

European Union Referendum Bill 2015 House of Lords Second Reading briefing - 7 October 2015

Introduction

The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate political party and election finance and set standards for well-run elections and referendums. We put voters first by working to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

This briefing sets out the Electoral Commission's view on the European Union Referendum Bill, ahead of its Second Reading in the House of Lords on Tuesday 13 October. It covers the following:

- Our role in referendums held under the Political Parties, Elections and Referendums Act 2000 (PPERA)
- Principles for the conduct of referendums
- Timing of legislation and the referendum poll
- The referendum question
- Promotional activities by central and local government
- The regulatory framework

We are pleased that the Government has incorporated into this Bill many of our previous recommendations for changes to the legislative framework for referendums. We are also pleased that amendments have now been made by the House of Commons to address concerns that we identified when the Bill was introduced, in particular:

- **To ensure the referendum cannot be held on the same day as other scheduled polls.**
- **To revise the wording of the referendum question in line with our recommendations.**
- **To apply the existing PERA restrictions on the publication of promotional material by governments and other public bodies for the referendum.**
- **To improve the operation of regulatory controls, reduce burdens on campaigners and improve the information available to voters.**

We also anticipate that the franchise for the referendum will continue to be debated during the Bill's passage through Parliament. Decisions on the franchise for the referendum are important issues for Parliament to decide on, although the Commission will comment on the practical implications and workability of any amendments to the Bill in these areas where needed. In particular, the Commission's view is that any changes to the franchise for the referendum on the UK's membership of the European Union should be clear in sufficient time to enable all those who are eligible to be able to register and participate in the referendum.

Attached to this briefing is an annex that provides further background on:

- Definitions in the Bill
- Franchise for the referendum
- Designation and spending limits
- Broadcasting
- Public awareness
- Polling day, the count and recounts
- Reporting on the referendum

The Electoral Commission's role in referendums

The Electoral Commission has specific responsibilities and functions in relation to the delivery and regulation of referendums held under the Political Parties, Elections and Referendums Act 2000 (PPERA), which applies to any referendum Bill brought before the UK Parliament unless specifically stated otherwise.

Our responsibilities under PERA 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 PERA.
- 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.

The Commission will provide briefings to keep Parliamentarians informed of our key priorities throughout the passage of the Bill. All of our briefings on this Bill are available on our [website](#).

Principles for the conduct of referendums

Since the first referendum held under PERA in 2004, the Commission has published a number of reports recommending legislative changes intended to improve the administration of referendums and the regulation of referendum campaigners, drawing

on our practical experience.¹ Our most recent reports were published in December 2014 and May 2015 following our oversight of the Scottish Independence Referendum.² The lessons from this referendum and others have informed our key principles for referendums in the UK.³

Based on our experience of administering and regulating referendums in the UK since 2004, we have identified two key principles that we believe should inform the way referendums are run:

- Our focus is on voters and on putting their interests first, and that underpins everything we do.
- Referendums should be administered in a way that engenders confidence, is credible, transparent, and open to scrutiny.

Timing of legislation and the referendum poll

The Bill provides that a referendum on the UK's membership of the European Union must be held no later than 31 December 2017, on a date which will be specified in secondary legislation. This means that the proposed date of the referendum may not be known until after the Bill receives Royal Assent, and will not be confirmed until any regulations have been approved by Parliament.

Our report on the Scottish Independence Referendum also highlighted the benefits for voters, campaigners and electoral administrators of early confirmation of the legislative framework for the referendum, which was clear almost 10 months before the referendum date. **We continue to recommend that best practice for future referendums is that legislation should be clear (whether by Royal Assent to a Bill or the introduction of regulations to Parliament for approval) at least six months before it is required to be implemented or complied with** by campaigners, the Chief Counting Officer, Counting Officers or Electoral Registration Officers.

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 relating to other scheduled elections. We therefore welcomed amendments made to the Bill during consideration by the House of Commons to prevent the being held on the same day as other polls which will take place on 5 May 2016 and 4 May 2017.

The referendum question

In line with our statutory duty, the Commission undertook an assessment of the intelligibility of the question included in the European Union Referendum Bill when it

¹ We have reported on the 2004 North East regional assembly referendum, the March 2011 referendum on the law-making powers of the National Assembly for Wales, the May 2011 referendum on the voting system for UK Parliamentary elections, and the 2014 Scottish Independence Referendum.

² <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/referendums/scottish-referendum>

³ http://www.electoralcommission.org.uk/data/assets/pdf_file/0007/183742/Referendums-Principles-Letter-Parties-Panels-26-03-2015.pdf

was introduced in Parliament: “Should the United Kingdom remain a member of the European Union?”. The Welsh language question was: “A ddylai’r Deyrnas Unedig ddal i fod yn aelod o’r Undeb Ewropeaidd?”

We published our assessment of the question on 1 September 2015.⁴ While our research found that this question wording was generally easy to understand, we also heard from some campaigners and members of the public that it was not as balanced as it could be. We heard concerns through consultation and research with the public about the perception that the question encourages voters to consider one response more favourably than the other. We therefore recommended an alternative question wording:

“Should the United Kingdom remain a member of the European Union or leave the European Union?”

We recommended the response options:

“Remain a member of the European Union”
“Leave the European Union”.

In Welsh, the recommended question and response options were:

“A ddylai’r Deyrnas Unedig aros yn aelod o’r Undeb Ewropeaidd neu adael yr Undeb Ewropeaidd?”

“Aros yn aelod o’r Undeb Ewropeaidd”
“Gadael yr Undeb Ewropeaidd”

The Government quickly accepted our recommendations, and we are pleased that the amendments tabled by the Government were accepted at Report stage in the House of Commons to change the question wording to implement our recommendations.

Promotional activity by central and local government

When the Bill was introduced it dis-applied section 125 of PPERA for the purposes of the referendum on the United Kingdom’s membership of the European Union. This provision would have put in place restrictions during the 28 days immediately before polling day on the publication of promotional material about referendums by Ministers, government departments, local authorities and certain other bodies in receipt of public funds. We expressed concern about the risk that the use of significant amounts of public money for promotional activity could give an unfair advantage to one side of the argument.

We are pleased that the Bill was amended at Report stage in the House of Commons to ensure that section 125 of PPERA will apply at the referendum on the United Kingdom’s membership of the EU.

⁴ Available at http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/192075/EU-referendum-question-assessment-report.pdf

Following amendments made in the House of Commons, the Bill now also includes regulation-making powers for Ministers to modify section 125 for the purpose of the EU referendum. The modifications could exclude specified published material or oral communication from the 28 day pre-poll prohibition, for example, Government communication with the media about the referendum.

Regulations must be made under this power not less than four months before the date of the poll. The Bill also requires the Minister to consult the Electoral Commission prior to making regulations under this clause.

Our view remains that the scope of any regulations to exempt activity from being prohibited under section 125 should be limited only to managing any potential restrictions on the conduct of ‘day-to-day’ EU business that the Government is concerned could be affected by section 125. We welcome the commitments made by Ministers during Report stage debate on the Bill in the House of Commons that the UK Government does not intend to undertake campaign activities during the final 28 days of the referendum period, and in particular that the Government will not undertake any paid advertising or promotion within the 28 day period. We will publish any views on the draft regulations before Parliament debates them.

Regulatory framework

At referendums held under PPERA, the Commission provides advice and guidance to those that wish to campaign, registers campaigners, and appoints lead campaigners. We also monitor and secure compliance with the regulatory controls. To enable us to fulfil that role we have investigatory and sanctioning powers. The Commission will have all of these roles at the referendum.

It is important that the lessons learned from the experience of previous referendums in the UK can be applied to the campaigning rules for a referendum on the UK's membership of the EU. This will not only provide a robust and proportionate regulatory regime, but also improve trust and confidence in the poll.

We are therefore pleased that the majority of the Commission's recommendations intended to improve the regulatory controls, reduce burdens on campaigners and improve the information available to voters have been incorporated in the European Union Referendum Bill. In particular we welcome changes to:

- The registration requirements that enable the Commission to reject certain applications to register a campaign name which in the Commission's opinion is obscene or offensive or would be likely to amount to the commission of an offence. This addition will help to maintain voters' trust in the system.
- The rules regulating campaigners that work together on a coordinated campaign. These are significant additions to the PPERA controls to prevent campaigners setting up multiple campaign groups to circumvent spending controls whilst giving campaigners the freedom to work together to get a unified message to voters.

- The reporting requirements so that 'pre-poll reports' are required to be submitted to the Commission before the referendum detailing donations received and loans entered into that are over £7,500. This is an important addition to the PPERA controls that will ensure that voters have access to information before they cast their vote about the sources of significant amounts of funding given to the campaigners.

For further information, please contact **Mazida Khatun**, Public Affairs Officer on 020 7271 0583 or mkhatun@electoralcommission.org.uk.

Annex: European Union Referendum Bill 2015 background

This annex provides further information about how referendums work under the PPERA framework and relevant additional provisions that are included in the European Union Referendum Bill as printed prior to its Second Reading in the House of Lords on 13 October 2015.

Definitions

Chief Counting Officer

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

The CCO is responsible for the conduct of the referendum and for ensuring the accuracy of the overall result. The CCO may appoint a Deputy Chief Counting Officer.

The CCO may also appoint a Regional Counting Officer for each electoral region in Great Britain and may issue directions to local and regional Counting Officers relating to the discharge of their functions or preparations for the referendum.

Counting Officers

Counting Officers are responsible for administering the voting process in their local area. Their duties include running polling stations, managing the postal vote process and counting the votes cast in that area.

Regional Counting Officers

Regional Counting Officers will be responsible for coordinating the delivery of the referendum in their electoral region and will collate the local totals into a regional total.

Electoral Registration Officers

In Great Britain, Electoral Registration Officers (EROs) are responsible for the preparation and maintenance of the electoral register and list of absent voters within their area. Every local authority is required to appoint an ERO. In Northern Ireland, the Chief Electoral Officer is responsible for electoral registration and the list of absent voters.

Registered campaigners

Anyone intending on spending more than £10,000 must register with the Electoral Commission to become a 'registered campaigner' (the Bill refers to registered campaigners as 'permitted participants'). Once registered, they can spend more than £10,000, in addition to being granted access to the electoral registers for the purposes of campaigning and having the right for representatives to attend postal vote opening sessions, polling stations and the counting of the votes.

Designated lead campaigners

Registered campaigners can apply to the Electoral Commission to become the lead campaigner representing either side of the debate. They then act as the lead campaign group on behalf of those campaigning for that outcome.

Franchise

The Bill states that those who are entitled to vote in UK Parliamentary General Elections are also entitled to vote in this referendum. This includes British, Irish and Commonwealth citizens over the age of 18 who are resident in the UK, and UK nationals resident overseas for fewer than 15 years, provided they appear on the register of Parliamentary electors. In addition, the Bill provides that Peers and citizens of Gibraltar, who are able to vote at a European Parliamentary Election, can vote in this referendum.

Decisions on the franchise for the referendum are important issues for Parliament to decide on, although the Commission will comment on the practical implications and workability of any amendments to the Bill in these areas where needed. In particular, the Commission's view is that any changes to the franchise for the referendum on the UK's membership of the European Union should be clear in sufficient time to enable all those who are newly eligible to vote to take the steps they need to successfully register and participate in the referendum.

Following the September 2014 Scottish Independence Referendum we recommended that policy makers or legislators considering legislation to extend the franchise for future referendums or elections to include 16 and 17 year olds should ensure that any changes to legislation are clear six months prior to the beginning of the annual canvass of households (which currently takes place between July and December each year). This is to ensure that all those who need to take action have enough time to do so before the poll: 15 to 17 year olds who would be newly entitled to vote would need to successfully apply to register; electoral administrators would need to ensure their systems are updated to process applications; campaigners and the Electoral Commission would need to communicate with 15 to 17 year olds and encourage them to register to vote.

The regulatory framework

Registration of campaigners

Individuals and organisations that wish to spend more than £10,000 promoting an outcome at the referendum must register with the Commission stating the outcome they intend to campaign for. This requirement to register as a referendum campaigner also applies to political parties.

Only certain categories of individuals and organisations will be allowed to register as a referendum campaigner⁵. Most of these are set out in the Political Parties, Elections and Referendums Act 2000 (PPERA) – in the main, to be able to register as a campaigner

⁵ Permissible categories of 'permitted participants' under S.105 PERA - individuals registered in a UK electoral register, individuals resident in the UK, companies registered under the Companies Act 2006 incorporated within the UK or another member State, which carry on business in the UK, registered political parties, trade unions, building societies, limited liability partnerships which carry on business in the UK, friendly societies, any unincorporated association of two or more people which does not fall within any of the other categories but which carries on business or other activities wholly or mainly in the UK and whose main office is here.

you must be connected with the UK. The European Union Referendum Bill proposes to extend the categories of individuals and organisations that can register to campaign compared to previous PPERA referendums⁶.

There are no regulatory controls on those that wish to spend less than £10,000.

Once registered, campaigners (known as permitted participants in the legislation) are entitled to:

- a spending limit above £10,000;
- access to the electoral register to help them campaign; and
- the right to appoint representatives to attend postal vote opening sessions, polling stations and the counting of the votes.

Designation of lead campaigners

Registered campaigners are able to apply to the Commission to be appointed as the lead campaigner for the outcome they support.

PPERA provides that the Commission must designate lead campaigners that represent those campaigning for the outcome they support. If there is more than one suitable applicant for an outcome, the Commission must designate the one that represents the campaigners to the greatest extent⁷.

In addition to the benefits of being a registered campaigner, lead campaigners are also entitled under the European Union Referendum Bill 2015 to:

- a maximum spending limit of £7m;
- campaign broadcasts;
- free postage for a mailing (to each voter or household);
- access to public meeting rooms; and
- a publicly funded grant of up to £600,000 each (the amount and conditions are set by the Commission).

Campaigning rules and spending limits

Registered campaigners are subject to controls on the sources of their funding and the amount they can spend campaigning. They are also required to report where their funding has come from and the amount they have spent campaigning.

Referendum period

The majority of the regulatory controls apply during the 'referendum period' in the run up to polling day. PPERA provides for a 10 week referendum period before polling day.

⁶ Additional permissible categories of 'permitted participants' under Schedule 1, paragraph 2 EU Referendum Bill - individuals resident in Gibraltar, any individual who is a Gibraltar elector, bodies and organisations in Gibraltar, bodies incorporated by Royal Charter, charitable incorporated organisations, Scottish charitable incorporated organisations, partnerships constituted under the law of Scotland which carry on business in the UK,.

⁷ s.108 PPERA - Designation of organisations to whom assistance is available

The European Union Referendum Bill currently provides for the referendum period to be set by way of Regulations.

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 Election⁸.

For this referendum, the Government has increased the limits set out in PPERA to take account of inflation⁹. The new limits are also set out in the table below.

	Spending limits in the Bill	2015 UK general election vote share
Designated lead campaigners	£7,000,000	-
>30% share of the vote	£7,000,000	Conservative (36.9%)
>20 - 30% share of the vote	£5,500,000	Labour (29.03% ¹⁰)
>10 - 20% share of the vote	£4,000,000	UKIP (12.6%)
> 5 - 10% share of the vote	£3,000,000	Liberal Democrat (7.9%)
< 5% share of the vote	£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
Other registered campaigners	£700,000	-

Sources of funding

Referendum campaigners will only be able to accept donations over £500 from certain 'permissible' sources. Most of these permissible sources are set out in PPERA – as with the rules around eligibility to register as a campaigner. In the main, to be able to donate you must be connected with the UK.¹¹

⁸ Schedule 14 PPERA

⁹ Schedule 1, paragraph 21 EU Referendum Bill

¹⁰ 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))

¹¹ Permissible categories of 'donor' to a referendum campaigner under Schedule 15, paragraph 6 and Part 4 s54(2) PPERA - individuals registered in an electoral register, companies registered under the Companies Act 2006 incorporated within the UK or another member State, which carry on business in the UK, registered political parties, trade unions, building societies, limited liability partnerships which carry on business in the UK, friendly societies, any unincorporated association of two or more people which does

The European Union Referendum Bill extends the categories of organisations that are permitted to donate to referendum campaigners compared to previous PPERA referendums.¹²

Political parties are only regarded as 'permissible' donors when donating to designated lead campaigners. This means that other registered campaigners cannot accept donations from political parties¹³. Political parties that are also registered referendum campaigners will be able to receive donations from the full range of permissible donors under the Bill.¹⁴

Campaigners that work together

The European Union Referendum Bill contains rules regulating campaigners that work together on a coordinated campaign¹⁵. This is a significant addition to the PPERA controls to prevent campaigners setting up multiple campaign groups to circumvent spending controls whilst giving campaigners the freedom to work together to get a unified message to voters.

The rules are based on those that applied at the Scottish Independence Referendum which, based on the Commission's practical experience of regulating the rules, broadly worked well.

Generally, the working together rules provide that if campaigners work together, all the spending they incur counts against the limit of each of the campaigners involved¹⁶. There is an exception to this where a campaigner works together with one of the lead campaigners. This allows the lead campaigner to engage with other campaigners for the same outcome to put forward a unified message for voters as the costs will only count towards the lead campaigner's spending limit.

Reporting requirements

The European Union Referendum Bill provides for registered campaigners to submit a number of 'pre-poll reports' detailing the donations they receive and loans they enter into that are over £7,500¹⁷. These rules are based on those that applied at the Scottish Independence Referendum. This is an important addition to the PPERA controls that will ensure that voters have access to information about the sources of significant

not fall within any of the other categories but which carries on business or other activities wholly or mainly in the UK and whose main office is here.

¹² Permissible categories of 'donor' to a referendum campaigner under Schedule 1, paragraphs 22 and 24 EU Referendum Bill - a Gibraltar elector, bodies and organisations in Gibraltar, bodies incorporated by Royal Charter, charitable incorporated organisations, Scottish charitable incorporated organisations, partnerships constituted under the law of Scotland which carry on business in the UK.

¹³ Schedule 15, paragraph 1(6) PPERA

¹⁴ Schedule 1, paragraph 22 EU Referendum Bill - Political parties that are registered referendum campaigners will be permitted to receive donations from any registered referendum campaigner, including the new categories which are not permitted to donate under PPERA.

¹⁵ Schedule 1, paragraph 14 EU Referendum Bill

¹⁶ We consider that 'working together' involves spending money as a result of a plan or arrangement between one or more campaigners. Examples of this include: joint advertising campaigns, leaflets or events or coordinating activity with another campaigner.

¹⁷ Schedule 1, EU Referendum Bill

amounts of funding given to the campaigners before they cast their vote. The Bill provides for the reporting periods and submission dates to be set in Regulations.

After the referendum, registered campaigners will be required to submit a campaign spending return which will include details of the spending they incurred campaigning at the referendum and all donations and loans they accepted over £7,500 (or add up to over that amount from the same source).

Although campaigners that are registered political parties will be required to submit details of the spending they incurred campaigning at the referendum, they will not be required to separately report donations or loans towards that spending during or after the referendum (unless they are minor parties). Information on the donations or loans made to political parties will be available in their usual quarterly reports.

Broadcasting

PPERA requires that certain broadcasters, including the BBC, ITV, Channel 4, S4C, Channel 5 and certain independent national radio services, carry referendum campaign broadcasts on behalf of the lead designated campaign organisations in a referendum.

The broadcasters determine the length and frequency of referendum campaign broadcasts, although they are required to have regard to the Commission's views in doing so. Whilst each broadcaster is responsible for deciding its approach, the Broadcasters Liaison Group meets to help inform consistency. You can find out more about their work [here](#). For the 5 May 2011 referendum on the Parliamentary Voting System, each designated referendum organisation was allocated two broadcasts of around either three to four minutes in length.

Public awareness

As currently set out in the European Union Referendum Bill, the Electoral Commission must take whatever steps they think appropriate to promote public awareness about the referendum and how to vote in it. We would, therefore, expect to produce public information for voters that explains the options for casting your vote and what to expect on the ballot paper. In addition, we are likely to run a UK-wide advertising campaign that highlights basic information about the referendum such as the date, and how to register to vote. This would likely take the form of TV, radio and digital advertising, and would serve to support the distribution of the above booklet.

Our question assessment research showed that there is clearly an appetite from members of the public for detailed and clear information about the implications of any decision to either remain a member or leave the European Union for a range of issues that were important to them or their local area, as well as key issues that they had heard about in the media. It is likely that much of the information that voters would like will not be simply factual in nature, but will sit at the heart of the campaign arguments put forward by those on both sides of the referendum debate.

We recommended in our [question assessment report](#) that all campaigners' websites include a section with their answers to these questions, highlighting any wider sources that they have relied upon in formulating their response. In addition, if two lead campaign groups, one for each referendum outcome, are designated by the Commission, we will in due course provide the links to where any information they provide is hosted.

Polling day, the count and recounts

From the perspective of voters, polling day at the referendum will be similar to polling day at any other electoral event.

The Chair of the Commission, or a person the Chair appoints, will be the CCO for the referendum and responsible for certifying the outcome of the referendum. The CCO will appoint an RCO for each electoral region who will oversee the delivery of the poll by local COs, who in turn are responsible for polling stations, managing postal voting and counting the number of votes cast.

As the referendum is one UK-wide contest producing a single result, it is even more important than ever that voters receive the same high-quality service wherever in the UK they are. The CCO will build on the experiences of the 2011 Wales and UK-wide referendums and the 2014 Scottish Independence Referendum in developing an approach to co-ordinate the delivery of the poll across the UK.

The CCO and RCOs have a power of direction over COs relating to the discharge of their functions and preparations for the referendum. For certain aspects of the process where consistency is particularly important, the CCO may seek to direct COs, and in other areas guidance will be provided to support COs with preparing for and delivering a well-run referendum.

The count and recounts

A referendum has one single result, with local totals tallied to provide the overall outcome. The CCO is responsible for collating these totals and calculating and certifying the result of the referendum.

The CCO will announce and then publish the referendum result and local totals, and is currently considering options for how this will be managed in practice.

It is important to note that, as has been the case for previous referendums in the UK, the referendum rules would not provide for a national recount to be carried out in any circumstances. Any request for a recount of votes will be at local count level. The referendum result is only subject to challenge by way of judicial review.

Reporting on the administration of the referendum and referendum campaign spending

The Commission is required to publish a report on the administration of any referendum held under PPERA. We use public opinion research to understand views from voters, and data and views collected from Counting Officers to assess the administration of the poll. We also collect evidence and views from campaigners. We would also publish an analysis of campaign spending at the referendum, after statutory spending returns have been submitted by campaigners.

We use our reports to make an assessment of whether the referendum was well run, and to identify recommendations for improvements for future referendums. Our reports on previous referendums are published on our website at <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/referendums>.