

# **REFERENDUMS (SCOTLAND) BILL**

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Referendums (Scotland) Bill, introduced in the Scottish Parliament on 28 May 2019.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 46–EN);
  - a Policy Memorandum (SP Bill 46–PM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 46–LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.
4. The Bill—
  - gives the power for Scottish Ministers to provide for referendums by regulations;
  - sets out the requirements associated with referendum questions;
  - sets out details of the franchise;
  - sets out provision about voting etc.;
  - provides for the Convener of the Electoral Management Board (EMB) to fulfil the role of Chief Counting Officer (CCO), to oversee the running of the referendum and appoint counting officers to run the referendum in each local area;
  - sets out the rules for the conduct of a referendum, i.e. the conduct of the poll, the count and the declaration of the result;
  - provides for the Electoral Commission to have responsibility for oversight of any referendum, including providing guidance and information about a referendum, overseeing and regulating the campaign leading up to the referendum and reporting on the conduct of the referendums; and

- includes provisions regulating the campaign prior to a referendum, including limiting the amounts that may be spent on and donated for campaigning by permitted participants and others and requiring them to be accountable to the Electoral Commission.

5. The Bill itself gives rise to no significant direct costs. Costs will, however, be incurred if the framework is triggered using the secondary legislation powers contained in the Bill. It is not possible to provide a precise estimate of these costs. Any referendum will carry certain necessary costs regardless of the subject matter of that referendum, such as payments to returning officers. However other costs, for example of the preparation of standing guidance for the first referendum held under the terms of this Bill, will be largely one-off. Others, such as the costs associated with registration, will vary according to the volume of demand to update the register. More detailed information of the activities for which costs will be incurred is set in the remainder of this document and describes the process for consideration of that by the Parliament.

6. The cost of running the poll at the 2014 Scottish independence referendum amounted to about £15.8 million. Some of the costs associated with that referendum, for example, the preparation of guidance and costs of registration were exceptional, and have been superseded by subsequent policy changes. This figure should not therefore be regarded as providing an authoritative guide to the costs associated with holding a referendum under this framework.

## **OVERVIEW**

7. This Bill provides the legislative framework for the holding of referendums in Scotland. It covers the technical aspects of holding the referendum by prescribing the rules for voting and setting out the rules for how the poll should be conducted.

8. The Bill also provides campaign rules to regulate the political campaign preceding the referendum. The rules are largely based on existing UK and Scottish legislation covering elections and referendums. They include the administration of spending by participants, including limits on that spending and donations during the referendum campaign.

9. As set out in section 1 of the Bill, legislating for a referendum using the powers in this Bill requires secondary legislation to be made under it. Therefore, as noted in paragraph 5, provisions contained in this Bill do not, in themselves, directly cause additional costs.

10. The arrangements proposed in the Bill also draw on existing electoral institutions and systems which provide a range of functions in relation to other electoral events in Scotland. These include the Electoral Management Board and the Electoral Commission.

11. The costs of a referendum under the legislative framework set out in the Bill would fall into three broad categories—

- costs of running the referendum – incurred by the CCO, local counting officers and electoral registration officers;

- publicity costs incurred by the Electoral Commission in the fulfilment of its duty to provide information to voters on how to cast their vote; overseeing and regulating the referendum campaigns; and reporting on the conduct of the referendum; and
- the costs of allowing each of the main campaign organisations a free mailshot to every voter or household in Scotland.

12. These costs will have to be estimated in more detail at the time when the triggered referendum is taken forward. An estimate of the costs of a specific referendum event could be made based on comparisons with the cost of delivering previous elections and referendums across the UK and advice obtained from relevant stakeholders. As explained above the costs may vary according to the specific circumstances of the referendum to be held and there may be economies of scale associated with the framework approach, e.g. in the production of guidance materials.

## **POWER TO PROVIDE FOR REFERENDUMS**

13. This Bill provides that the Scottish Ministers may make regulations, subject to the affirmative procedure, applying the provisions set out in this Bill to any referendum which is to be held throughout Scotland. The regulations will specify the question or questions to be asked, the form of the ballot paper and the date on which the referendum is to be held. The regulations may also make any necessary amendments to the rules and conduct provisions set out in this Bill so that they can take account of developments in wider elections law and administration.

## **COSTS ON THE SCOTTISH ADMINISTRATION**

14. Costs incurred by the Scottish Government could include:

- the cost of allowing designated campaign organisations a free mailshot to every voter or household;
- charges made by the Royal Mail in relation to its role in the referendum in delivering poll cards and free materials;
- reimbursement of costs incurred by the CCO and counting officers;
- reimbursement of preparatory expenditure by the Electoral Commission.

15. Further details on each of these cost categories are provided below. Costs to be met by the Scottish Government, whether upfront payments or reimbursement of costs met by other bodies, will be provided for in the relevant Budget Acts and budget revisions.

### **Chief Counting Officer's costs**

16. Under section 11 of the Bill, the CCO and counting officers will be entitled to recover their costs and expenses in respect of the referendum directly from the Scottish Government. The maximum amount that the CCO and counting officers will be entitled to recover for the delivery of the vote and the count will be set out in separate regulations. Information on the costs to be incurred by counting officers are provided in the next section, as these costs will initially be borne by local authorities before being reimbursed by the Scottish Government. In addition, the CCO

will incur costs in the course of planning for the referendum and these will also be met directly by the Scottish Government. These will not be covered by the regulations due to the fact that payment will be required before the Order can be made. Further details are provided below at paragraphs 19 and 20.

### **Conducting the referendum**

17. The CCO, who will usually be the Convener of the Electoral Management Board, is responsible for the overall conduct of any referendum held under the framework and has oversight of and a power of direction over each counting officer. The CCO will also certify local counts and make the national declaration of the result after local declarations have been made.

18. The maximum level of fees and expenses incurred by the CCO in preparing for the collation of results, managing the national count and making the national declaration will be provided for in the regulations for each referendum.

### **Preparatory activity**

19. Preparatory expenditure incurred by the CCO prior to the enactment of the Bill is likely to cover project management activities that will commence in the run up to a referendum, including the preparation of guidance for counting officers, establishment of performance management arrangements and communications management.

### **Estimated costs of conducting the referendum and preparatory activity**

20. The CCO is likely to require a small team to undertake the activities described above and to work with the Electoral Management Board to plan and oversee the delivery of the vote and the count from a central hub. It is not possible to give precise cost figures as these will vary for different referendum events, depending on how the CCO will decide to deliver this work. For the 2014 referendum, the CCO's costs were £510,000.

### **Counting officers' costs**

21. The CCO must appoint counting officers in each local authority area. These are likely to be existing returning officers. The persons conducting the referendum will therefore be the local authority officers who are currently responsible for running elections in Scotland, and they will incur the bulk of the cost of running the referendum. As explained at paragraph 16, counting officers' costs will be reimbursed by the Scottish Government. Therefore, although local authority officers will incur the up-front expenditure, it will be the Government that ultimately bears these costs.

22. Counting officers will be responsible for the administration of the referendum, including:

- the issuing of poll cards;
- the provision, staffing and running of polling stations, including the appointment of presiding officers and poll clerks;

- the issue and receipt of postal voting papers;
- the staffing and running of the count in their area;
- the declaration of the local result.

23. The role of counting officer is essentially the same as that of a returning officer at an election. Their duties will be very similar to the activities required to run an election, but without the candidate nomination process and with a simple voting system which will require only one round of counting.

24. The Bill provides that the CCO must appoint a counting officer for each local government area, which means that there will be 32 counting officers. This is the same as for Scottish Local Government elections.

25. Counting officer costs will be set out in regulations made under powers in the Bill, which will provide the maximum level of expenses which each individual counting officer can claim. This is likely to be calculated for each voting area (i.e. each local government area). This will cover the costs incurred whilst carrying out their duties under the Bill, such as the provision of staff, equipment and venues. These will again be calculated by voting area and will be based on the size of the electorate and assumptions about average spend. Scottish Government officials will work with the Electoral Management Board and counting officers to determine figures for each proposed poll.

26. The costs likely to be incurred by counting officers in the course of undertaking these duties will include the categories listed below at paragraphs 27 to 35.

### **Polling station costs**

27. This will include the costs of polling station venues, of equipment used in polling stations such as polling booths, ballot boxes, stationery and notices, of preparing and transporting polling equipment, of printing ballot papers, and of payments to polling station staff, including training.

28. Many of these costs depend on the number of polling stations required, which will depend on the size of the electorate, the availability of venues and the geography of each voting area.

### **Postal vote costs**

29. Costs associated with the issue and receipt of postal votes will include the cost of printing and postage (both outward and return), payments to staff involved in issuing, receiving and checking postal votes; stationery, cost of venues and equipment for postal vote number of postal votes cast in each voting area.

30. Additionally, on the day of poll, the Royal Mail often undertakes a 'sweep' of mail centres to identify any postal votes that have not been processed for delivery and makes arrangements to ensure that they are delivered to the relevant counting officer in time to be counted. Postal sweeps are usually organised locally, by counting officers, although for the 2011 Parliamentary Voting

System referendum the sweep was organised on a national basis. This could allow for some savings to be made as a result of economies of scale. Previous experience at the 2014 referendum suggests that an estimation of the cost of a national final day sweep for a referendum could be in the region of around £28,000 (£34,000 including VAT), which, if organised nationally, would be met by the Scottish Government through reimbursing the CCO.

### **Poll card costs**

31. Poll cards will be sent to every voter. This will incur costs in relation to the printing and posting of poll cards, payments to staff, and equipment and stationery.

### **Count costs**

32. The count costs will include the cost of hiring count centre venues, transporting ballot papers from polling stations to count centres, equipment used at count centres, security, and payments to count centre staff, including training.

33. For some more remote voting areas, the cost of transporting ballot papers to the count centres will be considerably higher than in other areas. For example, in Argyll and Bute and the Western Isles, helicopters are sometimes used to fly the ballot papers from remote islands to a central count centre. Similarly, counts taking place in some of the larger cities will incur higher count venue costs, particularly in Edinburgh and Glasgow. This will be taken into account in discussions with the Electoral Management Board and others around calculating the maximum recoverable expenses for each counting officer.

### **Other costs**

34. In addition to the above, there will also be general costs incurred by counting officers in the course of managing the poll and the count, including the cost of payments to clerical staff and the cost of materials and services not covered elsewhere.

35. The counting officers' costs will have to be calculated closer to any referendum. At the 2014 referendum they came to £10.9 million and at the Scottish Parliament elections in 2016 Returning Officers costs were £11.9 million, but the 2016 Scottish Parliament election had increased costs due to the requirement for constituency and regional ballot papers.

### **Costs of the free postal communication**

36. The Bill sets out provisions which would, with the agreement of the UK Government, allow paragraph 1 of schedule 12 of the Political Parties, Elections and Referendums Act 2000 ("PPERA") to be applied to a referendum held under the Act.

37. If agreed, this confers a right on designated campaign organisations to send one postal communication, containing matter relating to the referendum to every household or every voter in the relevant area or electorate, free of any charge for postage. This means that the designated

campaign organisations will not need to make funds available for the upfront cost of postage (though they will still need to cover the cost of producing the communication).

38. Although not directly provided for in this Bill, in the event of a referendum designated campaign organisations may each be able to send a free postal communication to every voter or every household, and the mail service provider will be able to recover these postage costs from the Scottish Government.

39. A designated organisation is a permitted participant (registered campaigner) that has been designated by the Electoral Commission as the lead campaigner for a particular outcome. The number of designated organisations will vary according to the question and responses for each referendum held.

40. Under PPERA, the universal mail service provider can recover the cost of postage from the UK Consolidated Fund. In the case of referendums under this Bill, it is intended that agreement would be made that the universal service provider can recover the cost of postage from Scottish Ministers. The Postal Services Act 2011 provides that the universal service provider is the Royal Mail.

41. The indicative costs which would apply to the door to door delivery of unaddressed mail on this scale would be sought from the Royal Mail at the time the framework was triggered. However, in early 2016, the cost to the Scottish Government of sending an addressed communication was about 26p and an unaddressed one was 13p.

42. The free mailing at the 2014 referendum cost about £1.6 million.

### **Royal Mail services**

43. The Royal Mail will require an administration fee for providing the above service which will be met directly by the Scottish Government. The contract for this work would need to be scoped for each referendum. The Royal Mail's fee for a similar role in the 2016 Scottish Parliament elections was around £330,000 (£396,000 including VAT). However, this involved considerably more work, given the large number of candidates involved, who would each have been entitled to issue campaign communications free of postage, as compared with a smaller number of designated organisations for a referendum.

44. For information purposes, the costs of various elements at the 2014 Scottish independence referendum and 2016 Scottish Parliament elections were as follows:

	2014 independence referendum (£,000)	2016 Scottish Parliament election (£,000)
Chief Counting Officer	510	N/A
Counting officers	10,888	11,912
Electoral registration officers	1,042	N/A
Royal Mail	1,568	5,640
Electoral Commission	1,826	N/A
Miscellaneous	7	N/A
<b>Total</b>	<b>15,841</b>	<b>17,552</b>

45. The cost of the Scottish Parliament election and independence referendum are not directly comparable as Scottish Parliament elections involve printing and counting two ballot papers and the Royal Mail costs are significantly higher as there are more candidates who are entitled to free mailings. In addition, some elements of expenditure at a referendum are not applicable at elections. At a normal election, there is no CCO, registration officers' costs are already funded through local authority budgets and the Electoral Commission's costs form part of their core budget.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

### **Electoral registration officer costs**

46. Whilst it is not normal practice to provide additional funds to electoral registration officers in connection with electoral events, because the cost of the registration function is included within the funding provided to local authorities by the Scottish Government, at the 2014 referendum there was a substantial increase in registration activity in the weeks leading up to the poll. Because of the increased activity, electoral registration officers had to deploy more staff to assist with the registration process. The Scottish Government agreed to meet any additional costs directly attributable to registration activity in connection with the referendum and additional payments amounting to just over £1 million were made to electoral registration officers.

47. Since 2014, there have been a number of changes to the electoral registration system, most noticeably the introduction of individual electoral registration and the facility for individuals to register on line. These developments should reduce the burdens on registration staff by automating some processes, and the registration costs associated with any future referendum should be significantly lower as a result. However, the main driver of any additional costs will be the number

of people who apply to register or re-register in the run up to any referendum and this may vary significantly depending on the gap between other elections and any referendum.

### **Electoral Commission costs**

48. Costs for question-testing for future referendums would be met by the Scottish Government. Question-testing undertaken for the 2014 referendum was undertaken at a cost of £130,000.

49. In addition to testing the question, the Electoral Commission are responsible for oversight of any referendum, including providing guidance and information about the referendum, overseeing and regulating the campaign leading up to the referendum and reporting on the conduct of the referendums.

50. Exact details of any future publicity campaigns etc. in relation to future elections would be subject to negotiation with the Electoral Commission as to the extent and method of providing information to voters and others, and therefore it is not possible to give an accurate estimate of future costs. However, the Electoral Commission spent about £1.8 million on providing these services at the 2014 referendum.

51. In line with the funding arrangements set out in the Bill, costs incurred by the Electoral Commission will be reimbursed by the Scottish Parliament Corporate Body (SPCB). The SPCB receives funding directly from the Scottish Consolidated Fund under the annual Budget (Scotland) Act and budget revisions.

### **Costs to political parties, campaign groups and individuals**

52. It is anticipated that political parties, campaign groups and some individuals will choose to incur campaign costs in relation to referendums held under this Bill. The Bill does not oblige these groups to incur any costs.

53. The Bill limits the amount of expenses that can be incurred by those campaigning in the referendum. The following table sets out the spending limits for different types of permitted participants.

<b>Type of participant</b>	<b>Spending limit (during the referendum period)</b>
An individual or body that is not a permitted participant	£10,000
A designated organisation	£1,500,000
A permitted participant which is not a designated organisation but is a registered party and has a relevant percentage <sup>1</sup>	The sum calculated by multiplying the sum of £3,000,000 by the party's relevant percentage, or £150,000.
A permitted participant which is not a designated organisation nor such a registered party	£150,000

54. The Bill also makes provision for certain organisations to charge fees for access to or the provision of certain documents. The Electoral Commission may charge a “reasonable” fee for access, inspection or a copy of registers and documents held by the Electoral Commission.

55. Electoral registration officers may charge a fee when a designated organisation requests a marked copy of the register of local government electors. The fee is £10, plus (for a copy in printed form) £2 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request, and (for a copy in data form) £1 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request.

### **Offences and income from fines**

56. The Bill creates a number of electoral offences, which are subject to civil penalties, and are triable under summary or in some cases solemn procedures. If any offences are committed, costs will arise in relation to the investigation of offences by the Electoral Commission, and then the administration of justice via civil or criminal penalties. Where fines are imposed, there will be income associated with the fines. Experience at the 2014 Scottish independence referendum, and other polls in Scotland, demonstrates that electoral offences are rare. On this basis, the costs of the administration of justice, and the income associated with fines, are not likely to be significant.

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<sup>1</sup> A registered party has a relevant percentage if, at the general election for membership of the Scottish Parliament last occurring before the relevant day (“the election”), constituency votes were cast for one or more candidates at the election authorised to use the party’s registered name and regional votes were cast for the party. A registered party’s relevant percentage is equal to the sum (rounded to one decimal place) of the total number of constituency votes cast at the election expressed as a percentage of the total number of constituency votes cast at that election for all candidates, multiplied by 56.6%, and the total number of regional votes cast at the election for the party expressed as a percentage of the total number of regional votes cast at that election for all registered parties and individual candidates, multiplied by 43.4%.



*This document relates to the Referendums (Scotland) Bill (SP Bill 46) as introduced in the Scottish Parliament on 28 May 2019*

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