

## European Union Referendum Bill 2015 House of Commons Committee Stage (Day 1) Briefing

15 June 2015

### Introduction

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This briefing sets out the Electoral Commission's view on amendments tabled ahead of the first day of Committee Stage of the European Union Referendum Bill in the House of Commons on 16 June.

We have not commented on all amendments tabled in relation to this Bill, and the absence of comment does not imply that we support them. In particular, decisions on the franchise for the referendum and on the level for spending limits for campaigners are important issues for Parliament to decide on, and the Commission will only comment on the practical implications and workability of any amendments to the Bill in these areas.

This briefing covers amendments relating to:

- The timing of the referendum poll
- Campaigning and financial controls
- Referendum spending limits

Our comments at this stage relate solely to the provisions currently set out on the face of the Bill. However, if the Bill is significantly amended during its progress through Parliament, the detail of such changes will need to be carefully considered. We will continue to brief on the Bill and any relevant amendments that are tabled as the Bill progresses through parliament. All briefings will be available on our website [here](#).

### The Electoral Commission's role in referendums

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The Electoral Commission has specific responsibilities and functions in relation to the delivery and regulation of referendums held under PPERA, which applies to any referendum Bill brought before the UK Parliament unless specifically stated otherwise.

Our responsibilities under PPERA include:

- Commenting on the intelligibility of the referendum question.

- Registering organisations or individuals who want to campaign in the referendum.
- Considering and approving applications for designation as the lead campaign group for each referendum outcome.
- Making grant payments to the approved designated organisations.
- Monitoring spending on referendum campaigning, in line with the referendum spending limits imposed by PPERA.
- Providing advice and guidance on the rules to campaigners.
- Monitoring and securing compliance with campaign donation, loan and spending controls.
- Reporting on the administration of the referendum and referendum campaign spending.

The Chair of the Commission, or a person the Chair appoints, is the Chief Counting Officer for the referendum and responsible for certifying the outcome of the referendum.

## Clause 1: Timing of the referendum poll

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**Amendment 17 to Clause 1**, tabled in the name of Alex Salmond and others, would prevent a referendum on the UK's membership of the European Union being held on the same day as elections to the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Although not scheduled to be debated until Committee Stage Day 2, **Amendments 3 and 7** to Clause 4 would also prevent a referendum being held on the same day as other scheduled polls.

**Amendment 3** tabled in the name of Harriet Harman and others would prevent the referendum being held on the same day as:

- Elections to the Scottish Parliament;
- Elections to the National Assembly for Wales;
- Elections for the Mayor of London;
- Local authority elections.

**Amendment 7** tabled in the name of Sir William Cash and others would prevent the referendum being held on the same day as elections, other than by-elections, that are scheduled for:

- The Scottish Parliament;
- The National Assembly for Wales;
- The Northern Ireland Assembly;
- The Gibraltar Parliament;
- Police and Crime Commissioners in England and Wales;

- The London Assembly and Mayor of London; or
- Local authorities and mayors in the United Kingdom and Gibraltar.

**The Electoral Commission supports these amendments.** In our House of Commons Second Reading debate briefing we set out our view that a referendum on the UK's membership of the European Union should not be held on the same day as the polls which will take place on 5 May 2016 or any other scheduled polls.

It is important that voters and campaigners are able to engage fully with the issues which are relevant at these elections. It is also important that any debate about the UK's membership of the European Union takes place at a time that allows the full participation of voters and campaigners, uncomplicated by competing messages and activity from elections which might be held on the same day.

## Schedule 1: Campaigning and financial controls

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**Amendment 9**, tabled in the name of Sir William Cash and others, would ensure that that the referendum period lasts for at least 16 weeks.

**The Commission supports the principle behind this amendment.**

PPERA provides for a maximum six week period for potential lead campaigners to apply and be appointed, followed by a minimum four week period before the poll.

Based on the Commission's experience of regulating the rules for the Scottish Independence Referendum in 2014, we recommended an alternative approach to the timetable for appointing lead campaigners should the legislative timetable allow – we recommended that the appointment should take place shortly *before*, rather than during the first six weeks of, the referendum period. This would provide clarity earlier for voters and campaigners and for the lead campaigners to be in place shortly before the majority of the regulatory controls come into force. This would allow for a shorter total duration of the subsequent referendum period, for example, a six week designation period and a subsequent 10 week regulated campaign period.

This amendment would extend the minimum referendum period to 16 weeks, thus providing for a minimum 10 week post-appointment period. In our view, this would go some way to giving designated lead campaign groups the time needed to get their messages to voters, including to plan and effectively use free mailing and TV broadcasts.

**Amendments 20, 24, 28, 32, 34, 35, 36, 38, 39, 40, 42, 43, 44, 45**, tabled in the name of Bernard Jenkins, would remove the proposed eligibility of Royal Charter bodies and charitable incorporated organisations (CIOs) to be able to register as a referendum campaigner and donate to other referendum campaigners.

**The Commission does not support these amendments.**

The Bill as drafted will ensure that the types of organisations that Parliament has already agreed should be eligible to campaign at elections are also able to participate at referendums.

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 extended the categories of organisations that can register as recognised third party campaigners at elections to include Royal Charter bodies and charitable incorporated organisations (CIOs). These are now included in Part 6 PPERA.

Following the Scottish Independence Referendum in 2014, the Commission recommended that, for consistency, it was important that the list of individuals and bodies eligible to register as a referendum campaigner and donate to other referendum campaigners should be brought into line with those eligible to register as a recognised third party at elections.

**Amendment 53**, tabled in the name of Sir Edward Leigh, would require the Electoral Commission to limit the number of registered campaigners ('permitted participants') to ensure that the total spending on either side of the referendum would be broadly equal.

**The Commission does not support this amendment.**

One of the Commission's principles in relation to campaigns for well-run referendums is that there should be no barriers to campaigners putting forward arguments for any of the possible outcomes.<sup>1</sup> There is no precedent for the Commission having a role in limiting the number of campaigners at referendums or elections. In our view, it would be inappropriate for an arbitrary limit to be placed on those that can participate.

As we set out in our advice on the spending limits for the Scottish independence referendum in 2014<sup>2</sup>, in practice, it is not possible for spending limits to create a completely level playing field between campaigners at elections or referendums, because:

- There can be no certainty that there will be equal resources on each side, whatever the limits that apply, and

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<sup>1</sup> The Commission's principles in relation to campaigners for well-run referendums are there should be no barriers to campaigners putting forward arguments for any of the possible outcomes. This means that (i) it is easy to register as a permitted participant and to take part in campaigning, (ii) the rules that govern campaign spending and fund-raising activity are clear and fair, and (iii) the process for designating lead campaign organisations for each outcome (and consequent distribution of public funds and access to the media) is easy to understand, and accepted as fair.

<sup>2</sup> Electoral Commission advice on spending limits for the referendum on independence for Scotland [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0004/153697/Report-on-spending-limits-for-the-referendum-on-independence-for-Scotland.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/153697/Report-on-spending-limits-for-the-referendum-on-independence-for-Scotland.pdf)

- The number of participants on each side should not be artificially limited by the rules – all those that have arguments to make and who are eligible to register should be able to make them.

**Amendment 14**, tabled in the name of Secretary Philip Hammond, would increase the PPERA spending limits to take account of inflation.

**While we recognise that there may be justification for adjusting spending limits to reflect changes in inflation, the Commission has no role in advising on spending limits at UK-wide referendums held under PPERA<sup>3</sup>. We do not intend to comment on the principle of this or other amendments on the limits.**

It is important that Parliament is aware of how the spending limits will apply for the referendum. The table in Appendix 1 sets out the spending limits as they would be under the current PPERA rules, and as they would be under this amendment.

The spending limits that apply at referendums are a central element of the regulation of campaigners. The limits should be set at a level that is sufficient to enable campaigners get their messages to voters but deter excessive spending.

**Amendment 10**, tabled in the name of Sir William Cash and others, would ensure that no funds or support provided directly or indirectly by European Union bodies have a bearing on the outcome of the referendum.

**The Commission does not support this amendment because PPERA already places controls on direct and indirect sources of campaign funding.**

A central principle of the PPERA regulatory regime is to ensure that foreign sources of funding do not have an undue influence on our democratic process. PPERA already provides that referendum campaigners are only able to accept donations over £500 from certain ‘permissible’ sources. In general, the permissibility rules provide that funding can only be accepted by referendum campaigners from certain UK-based sources. There are also rules and offences related to using permissible donors as agents to circumvent the rules.

It is important that the legislation is clear about those organisations that can and cannot participate in the referendum. The Commission’s view is that the European Commission does not fall within the list of bodies that can register as a campaigner<sup>4</sup>

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<sup>3</sup> The Commission has a specific statutory role in providing advice on the spending limits that should apply at referendums held in a part of the UK. The Commission does not have this role for UK-wide referendums.

<sup>4</sup> s.105(1) PPERA as modified by para 2, Schedule 1 EUR Bill

or donate to other referendum campaigners<sup>5</sup>. This amendment is therefore unnecessary.

In addition, this amendment goes significantly further than the current controls in PPERA by looking at the ultimate source of a campaigner's funds, rather than primarily at the eligibility of a donor. In our view, the broadness of this amendment makes it unworkable.

**Amendment 15**, tabled in the name of Secretary Philip Hammond, would require registered campaigners that do not incur any referendum expenses to submit a declaration stating that fact to the Electoral Commission following the referendum.

**The Commission supports this amendment.**

Under PPERA, campaigners that register but then do not incur any regulated spending are not required to inform the Commission of that fact after the poll. This means that the Commission is unaware if a campaigner has incurred regulated spending and has failed to submit a return or has not incurred any spending and is not required to submit a return. In practice, the Commission contacts each campaigner that does not submit a return to establish the position.

This amendment is based on the rules that applied at the Scottish Independence Referendum in 2014. It will require registered campaigners to submit a declaration to the Commission confirming that they have not incurred any regulated spending.

The amendment will introduce a minor regulatory burden on campaigners that have not spent any funds campaigning. However, based on the Commission's experience of regulating the independence referendum, in our view it is an important addition to the reporting rules that will close a gap in the requirement to provide evidence of the spending incurred by all those that have chosen to register to campaign.

**Amendment 11**, tabled in the name of Sir William Cash and others, would apply a restriction on the publication of certain material by central and local government for the duration of the referendum period.

**New clause 3**, tabled in the name of Alex Salmond and others, would apply a restriction on the publication of certain material by specified bodies in the 28 days before the poll.

**The Commission supports proposals to reinstate restrictions on the publication of promotional material by central and local government.**

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<sup>5</sup> paragraph 6, Schedule 15 PPERA as modified by para 17, Schedule 1EUR Bill

The Bill provides that section 125 of PPERA (which places restrictions on the publication of promotional material about referendums by Ministers, government departments, local authorities and certain other public bodies during the period of 28 days immediately before polling day) would not apply at the referendum. This could mean that governments and others will be free to spend unlimited amounts of public funds promoting an outcome at the referendum right up until polling day.

The underlying legislative basis for referendums held under PPERA is that campaigners will come forward to put the arguments for each side of the debate to voters. These campaigners are subject to a regulatory regime including limits on the amount that they can spend during the regulated referendum period. In the Commission's view, there is a risk that the use of significant amounts of public money for promotional activity could give an unfair advantage to one side of the argument. Unlimited government spending would also undermine the principle of having spending limits for registered campaigners. This has the potential to be particularly significant in the case of a referendum on the UK's membership of the European Union where there would be four governments in the UK with views on the issue being debated, as well as local authorities who may have strong interests in promoting a particular outcome.

**The Commission is therefore generally supportive of proposals to reinstate restrictions on the publication of promotional material by central and local government in the run up to the poll.** However, following the 2011 referendums we suggest that there would be benefit in clarifying the scope of the restrictions that applied to the publication of promotional material in s.125 PPERA, including what sanctions, if any, should apply to breaches.

Following the Scottish independence referendum in 2014, we said that we agree in principle that a period of 28 days is an adequate duration for the restrictions on the publication of other promotional material by central and local government. The 28 days restriction would not stop politicians setting out their views in their personal or party capacity (including government Ministers). There is no evidence from the Scottish Independence Referendum that the restriction prevented campaigning by Ministers in their personal or party capacity.

However, to mitigate the risks of the relatively short 28 day period, it is important that relevant governments consider carefully how any promotional material they publish before then may impact on voters' trust in the rules. It is also important that there is a clear explanation of the rules and how to comply with them for relevant public bodies to follow during that period.

We also recommended relevant governments should publicly commit to and refrain in practice from any paid advertising, including the delivery of booklets to households, that promotes a particular referendum outcome for the full duration of the regulated referendum period.

**New clause 4**, tabled in the name of Alex Salmond and others, would establish an enforcement body for breaches of the restriction on the publication of material by certain bodies.

**The Commission supports the principle behind proposals to clarify the sanctions that will apply to breaches of the rules the restriction on the publication of material by central and local government.**

The Commission has noted previously that there are no sanctions associated with the restrictions on central and local government spending in PPERA. Following the 2011 referendums, we suggest that there would be benefit in clarifying the scope of the restrictions that applied to the publication of promotional material in s.125 PPERA, including what sanctions, if any, should apply to breaches.



## Appendix 1: EU referendum spending limits

PPERA sets out the spending limits that apply during the referendum period at UK-wide referendums. The limits for political parties are allocated according to the party's share of the vote at the last UK Parliamentary General Election<sup>6</sup>.

Based on the provisional data available at this time<sup>7</sup>, the PPERA calculation following the 2015 UK Parliamentary General Election would likely result in the spending limits set out in the table below. **Amendment 14**, tabled in the name of Secretary Philip Hammond, would increase the PPERA spending limits to take account of inflation. The proposed limits are also set out in the table.

	<b>PPERA limits (set in 2000)</b>	<b>Amendment 14 proposed limits for an EU referendum held before 31 December 2017</b>	<b>2015 UK general election vote share</b>
<b>Limits for designated lead campaigners</b>	£5,000,000	£7,000,000	-
<b>Limits for political parties with:</b>			
>30% share of the vote	£5,000,000	£7,000,000	Conservative (36.9%)
>20-30% share of the vote	£4,000,000	£5,500,000	Labour (29.03% <sup>8</sup> )
>10-20% share of the vote	£3,000,000	£4,000,000	UKIP (12.6%)
>5-10% share of the vote	£2,000,000	£3,000,000	Liberal Democrat (7.9%)
<5% share of the vote	£500,000	£700,000	SNP (4.7%) Green (3.8%) DUP (0.6%) Plaid Cymru (0.6%) Sinn Fein (0.6%) SDLP (0.3%) UUP (0.4%) Plus all other parties that stood at least one candidate at 2015 UKPGE
<b>Limits for other registered campaigners</b>	£500,000	£700,000	-

<sup>6</sup> Schedule 14 PPERA

<sup>7</sup> The final data necessary to undertake the necessary vote share calculations should be available in July 2015

<sup>8</sup> Labour Party share of the vote is adjusted because votes cast for joint candidates are divided by the number of parties the candidate is standing for i.e. Labour / Co-op candidates (PPERA Sch14, para 1(4))