Referendum Bill	Scottish Government introduce the Bill
27 June 2013	Scottish Independence Referendum (Franchise) Bill	Scottish Parliament pass the Franchise Bill
7 August 2013	Scottish Independence Referendum (Franchise) Act 2013 asp 13	The Bill receives Royal Assent
30 May 2014 to 18 September 2014	Referendum Period	The regulated period for the referendum defined in Schedule 8 of the Scottish Independence Referendum Bill
21 August 2014 to 17 September 2014	Relevant period for the Referendum (Purdah)	Defined in Schedule 4 Part 4 of the Scottish Independence Referendum Bill
18 September 2014	Referendum	Set out in Section 1 of the Scottish Independence Referendum Bill

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