



Referendum on the voting system for UK parliamentary elections

Report on the May 2011 referendum

October 2011

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Foreword

2011 has been a big year for electoral events with two referendums and important elections. On 3 March people in Wales voted in the referendum on the powers of the National Assembly for Wales. On 5 May voters across the UK went to the polls voting in the referendum on the voting system used to elect MPs to the House of Commons, the first UK-wide referendum since 1975. The UK referendum was held alongside scheduled elections to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, and local government elections in England and Northern Ireland.

Referendums are the only polls where legislation provides for accountability, co-ordination and delivery at a UK level. Under the framework of the Political Parties, Elections and Referendums Act 2000 the Commission had a number of specific responsibilities and functions in relation to the delivery and regulation of the referendum that we do not have at elections. We also promoted public awareness of the referendum, its subject matter and how to vote in it. As Chair of the Commission, I was Chief Counting Officer for both referendums, with a power to direct Counting Officers about the way they performed their functions. This meant that I was responsible for certifying and declaring the referendum results and, ultimately, accountable for the way the polls were conducted.

I am generally very pleased with the way in which the referendum was conducted and especially pleased that voters were overwhelmingly positive about their experience of voting. My aim was always to make sure their interests were at the centre of our planning and we set some good processes in place to ensure that no voter was denied their right to vote. None of this could have been achieved without the hard work of the Regional Counting Officers, local Counting Officers and their staff in ensuring that the referendum went smoothly, and I would like to extend my thanks to them for the vital role they played.

Our work on this referendum did not end in the early hours of Saturday 7 May. Since then we have been collecting information from all those who participated, from voters and campaigners to local Counting Officers and their staff, in order to compile this statutory report on the referendum. This is a factual account and covers all of the major themes for the referendum: public information, registration and voting, the campaigns and the delivery of the referendum itself. It contains a number of recommendations for change. I would like to thank campaigners and staff in local authorities for giving us feedback on their experience of the referendum. This feedback has been particularly helpful in enabling the Commission to change the way we do things, as there are lessons to learn for us too.

There is no doubt that uncertainty, up until three months before polling day, about whether the referendum would take place and when, caused difficulties for those planning to campaign in the referendum, and particular challenges for

those who were delivering the referendum, in some areas alongside scheduled elections. This significantly increased risks to the successful delivery of the poll and there needs to be a better approach to referendum and election legislation that removes this uncertainty.

We would like to see a set of generic rules setting out how a referendum, and indeed each major election, works. Such a set of rules would avoid the eleventh-hour changes to a process that should be open, accountable and clear from before the referendum campaign begins, and make planning easier.

Our experience from this year's polls shows that elections can also be run more efficiently and provide a better experience for the public. For the March and May polls, consistently good service for voters was delivered both through the hard work of local authority staff, and through oversight from the Commission, supported by Regional Counting Officers.

For the first time, I was able to issue a set of instructions and directions to all Counting Officers which they were required to follow at each stage in the administration of the referendum. Commission staff were able to monitor performance against these as the referendum period progressed. This real time monitoring meant that we could be confident that key tasks had been carried out on time. Regional Counting Officers, who were provided with this information, intervened quickly when circumstances required and gave additional guidance, support and advice where it was needed.

An area where the Commission has undertaken significant research is through our testing of the voter forms and notices used at elections and referendums. We were able to put this knowledge to work this year because as Chief Counting Officer I had the ability to specify the format that such materials should take. Evidence from our public opinion research suggests that voters found these revised materials more useful than those in use at the 2010 UK Parliamentary general election. Without specific legislation we cannot guarantee this consistent and user-friendly approach in the future.

As well as reflecting on our experience this year, the Commission has been thinking about how to put what we have learnt into practice for next year's local elections. Both in Scotland and in London in 2012, the Commission will be supporting two individuals who are accountable for delivery: the Convener of the statutory Electoral Management Board in Scotland, and the Greater London Returning Officer in London. Both roles have a power of direction which can be used to intervene and improve performance if necessary. The UK Parliament has also decided that the elections for Police and Crime Commissioners, to be held in November 2012, will be run by Police Authority Returning Officers who are similarly accountable for delivery and able to ensure consistent performance from the local authorities which make up these new, larger, constituencies. We hope that our real time monitoring of electoral administration will help them all to ensure voters have the best experience whenever they choose to vote in 2012.

But looking ahead to the UK Parliamentary general election in 2015 we face a very different situation. Accountability is fragmented and no-one has the power to intervene to ensure consistent standards are met. It is hard to see how this can continue, particularly if the trend for Westminster constituency boundaries to embrace a number of different local authorities further increases. After the last UK general election in May 2010, our public opinion research showed us the impact that television coverage of people being denied their right to vote after queues at polling stations had on confidence in our democracy.

Things were very different this year, when in the days following the polls people were talking about the results, not how the polls were managed. That's the way it should be but we can't take this for granted. The only way to be sure elections are delivered as well as they can be in the future is to address the underlying framework, including consideration of the powers that the Commission might need in the future, to achieve an appropriate level of consistency and performance for all types of elections in the UK. This may not grab the headlines, but it is the most important lesson from the polls of 2011, and we will continue to champion it as an important issue for debate – and action.

Jenny Watson

Chair of the Electoral Commission and Chief Counting Officer

Summary

About this report and our role

On 5 May 2011, the people of the UK voted in a referendum on the voting system used to elect MPs to the House of Commons. The question asked on the ballot paper was:

At present, the UK uses the 'first past the post' system to elect MPs to the House of Commons. Should the 'alternative vote' system be used instead?

The referendum was held on the same day as scheduled elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly, and local government elections across Northern Ireland and in 279 local authorities in England.

This report focuses on the administration of the referendum and the impact of holding it on the same day as other polls. It reflects the experience of voters, based on public opinion research and electoral data provided by Counting Officers. It also reflects feedback and views about the administration of the referendum from campaigners, those responsible for delivering the referendum poll and other participants.

We have published separate reports on the elections that also took place on 5 May 2011 in Scotland, Wales, and Northern Ireland. We will publish a further report on campaign spending at the referendum in early 2012 and detailed reports on the cost of the referendum later in 2012.

The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate party and election finance and set standards for elections and electoral registration. We are also responsible for reviewing and reporting on the administration of referendums and elections.

The Commission has specific responsibilities and functions in relation to the delivery and regulation of referendums which are held under the Political Parties, Elections and Referendums Act 2000 (PPERA). The Chair of the Electoral Commission, Jenny Watson, was Chief Counting Officer (CCO) for the May 2011 referendum.

Key facts and figures

At the May 2011 referendum:

- a total of **45,684,501** people were registered to vote
- **19,285,751** electors cast a vote – a turnout of **42.2%**

- **13,013,123** people voted No – **67.9%** of all valid votes
- **6,152,607** people voted Yes – **32.1%** of all valid votes
- **440** Counting Officers set up and staffed **41,800** polling stations
- nearly **7.2 million** postal votes were issued to electors, of which **5.2 million** (72%) were returned
- there were **12** registered campaign groups, and two official lead campaign groups were designated by the Electoral Commission: **Yes to Fairer Votes** and **NO to AV**
- the Electoral Commission distributed **27 million** information booklets to households across the UK, reaching **96.1%** of all households

Key issues and lessons learned from the referendum

The referendum legislation

The legal framework for referendums held under legislation enacted by the UK Parliament is set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). Individual referendums also require a specific Act to be passed by Parliament, and secondary legislation is also needed to provide for the detailed rules for the administration and funding of the referendum.

The Parliamentary Voting System and Constituencies (PVSC) Bill was introduced to the UK Parliament on 22 July 2010. The Bill provided for a referendum on the voting system for UK Parliamentary elections, and also set out new rules for the redistribution of parliamentary constituencies and the conduct of boundary reviews. It received Royal Assent as The Parliamentary Voting System and Constituencies Act on 16 February 2011 – less than three months before polling day.

Feedback from voters and campaigners has confirmed that, overall, the May 2011 polls were well run. But such late confirmation that the referendum would actually take place on 5 May caused difficulties for those planning to campaign in the referendum and for those who were required to deliver the May 2011 polls, and increased risks to the successful delivery of the poll.

When considering proposals for any future referendum held under PERA, the UK Government must manage the development and introduction of enabling legislation to ensure that Parliament has sufficient time to properly scrutinise proposals, while also acknowledging the importance of allowing sufficient time for campaigners, Counting Officers and the Electoral Commission to prepare for their respective roles.

We have made recommendations aimed at not only improving the legislative framework for future referendums but also ensuring that it is in place in good time (Recommendations 1–4).

Information for voters about the referendum

The Electoral Commission was required to consider the intelligibility of the referendum question which was included in the PVSC Bill. We tested the proposed question using research with voters to determine whether people understood the options. Based on the findings from our research, we suggested some changes to the proposed question, which were accepted by the UK Government. The question included in the Act reflected the results of our assessment.

The Commission was also required to promote awareness of both the scheduled elections and the referendum on the Parliamentary voting system. We undertook a public information campaign to increase people's awareness of the May 2011 polls, including sending an information booklet to all households in the UK. We also used television, radio and online advertising to inform people about the referendum.

We evaluated levels of awareness about the referendum and our campaign. Of those surveyed after the referendum, more than two thirds (68%) recognised at least one element of our public information campaign. The proportion of people who said that they were aware of the referendum rose from 9% prior to our campaign to 53% after polling day.

During Parliamentary scrutiny of the PVSC Bill, concerns were expressed that the referendum would dominate media coverage at the expense of the scheduled elections held on the same day. Evidence from media content analysis, however, suggests that there was a reasonable balance between coverage of the referendum and the scheduled elections, with each attracting varying levels of coverage in the UK-wide or other media.

Evidence from public opinion research suggests that most people knew enough about these polls and had adequate information to make an informed decision on how to vote in them. Just over seven in ten people surveyed (73%) said they had enough information to make an informed decision on how to vote in the referendum, and just over two-thirds (65%) said that they knew enough on what the referendum was about.

We have made recommendations to ensure intelligible questions for future referendums and the appropriate use of public money to inform voters about a referendum (Recommendations 5–6).

The experience of voters

Voters across the UK continue to have very high levels of satisfaction with the voting process. Both polling station and postal voters remain positive about their experience. Full details of our research findings are contained in the report.

A key priority for the Electoral Commission is that voters are able to vote easily and confidently, knowing that their vote will be counted in the way they intended. The Chief Counting Officer directed all Counting Officers to use specific templates when designing and printing referendum ballot papers and key voter-facing forms and notices, based on principles set out by the Commission in our *Making Your Mark* guidance on the design of materials for voters.

Public opinion research found that nearly all voters (95%) said that the referendum ballot paper was easy to complete. Similarly, nearly all (96%) of those people who voted in both the referendum and the scheduled elections on 5 May 2011 said that it was easy to complete more than one ballot paper on the same day.

More than 300,000 returned postal ballot packs (representing almost 6% of the total returned by voters) were not able to be included in the count for the referendum because the postal voting statement was missing or incorrectly completed. Our report contains more information and data about invalid postal votes.

We have made recommendations to improve participation and confidence for voters at future elections and referendums (Recommendations 7–9).

Campaigning at the referendum

The Commission has a number of statutory roles relating to campaigners at elections and those also applied at the referendum. We provided advice and guidance to campaigners and were responsible for registering them. We also publish both the full statutory returns and expenditure data extracted from them, undertake compliance checks on invoices, expenditure levels, and the permissibility of donations, and take enforcement action in cases where the rules are broken.

We also had the additional referendum-specific statutory roles of designating lead campaign groups and setting the level of the publicly funded grant available to them.

We report on the experience of those who campaigned at the 2011 UK referendum, explain how we carried out our statutory roles, and comment on the implications for the legal framework that regulated the campaigns. In general, the rules relating to campaigners allowed those campaigning on both sides of the referendum debate to get their messages to voters.

Drawing on our experience of the 5 May 2011 referendum and the referendum held in Wales on 3 March, and feedback from campaigners, we make a number of recommendations to improve the regulation of campaigning at future referendums. These include recommendations to increase the timetable between the campaigning rules being finalised and polling day, address

potential problems in designating lead campaign groups, and improve the transparency of the funding of campaigners. (Recommendations 10-20)

Delivering the referendum

At the May 2011 referendum, as with any referendum held under PPERA, the Chief Counting Officer was responsible for certifying the overall result of the referendum, but was not directly responsible for the delivery of the poll locally. The conduct of the referendum poll in each of the 440 voting areas was the responsibility of individual Counting Officers. In those areas where scheduled elections also took place on 5 May 2011, the Counting Officer was also the Returning Officer for the elections.

The CCO appointed 11 Regional Counting Officers (RCOs) to provide an intermediate level of management to address the challenge of overseeing the delivery of a UK-wide referendum and in particular to ensure consistency in the experience and service provided to voters. The CCO issued directions to Counting Officers about the way they should deliver specific aspects of the referendum poll, and worked with RCOs to monitor the administration of the poll. The CCO and RCOs used detailed monitoring data to identify areas where insufficient progress had been made towards planning and delivery of the polls, and to intervene to provide appropriate support to Counting Officers.

Some Counting Officers and electoral administrators have expressed dissatisfaction with the way in which the Chief Counting Officer communicated her directions and supporting instructions and materials, arguing that they were too detailed and, in some cases, issued late in the planning and delivery process. The Chief Counting Officer for any future referendum should aim to ensure that directions are communicated to Counting Officers no later than six months before the proposed polling day.

Overall, the management structure put in place by the Chief Counting Officer for the referendum worked well, and ensured an appropriate level of coordination and accountability for a UK-wide electoral event. It enabled effective management by ensuring that the referendum was planned and delivered to a consistent standard, allowing appropriate local management of delivery while also ensuring that good practice in key areas was followed and monitored.

As the management structure for this referendum was specified in the PVSC Act rather than PPERA, however, it would not automatically be in place for any future referendum.

We have made recommendations about the delivery of future referendums including confirming the management structure used for the May 2011 referendum in legislation for all future referendums, improving the detailed rules for the administration of future referendum polls, and ensuring that directions and supporting materials are available to COs in sufficient time to plan and deliver future referendum polls (Recommendations 21–23).

Following the experience of the May 2011 polls, we also believe it is time to think carefully about whether it is still appropriate for important polls, including those such as the election of MPs to the House of Commons, to continue to be administered without any coordination or accountability for delivery above the very local level, and with the risk of significant variations in practice. We believe that the level of consistency provided for voters this year is both desirable and achievable at future elections. We have recommended that the UK Government should review existing mechanisms for providing assurance about the quality of electoral administration, including consideration of powers which the Electoral Commission might need in future, to achieve an appropriate level of consistency and performance for all types of elections in the UK (Recommendation 24).

The cost of the referendum

Our report provides initial details of the costs involved in holding the May 2011 referendum. Additional audited information about the costs incurred by the Electoral Commission in 2011–12 will be set out in the Commission's annual accounts that we will publish in summer 2012. A set of referendum accounts, including costs incurred by Counting Officers and Regional Counting Officers, will be published in autumn 2012. Also in autumn 2012, we will publish a report on what we have learnt from administering the fees and charges for a national poll and this report will include consolidated financial information covering costs incurred directly by the Electoral Commission and those incurred by Counting Officers and Regional Counting Officers across the financial years 2010–11 and 2011–12.

Costs incurred directly by the Electoral Commission are met from the UK Consolidated Fund, after having been scrutinised and agreed by the Speaker's Committee, a statutory Committee of the UK Parliament. The overall amount spent by the Commission is currently calculated as £16.3m, which includes statutory grants to designated organisations and the cost of mailings sent by the designated organisations to electors in advance of the referendum.

Claims for costs incurred by Counting Officers and Regional Counting Officers in delivering the referendum poll will be processed by the Commission. The total amount set aside to cover the expenses and fees for Counting Officers and Regional Counting Officers is £79.8m. The actual costs of administering the referendum poll are not yet known, as Counting Officers and Regional Counting Officers have until 5 January 2012 to submit their accounts.

The Commission had overall responsibility for administering the fees and charges process for the referendum, which enabled us to scrutinise the performance of Counting Officers and link it to their receipt of any fees for their services.

We have made recommendations about giving the Commission full responsibility for fees and charges for future referendums and relevant elections (Recommendation 25).

Summary of recommendations for future referendums

We have provided below a summary of each of the recommendations made in our report. The full recommendations can be found in the main body of the report on the page references provided.

Recommendations for future referendum legislation

Recommendation 1 – Timing of legislation for future referendums (page 35)

In planning for any future referendum, the UK Government should aim to ensure that there is confirmation that a referendum will take place (either by Royal Assent to a referendum Act or the making of an Order providing for a referendum) at least 28 weeks in advance of the proposed polling day.

Recommendation 2 – Amending the legal framework for future referendums (page 36)

The UK Government should amend the framework for future referendums held under Part 7 of PPERA to reflect the lessons learned from the delivery of the March and May 2011 referendums.

Recommendation 3 – Providing greater certainty about the detailed rules for the conduct of future referendums (page 38)

The UK Government should use the powers provided to the Secretary of State in section 129 of PPERA to make a generic order providing for the conduct of any future referendum.

Recommendation 4 – Considering the implications of holding future referendums on the same day as scheduled elections (page 38)

The UK Government and Parliament should continue to consider proposals in future to hold a referendum on the same day as another set of polls by on a case-by-case basis. If it introduces proposals to Parliament in future to hold a referendum on the same day as another set of polls, the UK Government should also publish at the same time its assessment of the implications of holding the polls on the same day.

Recommendations for voter information at future referendums

Recommendation 5 – Ensuring intelligible questions for future referendums (page 56)

If any significant changes are made to the proposed referendum question during the passage of any future referendum Bill, the revised question should be re-considered by the Commission before Parliament concludes its consideration of the legislation.

Recommendation 6 – Ensuring appropriate use of public money in informing voters about the referendum (page 57)

The prohibition on publication of promotional material about the referendum by publicly-funded bodies or individuals should commence at the same time as the beginning of the referendum period for future referendums, but activities carried out by Counting Officers, under any statutory duty to promote participation and in accordance with the CCOs directions, should be exempt from the prohibition on the publication of referendum material by publicly-funded bodies or individuals.

Recommendations for improving the experience for voters at future referendums and elections

Recommendation 7 – Ensuring accessible voter materials for future referendums and elections (page 83)

The UK and Scottish governments should ensure that the modifications specified by the Chief Counting Officer to key voter-facing forms and notices for the May 2011 referendum are reflected in legislation for future elections and referendums. The Government should also provide powers for the Electoral Commission or other relevant statutory officer holders to specify modifications to the format, layout and wording of key voter-facing forms to ensure usability and intelligibility.

Recommendation 8 – Ensuring access and confidence in the voting process at future referendums and elections (page 84)

The UK Government should introduce legislation to make clear that eligible electors who are entitled to vote at a polling station and who are in the queue to enter the polling station at the close of poll will be allowed to vote, and that it should be the responsibility of (Acting) Returning Officers rather than local authorities to designate polling places for polling districts at UK Parliamentary elections, and that any public building may be available for use as a polling place. We also want the UK Government to bring forward proposals for a comprehensive electoral modernisation strategy.

Recommendation 9 – Ensuring access and confidence in the postal voting process at future referendums and elections (page 85)

The UK Government should introduce legislation to enable Electoral Registration Officers to request corrected or refreshed personal identifiers from absent voters at any time in addition to the current required five-yearly refresh, and require Returning Officers to provide information about electors whose postal votes were rejected due to a mismatch of personal identifiers so that Electoral Registration Officers can request corrected or refreshed identifiers or, where necessary, further investigate possible electoral malpractice.

Recommendations for campaigning at future referendums

Recommendation 10 – Timing of legislation (page 106)

We recommend that the Government ensure that there is a period of at least 12 weeks between the campaign rules being finalised and the start of the regulated referendum period. This period would allow the Commission to complete, publish and distribute guidance and give campaigners an opportunity to become familiar with the guidance before the rules come into effect.

Recommendation 11 – The referendum period (page 107)

We recommend that at future PPERA referendums the statutory minimum referendum period should be at least 16 weeks, consisting of the current 28 day designation application period, the current 14 day designation decision period, and a minimum of 70 days between the final date for the designation decision and polling day. This would give designated lead campaign groups more time to plan and use the benefits that PPERA makes available to them in order to put campaign arguments to voters.

Recommendation 12 – Designation of lead campaign groups (page 107)

We recommend that:

- When considering the case for future referendums, legislators should take into account whether the referendum is likely to stimulate a level of debate which would generate willing and able applicants for designation. However, this step would not in itself ensure that such campaigners will seek designation at a particular referendum in future.
- The Government should take steps to reduce the potential advantages to a prospective lead campaigner of deciding not to apply for designation.

Recommendation 13 – Grants to designated lead campaign groups (page 107)

We recommend that the Commission's ability to pay grants to designated lead campaign groups in instalments be confirmed for future referendums.

Recommendation 14 – Expenditure limits for registered campaigners that are subsequently designated as a lead campaign group (page 107)

We suggest that the Government consider whether the legislation on spending limits for registered campaigners that are designated as lead campaign groups should be clarified for the avoidance of any doubt at future PPERA referendums.

Recommendation 15 – Expenses incurred by persons acting in concert (page 107)

We recommend that the Government consider amending the 'acting in concert' provisions to remove or relax them in cases where there are no designated lead campaign groups.

Recommendation 16 – Expenses exclusion for the media (page 108)

Subject to any further consideration by Parliament of how the regulation of political campaigning should apply to the media in general, we recommend that

the clarification that press comment is not subject to spending controls should be incorporated into PPERA for future referendums.

Recommendation 17 – Regulation of loans (page 108)

The Government has powers to introduce loan controls for referendum campaigners, and for candidates and non-party campaigners at elections, via secondary legislation. We understand that that Government intend to do this and we recommend that the relevant secondary legislation be brought forward as soon as practicable.

Recommendation 18 – Reporting donations (page 108)

We recommend that the Government consider the options for an element of pre-poll reporting of donations, and introduce a suitable provision for future referendums. Once the loan controls for referendum campaigners are in place, as recommended above, we recommend that such a pre-poll reporting requirement should also apply to loans.

Recommendation 19 – Restriction on publication of material by publicly funded organisations (page 108)

We understand that the Government may wish to revisit the overall scope of section 125 to clarify it. We recommend that this review should consider what, if any, sanctions should apply to breaches of this provision.

Recommendation 20 – Regulation of campaign arguments (page 108)

We invite the Government and Parliament to confirm that a role in policing the truthfulness of referendum campaign arguments would be inappropriate for the Commission.

Recommendations for the delivery of future referendums and elections

Recommendation 21 – Ensuring an effective management structure for future referendums (page 136)

The UK Government should establish a standard management structure for any future referendum held under the PPERA framework, reflecting the structure in place for the May 2011 referendum.

Recommendation 22 – Supporting the effective delivery of future referendum polls by Counting Officers (page 137)

The Chief Counting Officer for any future referendum should communicate to Counting Officers and referendum campaigners details of the proposed approach to overseeing the delivery of the referendum no later than six months before polling day, including details of: the key directions which COs will be required to follow; the policy and process to consider request by COs for exceptions to the CCO's directions; and the process for monitoring the performance and delivery of key referendum activities by COs during the months leading up to polling day. The Chief Counting Officer should also aim to ensure that detailed instructions and any supporting materials are issued to Counting Officers no later than four months before polling day.

Recommendation 23 – Ensuring the efficient conduct of future referendum polls (page 137)

The UK Government should ensure that the conduct order which should be in place for any future referendum allows observers who are properly accredited by the Electoral Commission to attend proceedings carried out by Regional Counting Officers. For a referendum where the Chief Counting Officer has appointed one or more Regional Counting Officers have been appointed, the rules should not require the certification or announcement of count totals at a regional level.

Recommendation 24 – Improving the management and delivery of future elections (page 138)

The UK Government should ensure that its review of the funding arrangements for elections to the UK Parliament and the European Parliament also considers the wider question of how to achieve an appropriate level of consistency and performance for all types of elections in the UK, building on the experience and lessons learned from the 2011 polls.

Recommendations for the funding of future elections and referendums

Recommendation 25 – Improving the process for funding elections and future referendums (page 144)

The UK Government should reflect on the experience of implementing this framework for the 2009 and 2010 elections and the May 2011 referendum to consider how the funding of future elections and referendums might be improved. For future referendums held under the PPERA framework, the UK Government should amend PPERA to give responsibility to the Electoral Commission for negotiation with Her Majesty's Treasury on fees and charges for Counting Officers, as well as for receiving and administering claims from Counting Officers relating to the referendum.

1 Introduction

About our report

1.1 On 5 May 2011, the people of the UK voted in a referendum on the voting system used to elect MPs to the House of Commons.

1.2 The referendum was held alongside scheduled elections to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, and local government elections across Northern Ireland and in 279 local authorities in England. There was also a UK parliamentary by-election (in Leicester South), five mayoral elections and one referendum on having an elected Mayor.

1.3 This is a report about the administration of the referendum and its combination with other polls. It reviews the experience of voters, the referendum campaign and the delivery of the referendum. We will publish a further report on campaign spending in early 2012, after the registered campaigners that spent more than £250,000 have submitted their donation and spending returns in November 2011.

1.4 Separate reports have been published on the elections that took place in Scotland, Wales, and Northern Ireland, these can be found on our website.

1.5 The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate party and election finance and set standards for elections and electoral registration. We are responsible for publishing reports on the administration of referendums and elections.

1.6 The Commission has specific responsibilities and functions in relation to the delivery and regulation of referendums held under the framework of the Political Parties, Elections and Referendums Act 2000 (PPERA). The referendum in the UK was conducted under the PERPA framework, as was the referendum held on 3 March in Wales on powers of the National Assembly for Wales.

1.7 In a referendum held under PERPA, the Commission is responsible for the following functions, outlined below:

- Commenting on the intelligibility of the referendum question proposed by the Government.
- Registering organisations or individuals who want to campaign in the referendum.
- Monitoring spending on referendum campaigning, in line with the referendum spending limits imposed by PERPA.
- Considering applications for designation as lead campaign groups for each referendum outcome.

- Ensuring that designated organisations (if appointed) have access to certain assistance.
- Reporting on the administration of the referendum and referendum campaign spending.

1.8 In this referendum, the Commission was also responsible for promoting public awareness of the referendum, its subject matter, and how to vote in it.

1.9 The Chair of the Commission, or someone she appoints, is Chief Counting Officer (CCO) for a referendum conducted under the PPERA framework. Referendums are the only polls where legislation provides for co-ordination and delivery at a UK level.¹

The referendum on the voting system for the UK Parliament

What the referendum was about

1.10 On 5 May people were asked to vote yes or no on the following question:

At present, the UK uses the ‘first past the post’ system to elect MPs to the House of Commons. Should the ‘alternative vote’ system be used instead?

1.11 This referendum was a key element of the coalition agreement, following the 2010 UK general election, between the Conservative Party and the Liberal Democrats.

The referendum result

1.12 The outcome of the referendum was:

- 19,285,751 people (42.2% of the electorate) voted in the referendum
- 13,013,123 people (67.90% of all voters) voted No
- 6,152,607 people, (32.10% of all voters) voted Yes
- turnout was highest in Eastwood, Scotland (63.3%) and lowest in the London Borough of Newham (27.3%)

¹ There is co-ordination and delivery at sub-UK levels such as the Electoral Office for Northern Ireland, Greater London Returning Officer, the Electoral Management Board in Scotland and the Regional Returning Officers for European Parliamentary elections.

- Turnout across England was 41.0%, Scotland 50.7% , Wales 41.7%, and Northern Ireland 55.8%
- Ten out of the 440 voting areas voted Yes.² The other 430 voted No.

1.13 Detailed results for all voting areas can be found on the Commission's website www.electoralcommission.org.uk/elections/results.

The law on referendums

1.14 The legal framework for referendums held under legislation enacted by the UK Parliament³ is set out in the Political Parties, Elections and Referendums Act 2000. That legislation, which also established the Electoral Commission, gives us our particular role in referendums and creates a framework for how referendums are run and regulated. It also specifies that there will be a CCO with overall responsibility for running a referendum and Counting Officers (CO) responsible for administering the referendum locally.

1.15 Under the current legislative framework, however, before any referendum can take place specific additional legislation is needed, covering not only important points such as the date of the referendum and the referendum question, but also all the detailed rules for running the referendum and the rules that apply to registered campaigners.

1.16 The UK Government was responsible for making the legislation for the referendum, and the UK Parliament was responsible for agreeing it. The Parliamentary Voting System and Constituencies (PVSC) Bill 2010 was introduced to Parliament on 22 July 2010 and provided for a referendum to be held in the UK on 5 May 2011 on the voting system used for UK Parliamentary elections. The PVSC Bill became an Act on 16 February 2011.

1.17 The PVSC Act⁴ also included provisions to combine the poll for the referendum with polls for the elections, which were scheduled to take place on 5 May, to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, and to local government in parts of England and across Northern Ireland.

1.18 The PVSC Act contained provision for the Regional Counting Officers (RCO) and Counting Officers to recover their costs in respect of the referendum.

² Cambridge; Camden; Edinburgh Central; Glasgow Kelvin; Hackney; Haringey; Islington; Lambeth; Oxford; Southwark.

³ A referendum held under legislation enacted by the Scottish Parliament would not be included within the PPERA framework.

⁴ Part 1, section 4.

In addition secondary legislation had to be made setting the amounts Counting Officers and Regional Counting Officers could recover for their costs in running the referendum and how they should do this. Another piece of secondary legislation had to be made to specify the bilingual (Welsh and English) format and content of a series of statutory voter forms and notices used at the referendum. The PVSC Act also provided for the CCO to recover costs that would have been incurred by COs or RCOs but which the CCO incurred instead as it was more economical to do so, for example Royal Mail sweep.

1.19 There are no generic rules that are ready to be used when a referendum is called. We have called on the UK Government to make such generic rules since the North East of England referendum in 2004. The House of Lords Constitution Committee recently recommended to the UK Government that the legislative changes that we recommended following lessons learnt in 2004 should be implemented.⁵ In light of our experience of the two referendums that were held in 2011, we continue to recommend that the UK Government must establish generic rules that can be used when a referendum is called.

Referendums in the UK

1.20 The UK has limited experience of holding referendums. The only other UK-wide referendum was the UK European Communities referendum held in 1975.

1.21 Since then, there have been referendums in Scotland and Wales on devolution leading to the creation of a Scottish Parliament and Welsh Assembly; a referendum in London on the establishment of the Greater London Authority and an elected mayor; and one in Northern Ireland on the Good Friday agreement.

1.22 Since the introduction of PPERA in 2000 and the establishment of the Electoral Commission there have been two further referendums under PPERA: the first on 4 November 2004 on the establishment of an elected regional assembly in the North East of England and the second on 3 March 2011 in Wales on whether the National Assembly should be able to make laws on all matters covering 20 listed subject areas without needing the UK Parliament's agreement. The referendum in Wales was the first time that the Chair of the Commission took on the role of Chief Counting Officer.

⁵ House of Lords, Select Committee on the Constitution, *Referendums in the United Kingdom*, (March 2010).

Table 1: Referendums and their outcomes

Referendum	Date	Result	Turnout
UK Voting system	5 May 2011	No – 67.5%	42.2%
NAW law making	3 March 2011	Yes – 63.5%	35.6%
North East regional assembly	4 November 2004	No – 77.9%	47.7%
Northern Ireland Good Friday Agreement	22 May 1998	Yes – 71%	81.1%
Greater London Assembly	7 May 1998	Yes – 72%	34.1%
Devolution in Wales	18 September 1997	Yes – 50.3%	50.1%
Devolution in Scotland	11 September 1997	Yes – 74.3%	60.2%
UK European Communities Membership	5 June 1975	Yes – 67%	64.0%

Source: Electoral Commission, 2004 onwards. Colin Rawlings and Michael Thrasher, *British Electoral Facts*, before 2004. Figures before 2004 do not include rejected ballots.

1.23 As the first UK-wide referendum since 1975, the 5 May referendum represented the most significant test of the 2000 legislative framework governing referendums.

Key roles at the referendum

1.24 On 5 May 2011, Jenny Watson, the Chair of the Commission, was Chief Counting Officer for the UK-wide referendum, as she was for the referendum in Wales on 3 March. She appointed Max Caller CBE, Electoral Commissioner, as Deputy Chief Counting Officer for the May referendum.

1.25 Under the PVSC Act, the CCO also appointed a Regional Counting Officer (RCO) for the eleven specified electoral regions in Great Britain. PPERA provides that Northern Ireland is one voting area, with the Chief Electoral Officer appointed as the CO.

1.26 The PVSC Act provided that the Counting Officer for each referendum voting area would be the person who, in that area, was the Returning Officer for elections to local government in England, the Scottish Parliament or the National Assembly for Wales, as applicable. There were 440 voting areas across the UK, 325 in England, 73 in Scotland, 1 in Northern Ireland and 40 in Wales.

The Electoral Commission's approach to referendums

1.27 During the year before the 2010 UK Parliamentary general election, the Electoral Commission had reviewed its policies and approach to referendums.

1.28 Previously our position was that referendums and elections should, in general, not be held on the same day. In November 2009 we reviewed our evidence base for this, including the international experience of holding elections and referendums on the same day. In light of this review, the Commission concluded that each specific proposal should be considered individually on its merits, rather than adopting a blanket view regardless of the specific circumstances.

1.29 We looked again at the experience of the North East of England referendum in 2004 and in February 2010 published a summary of our views and the principles that we would use to make decisions in areas where we have a role in a referendum. We sought to follow these principles in the matters that we were responsible for in the UK referendum.

1.30 The principles we set out for voters, campaigners and administrators are below.

Voters

Our focus is on voters and on putting their interests first. There should be no barriers to voters taking part. This means that:

- voters can easily understand the question (and its implications)
- voters are informed about the possible outcomes, and can easily understand the campaign arguments
- those eligible can register to vote
- voters can have confidence that campaign funding is transparent; distribution of any public support and access to media is fair; any rule-breaking will be dealt with
- the voting process should be easy to take part in and well run
- the result and its implications should be clear and understood

Campaigners

There should be no barriers to campaigners putting forward arguments for any of the possible outcomes. This means that:

- it is easy to register as a permitted participant and to take part in campaigning
- the rules that govern campaign spending and fund-raising activity are clear and fair
- 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

Administration

The referendum should be administered efficiently and produce results that are accepted. This needs:

- a clear legal framework with clear roles and responsibilities communicated to those who are bound by them
- clear guidance and efficient procedures for voters, campaigners and administrators
- performance standards against which the performance of Electoral Registration Officers and Counting Officers at referendums is evaluated
- an efficient process for distributing funds to campaigners and administrators
- rapid and clear reporting on campaign funding and spending
- a timely and persuasive report on how the referendum worked

2 The referendum legislation

2.1 While the UK has a broad legal framework for referendums, individual referendums cannot take place unless specific legislation is passed by Parliament. Secondary legislation may also be needed to provide for the detailed arrangements and funding for referendums. This chapter provides details of that legislation and sets out the Commission's agenda for change to improve the administration of future elections and referendums. Our detailed assessment of the law on the regulation of campaigning at future referendums is set out in Chapter 5.

Preparation of legislation

Political Parties, Elections and Referendums Act 2000

2.2 The legal framework for referendums held under legislation enacted by the UK Parliament⁶ is set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). This Act also established the Commission and gives us our particular role in referendums and provides a broad framework for how referendums are run and regulated. PPERA does not apply to local referendums, including mayoral referendums.

2.3 Part 7 of PPERA provides for:

- the appointment of Counting Officers and a Chief Counting Officer
- general rules on how referendums should be run
- rules on promotional material and campaigning in referendums
- spending restrictions for registered campaigners

2.4 Further legislation is required for individual referendums to take place, covering specific details such as the date of the referendum and the referendum question. Because there is currently no legislation setting out detailed rules for running all referendums, or the rules that apply to registered campaigners, legislation continues to be required to cover these aspects for each specific referendum.

Parliamentary Voting System and Constituencies Act 2011

2.5 Following the May 2010 UK Parliamentary general election, the UK Government published its programme for government, which included a

⁶ A referendum held under legislation enacted by the Scottish Parliament would not be included within the PPERA framework.

commitment to 'bring forward a Referendum Bill on electoral reform, which includes provision for the introduction of the Alternative Vote in the event of a positive result in the referendum, as well as for the creation of fewer and more equal sized constituencies.'⁷ The Parliamentary Voting System and Constituencies (PVSC) Bill was introduced to Parliament on 22 July 2010.

2.6 The PVSC Bill provided for a referendum to be held across the UK on 5 May 2011 on whether the first-past-the-post voting system for elections to the House of Commons should be replaced with the alternative vote system. It also set out new rules for the redistribution of parliamentary constituencies and conduct of boundary reviews.

2.7 The Bill which was introduced contained the specific wording for the question which was to be printed on the ballot papers for the referendum (see Chapter 3 for more information about the referendum question) and the franchise for the electorate at the referendum. It also applied rules relating to the regulation of loans to permitted participants. Further Schedules to the Bill specified the referendum period, provisions about the role of the Electoral Commission, the appointment of Counting Officers (CO) and Regional Counting Officers (RCO) and payments to Counting Officers, and also set out the detailed rules for the conduct of the referendum poll and the regulation of campaign activities.

2.8 Following the North East of England regional assembly referendum in 2004, which was the first referendum held under PPERA, we made a number of recommendations for changes to the legal framework for referendums that should be implemented for any future referendum.⁸ We were pleased that Cabinet Office officials consulted us on these recommendations during the development and drafting of the PVSC Bill provisions. The Bill which was introduced therefore included the following provisions which we had recommended:

- The establishment of a statutory Regional Counting Officer function.
- A power for the Chief Counting Officer to give directions to Counting Officers and Regional Counting Officers about the discharge of their functions.
- A power for the Electoral Commission to promote public awareness of the registration and voting process at a referendum (as it has in relation to elections) to ensure that voters are informed about how to participate.
- A discretionary power for the Commission to provide information to voters on the referendum options, if it was not possible to designate lead campaign organisations.

⁷ HM Government, *The Coalition: our programme for government* (May 2010).

⁸ The Electoral Commission, *The 2004 North East regional assembly and local government referendum* (November 2005).

- The aggregation of spending limits for permitted participants who operate to a common plan in campaigning.

2.9 The only recommendation which the Government did not reflect in the Bill was for the restriction on the publication of promotional material by publicly-funded bodies to apply from the start of the referendum period (i.e. the date from which campaigners can be registered as permitted participants) rather than the 28 days before polling day as currently specified in PPERA. In its October 2010 response to the House of Lords Select Committee on the Constitution report on referendums in the UK, the Government noted that:

The Government is concerned that putting in place such a requirement could impact upon the ability of Government to carry out its day-to-day duties, depending upon the subject of the referendum and the length of the referendum period. The Government believes that the existing 28-day restriction provided for in PPERA is adequate and that any extension of that period needs to be considered on a case-by-case basis.

Government response to the report on Referendums in the United Kingdom, October 2010

2.10 Following publication of the PVSC Bill, we identified that the key voter-facing forms and notices for the referendum specified in the Bill did not meet the guidelines for accessibility and usability which we had previously recommended the Government should follow when introducing new legislation.⁹ We considered with the Government how the forms could be improved, and suggested that the Chief Counting Officer (CCO) should be given a power to specify modifications to the wording and design of the forms for the purposes of making them easier to use or understand, and which Counting Officers would be required to reflect. During the Committee Stage of the Bill's consideration in the House of Commons the Government tabled an amendment to provide the Chief Counting Officer with this power which was agreed without a division.

2.11 Because the PVSC Bill applied only to the proposed referendum on the voting system and did not amend PPERA, the changes which reflected our recommendations will not automatically apply at any future referendum. Therefore our good practice guidance for the design and wording of key voter materials issued by the CCO will not automatically be followed by future COs as they will not be required to do so under PPERA. Any changes to the existing legislation will need to take this into consideration.

⁹ The Electoral Commission, *Making your Mark Good practice for designing voter materials guidance for electoral administrators* (2009) www.dopolitics.org.uk/making-your-mark

Combination rules

2.12 A number of Government amendments were accepted during the passage of the PVSC Bill through Parliament, including changes to the referendum question following the publication of the Commission's assessment report on the intelligibility of the referendum question (see Chapter 3 for more information about the assessment process and our conclusions). The most substantial amendments, however, were those which were made on 2 November 2010 during the report stage of the Bill's consideration in the House of Commons. These added a further four schedules to the Bill, which allowed the referendum poll to be combined with the polls for scheduled elections which were due to take place in May 2011.

2.13 The combination schedules set out the technical procedures for administering the poll for the referendum alongside the polls for the scheduled elections. In particular, the schedules specified those functions, such as identifying, booking and staffing polling stations for the scheduled elections, which were to be combined and exercised by the Counting Officer for the referendum.

2.14 In order to improve the efficiency of the administration of the referendum, the Bill was also amended to provide that the voting areas for the referendum would be the same as the constituencies for the Scottish Parliament and National Assembly for Wales general elections, and would be the same as local authority areas in England. The Counting Officer for each voting area would be the person who, in that area, was the Returning Officer for the relevant election. PPERA provides that Northern Ireland as a whole constitutes a single voting area for referendums, and that the Chief Electoral Officer will be the Counting Officer.

The Electoral Commission's assessment of the progress of legislation

2.15 When the Bill was published, we set out a number of steps which the UK Government should take to address the risks we identified and ensure planning for the 5 May took account of the different impact of the range of polls right across the UK:

- The rules on how the referendum was to be conducted had to be clear from at least six months before polling day, that is by early November for a 5 May poll.
- Adequate provision must be made for appropriate public awareness activities to ensure voters understood the election and referendum process.
- Appropriate funding must be made available to deliver the referendum and scheduled elections together.
- The legal framework for the referendum must make provision for it to be formally combined with the scheduled elections.

2.16 On Thursday 11 November 2010, six months before polling day, we published an assessment of the progress of the legislation and steps taken to mitigate the risks we had identified in July 2010 to the successful delivery of the May 2011 polls. We concluded at that stage that we were broadly satisfied that

sufficient progress had been made to enable the local Returning and Counting Officers to run the polls well and for voters to participate in them.

The referendum date

2.17 On 6 December, during the Committee stage of the Bill's consideration in the House of Lords, the clause specifying the referendum date was removed and replaced with a provision allowing the referendum to be held on any date before 31 October 2011. The Government made clear that its intention remained to hold the referendum on 5 May, and that it would introduce a further amendment to ensure that the referendum could be held on the proposed date.

2.18 The referendum date of 5 May 2011 was reinstated by a Government amendment tabled at the report stage of the Bill's consideration in the House of Lords on 7 February 2011. The PVSC Act received Royal Assent on 16 February 2011, in the last sitting before Parliament rose for spring half term recess and 11 weeks before polling day.

Secondary legislation

2.19 As well as the referendum provisions in the PVSC Act, a further three pieces of secondary legislation were required which could only be made once the Act had received Royal Assent. The first two Orders were made by the UK Government:

- A 'fees and charges' order governing the amounts Counting Officers and Regional Counting Officers could recover for their costs in running the referendum. *The Referendum on the Voting System (Counting Officers' and Regional Counting Officers' Charges) Order 2011* was made on 4 April 2011 and came into force the next day.
- An Order to specify the bilingual (Welsh and English) format and content of a series of statutory forms and notices used at the referendum, contained in English only in the PVSC Act. *The Referendum on the Voting System (Welsh Forms) Order 2011* was laid before Parliament on 24 March 2011, and came into force seven days later.

2.20 The third piece of secondary legislation for the referendum was a set of regulations made by the Electoral Commission setting out the process by which the Chief Counting Officer's,¹⁰ Counting Officers' and Regional Counting Officers' charges should be claimed. These regulations could only be made once the fees and charges order had been made on 4 April. *The Counting Officers, Regional Counting Officers, and Chief Counting Officers Accounts*

¹⁰ The only expenses that the CCO would be claiming back are those that would have been incurred by COs or RCOs but which the CCO incurred instead as it was more economical to do so, for example Royal Mail sweep.

(Parliamentary Voting System Referendum) Regulations 2011 were made on 5 April 2011 and came into force the next day.

Lessons learned about the referendum legislation

Lessons learned about the timing of the legislation

2.21 The fact the PVSC Act did not receive Royal Assent until mid-February 2011, less than three months before polling day, meant that there was still uncertainty about whether or not the referendum would be held and what the date of the poll would be. This uncertainty was exacerbated by other factors including the fact that the detailed rules for the conduct of the referendum were contained in the PVSC Act rather than being available in advance, and that the referendum could potentially take place on the same day as the scheduled elections.

2.22 This uncertainty caused difficulties for those planning to campaign in the referendum and for those who would be required to deliver the referendum and the scheduled elections. RCOs and COs were understandably nervous about finalising plans and committing resources while uncertainty remained about whether the referendum poll would take place. Confirmation that the referendum would take place so close to polling day also posed a risk that voters would not know enough about the issues in the referendum because campaigners would not be able formally to start campaigning until very shortly before polling day.

2.23 Where possible, the Electoral Commission and the CCO took steps to try to address some of these issues. For example, in response to calls from the Commission, the UK Government agreed that COs could spend money in advance of Royal Assent and would be able to be reimbursed for this money through the fees and charges process. Following consultation with RCOs, the CCO sent out a message to all COs that they should continue to plan for a referendum on 5 May despite uncertainty as to when final confirmation would be provided. The Commission also continued to press the UK Government to finalise and make the Counting Officers' charges order as quickly as possible after Royal Assent. The CCO also issued key information about her directions and instructions to Counting Officers in advance of Royal Assent, with a caveat that the directions could only be issued formally once the legislation had been passed by Parliament.

2.24 In our survey of COs and Returning Officers (RO), a large number of authorities reported that the late confirmation that the referendum would take place on 5 May 2011 made planning, scheduling and completing planned tasks difficult. It also put additional pressure on the design, printing and production of postal ballot packs. In areas with scheduled elections taking place on 5 May, ROs felt that they needed in effect to have two sets of plans, one that included the referendum and one that did not to reflect the possibility that the referendum

would not take place. Whether or not the referendum took place would affect key operational planning decisions such as the design and print runs for voter forms and notices, the location and set-up of polling stations, staffing levels and the size of count venues.

2.25 Printers and electoral management software suppliers also reported to us that they felt that late confirmation hampered effective planning and increased risks to the successful delivery of the polls. More time was needed to develop and test their products as well as making any necessary changes to software, to be able to ensure that risks arising from any new processes were minimised. Printers said that they need confirmation of requirements in sufficient time to ensure that there were sufficient paper stocks available, and of the right type. As one printer, Adare commented:

With no formal directives available until the passage of these bills through Parliament our development was delayed and could not commence until the period originally earmarked for the testing stage of our plan.

The timing of the legislation had a severe impact on the overall delivery of this year's election and work which should have been spread out over a minimum of 12 weeks was compressed into a 4 week period. The Electoral Commission seem to acknowledge the need for a minimum period of time to prepare for a Poll and in the past statements have been issued advising that legislation should be passed a minimum of 6 months before a poll takes place.

For the referendum this year the period from legislation passing to the poll was less than 12 weeks and bulk production of printed materials need to commence within 6 weeks of the legislation passing. This left insufficient time to effectively develop and test the most efficient solution and therefore additional costs had to be passed onto Local Authorities.

Feedback from Adare

2.26 While we are satisfied that the May 2011 referendum was well run, it is also clear that such late confirmation that the referendum would take place on 5 May significantly increased risks to the successful delivery of the poll. Feedback from referendum campaigners also highlights that earlier confirmation of the referendum date would have improved their capacity to communicate and influence voters.

2.27 We believe that the experience of legislating for the May 2011 referendum illustrates the need to ensure that Parliament has sufficient time to properly scrutinise proposals, while also acknowledging the importance of allowing sufficient time for campaigners, Counting Officers and the Electoral Commission to prepare for their respective roles. We do not believe that it should be seen as an example of the shortest period of time required to legislate for any future referendum.

The date of the referendum and length of the referendum period

2.28 The referendum framework set out in PPERA provides that, before a referendum is held, there is a formal campaigning period called the 'referendum period'. During this period, restrictions surrounding campaign expenditure and publicity apply. From the first day of the referendum period, the Commission starts to register those who intend to spend more than £10,000 campaigning, known as 'registered campaigners'. Once registered, campaigners can also apply to become the lead campaign group, known as the 'designated organisation', for one side of the debate.

2.29 The minimum length of the referendum period, as set out in PPERA, is ten weeks, to allow adequate time for the Commission to register campaigners and to designate lead campaign organisations, and for these organisations to access the assistance they are entitled to in order to support their campaigning activities. The PVSC Bill provided that the referendum period began when the legislation received Royal Assent. Therefore, for the referendum to take place on 5 May 2011, the PVSC Act had to receive Royal Assent no later than 24 February 2011, at least ten weeks before the proposed polling day. In practice however, as Parliament was in recess from 17 February, returning on 28 February, the Act needed to be passed no later than 16 February, the last day before recess, to meet the statutory referendum timetable.

2.30 This absolute cut-off point provided an incentive for Government to make every effort to ensure that the legislation was in place before the House rose for recess. Their original intention had been to have had it in place by the end of 2010. In addition to providing for a referendum to be held, Part 2 of the PVSC Act contained provisions to reduce the number of UK Parliamentary constituencies and equalise their size. Parliamentary debate and scrutiny of these provisions lengthened the time required for the Bill to progress through Parliament, adding to the uncertainty about the timing of the referendum.

2.31 This added to the uncertainty for those delivering the referendum and those campaigning in it, because if Royal Assent was not achieved by 16 February, the referendum could not take place on 5 May 2011 (unless the referendum period stipulated by PPERA was changed). In practice this would have required significant changes to plans at very short notice and would almost certainly have disrupted the delivery of the scheduled elections which would still have been held on 5 May. See chapter 6 on the delivery of the referendum.

2.32 The issue of the timing of the referendum was politically controversial, because it coincided with the date of the scheduled elections to the devolved legislatures in Scotland, Wales, Northern Ireland, and local government elections in Northern Ireland and across parts of England. Politicians were also concerned about the possible effect that combination could have on voters' experience, not only in terms of how to vote in multiple polls but also their awareness and knowledge of the different polls taking place. Chapter 3 looks at this issue in more detail.

2.33 Normally, when the scheduled date for parish and community council elections coincides with a poll at a UK Parliamentary or European Parliamentary election, by law the parish community council election must be postponed by three weeks. The Commission however recommended that the Government should not apply a similar provision in relation to the referendum, so that the parish and community council elections could go ahead as planned, and the polls could be combined with the UK- wide referendum. The National Association of Local Councils, which represents Parish Councils, agreed with this view.

2.34 The Government has since published draft legislation, in September 2011, which would repeal the provisions that automatically postpone the poll for a scheduled parish and community council election in England and Wales in these circumstances, with the intention of allowing these polls to be combined more often and facilitating voter participation in them.

2.35 The combination of the polls for parish and community council elections with the other polls that took place on 5 May 2011 worked well. However, given the increased frequency of combined polls and new categories of election, the Government should undertake wider research on the impact of combination provisions for all types of elections on voters, political parties, candidates and electoral administrators.

Timing of secondary legislation

2.36 A significant consequence of the late confirmation of the primary legislation for the referendum was that the UK Government was also delayed in being able to make the necessary secondary legislation.

2.37 Although the fees and charges order for Counting Officers could not be made until the PVSC Act received Royal Assent, in fact it was not made until 4 April, and came into force the following day. This was more than six weeks after Royal Assent, after the publication of the notice of referendum and just one month before polling day. As we continued to emphasise to Government, this meant that COs were uncertain about the final amounts of money they could spend in delivering the referendum during the planning and preparation phases of their work, and were forced to make key decisions and commit budgets based on their own assumptions about levels of funding. Counting Officers commented on this in our feedback survey:

The certainty of funding/level of resources to be provided was not known at the points key planning decisions needed to be made. In essence, it was too late generally and then, even after the main documents were released, key elements were still subject to debate.

CO/RO/ERO, Eastern & South East

The decision on funding came too late and meant that significant decisions had to be made without the proper framework being in place

CO/RO, Midlands

2.38 Similarly, the Welsh Forms Order was not laid before Parliament until 24 March, five weeks after the PVSC Act received Royal Assent, and it came into force on 31 March, seven weeks before the date of poll.¹¹ The late timing of the Order meant that forms, ballot papers and other materials in Wales were already printed by the time it was made, making it only a legal formality.

2.39 The Chief Counting Officer was able to specify modifications to certain voter forms and notices in the Act, including the bilingual versions. These modifications were specified via templates and wording issued by the CCO to Counting Officers in January and February 2011. The CCO issued the Welsh and English bilingual versions of these templates and wording at the same time, with the caveat that they were subject to the Welsh Forms Order being made. This meant that administrators in Wales had the majority of the forms and notices for the referendum available to them and were able to produce their postal ballot packs, for example, in good time.

2.40 Had the CCO not had such a power, or had she not exercised it in the way that she did, administrators in Wales would have been in a very difficult position. They would not have been able to produce documents required by the PVSC Act in time to meet statutory deadlines, or deadlines specified by the CCO's directions relating to, for example, the issue of poll cards and postal voting statements.

Lessons learned about the complexity of the legislation

2.41 There are no generic rules that are ready to be used when a referendum is called. We called on the UK Government to make such generic rules following the North East England referendum in 2004. The House of Lords Constitution Committee recommended in 2010 that the UK Government should implement the legislative changes that we recommended following lessons learnt in 2004.¹²

The legislative process

2.42 The detailed rules for the conduct of the referendum were contained in the PVSC Act itself, rather than in secondary legislation which is the more usual way that election rules have previously been made in the UK. Because of the short period of time between the introduction of the PVSC Bill and the proposed polling day, the Government argued that there would not be sufficient time to lay

¹¹ SI 2011/880 *The Referendum on the Voting System (Welsh Forms) Order 2011*.

¹² House of Lords, Select Committee on the Constitution, *Referendums in the United Kingdom*, (March 2010).

secondary legislation containing the detailed rules after the Bill received Royal Assent.

2.43 At the point at which the Bill was introduced in Parliament it included no provisions that would allow the referendum poll to be combined with any other poll held on the same day. New, specific rules had to be written to cover how the combined polls must be run in each part of the UK, taking into account the separate rules that would ordinarily apply to each of those polls and any differences between them. The combination rules were complex in this case, given the number of different polls taking place. They were set out in four different schedules and covered nine different combinations of polls which would be taking place across the UK on 5 May.

2.44 The process for developing the combination rules was made more complex because, at the point that the combination rules were introduced to Parliament (late October 2010), the revised conduct Orders that contained the rules for running the May 2011 elections to the Scottish Parliament, National Assembly for Wales, Northern Ireland Assembly and local councils in Northern Ireland had not yet been laid before Parliament. Further amendments were therefore needed to the combination Schedules in the Bill after they had been introduced to reflect the revised election conduct rules for Scotland, Wales and Northern Ireland.

2.45 Primary legislation is not an ideal vehicle for detailed and complex combination provisions. For example, the Commission is not required to be consulted on the content of primary legislation, although the UK Government did, as a courtesy, consult on some key policy issues and share much of their draft material with us before the Bill was introduced to Parliament. This meant that there was no formal process for the Commission to consider and comment on content that was added to the Bill during its passage through Parliament. When the combination rules, comprising four separate schedules, were laid before the UK Parliament in late October there had been little time for us to scrutinise them properly before they were added to the Bill. In addition as the contents of the Bill were subject to amendment until very close to polling day, this added to the lack of certainty for those responsible for administering the referendum and combined polls.

3 March Wales referendum legislation

2.46 The lack of any pre-existing referendum rules meant that two different sets of rules were being developed and agreed for the referendums held in 2011, via two different legislative processes, and the timescales for this work overlapped. The rules that had to be made for the referendum in Wales were secondary legislation, contained in Orders that were developed via a consultative process before being voted on by the Welsh Assembly and the UK Parliament. The rules for the UK-wide referendum were contained in primary legislation, which is subject to a different Parliamentary process and has to be approved by both Houses of the UK Parliament. As mentioned previously, the Bill could be amended while the UK Parliament was considering it, whereas the Orders for

the Wales referendum could not (although the Welsh Assembly or UK Parliament could vote to reject them in their entirety).

2.47 The process of developing the legislation for the Wales referendum held in March 2011 began in March 2010, and was well under way when the PVSC Bill, containing the UK referendum legislation, was introduced in July 2010. Work on the Bill was undertaken by Cabinet Office policy officials and lawyers, whereas work on the main Wales referendum Order was led by the Wales Office and Welsh Assembly Government lawyers and policy officials. The Wales Office handled the legislation stipulating spending limits and the start of the referendum period, and Welsh Assembly Government officials were responsible for Counting Officers' fees and charges and associated funding. As a consequence of the introduction of the PVSC Bill, many detailed issues in the Wales referendum rules, which were already at a late stage of drafting, had to be revisited to ensure that the two sets of referendum rules were aligned. In some cases, alignment was not possible; while the PVSC Bill, as primary legislation, could introduce some more substantive changes, these could not be achieved through secondary legislation for the Wales referendum.

2.48 In some limited instances the differences in the two sets of referendum legislation were substantive. For example, the PVSC Bill provided for the aggregation of spending limits by registered campaigners working to a common plan, and regulated loans to campaigners. These primary legislative provisions could not be included in the Wales referendum Order, meaning that different rules applied to registered campaigners in the two referendums.

2.49 The late revisions to drafts of legislation for the Wales referendum caused late revisions to the guidance that the Commission was preparing for both prospective referendum campaigners and Counting Officers who were making arrangements to run the referendum locally.

2.50 The introduction of a new set of referendum rules in the PVSC Bill was one of the factors that affected the length of time it took to finalise the legislation for the Wales referendum, which in turn affected the timing of that referendum. It also meant that administrators in Wales were running two PPERA referendums in short succession with different rules and legislative provisions.

2.51 This further demonstrates the case for a single set of referendum rules which would bring consistency of practice and could help speed up the legislative process, enabling a referendum to be held more quickly.

Lessons learned about holding the referendum on the same day as scheduled polls on 5 May 2011

2.52 When the PSVC Bill was introduced to Parliament it proposed that a referendum would be held on 5 May 2011, the same date that elections were scheduled to take place to the Scottish Parliament, Assemblies in Wales and Northern Ireland, and to local government in parts of England and across

Northern Ireland. In England, there were parish or town council elections taking place in some areas, plus Mayoral elections due to take place on that day in four local authorities, and one referendum on an elected mayor in Great Yarmouth. There were no elections scheduled to take place in London.

2.53 In practice, this meant that voters would be able to vote in anything between one and five elections and a referendum on 5 May. For example in some wards in Great Yarmouth, county, district, and parish local government elections as well as a mayoral referendum were all held alongside the UK referendum.

2.54 In July 2010, the Electoral Commission issued a statement setting out our views on the proposal to hold the referendum on 5 May 2011. In our statement, we said:

It is important that voters have access to information about the arguments for and against the choices they have at the different polls on 5 May. Elected representatives and others have raised concerns that if a UK-wide referendum is held on the same day as elections in different parts of the UK this would impact on the coverage of the campaigns for the elections. It is important that political parties, the media, referendum campaigners and the Electoral Commission all recognise this issue and play a part in ensuring that voters receive an appropriate level of information on the relevant campaigns and can make informed decisions.

But there are also benefits from holding a referendum on the same day as scheduled elections in many parts of the UK that can be set against these concerns, including some overall cost savings and avoiding asking approximately 39 million electors to participate in an election and a referendum on two separate occasions.

*Voting at different polls on 5 May 2011 –
the Electoral Commission's position
22 July 2010*

2.55 The Commission monitored the passage of the Bill closely and issued briefings for Parliamentarians at key stages of debate. We acknowledged the possible risks that could occur as a result of holding the polls on the same day, including:

- Different or conflicting campaign messages for the referendum and other scheduled elections could lead to confusion among voters about their choices for each contest.
- Different ballot papers and voting systems used on polling day could lead to confusion and errors by voters in recording their choices correctly.
- Overlapping, conflicting and complex responsibilities for the conduct of the referendum and other scheduled elections could lead to poor quality electoral administration.

- If the legal framework does not provide for formal combination of the referendum and elections, but provides only that the electoral events are held on the same day, the administration of the events will be more complex and the cost savings will be reduced.
- Overlapping regulatory regimes for donations and campaign spending could lead to confusion for campaigners and reduced transparency.

2.56 The evidence that we have presented elsewhere in this report – specifically on the experience of voters in Chapter 4, the experience of campaigners in Chapter 5 and the delivery of the referendum in Chapter 6 – suggests that in this instance, the important risks identified by the Commission were recognised by the UK Government and Parliament. As a result the actions taken by all those involved in delivering the referendum ensured the possible negative impact that holding the polls on the same day might have were minimised. Voters appear to have understood how to participate in the range of polls, and received enough information to enable them to make an informed decision. It also appears that electors were more likely to turnout to vote in the referendum in those areas where scheduled elections also took place on 5 May.

2.57 The vast majority of voters (with the exception of some voters in Northern Ireland) also appear to have been able to complete their ballot papers without error. Counting Officers and Returning Officers were able to discharge their respective functions and duties to effectively run the polls and in the majority of cases to a high standard, although earlier confirmation that the referendum would take place on 5 May would have reduced uncertainty and complexity for those involved in delivering the polls.

2.58 Any future proposals for holding a referendum on the same date as any type of scheduled elections may involve similar issues described in this report. The risks that we identified in July 2010 will remain relevant, and each individual proposal should be considered on its merits, including any actions which have been proposed to mitigate the risks.

Recommendations for future referendum legislation

To mitigate these risks and minimise the possibility of any uncertainties and issues at future referendums, we make the following recommendations for referendum legislation.

Recommendation 1 – Timing of legislation for future referendums

When considering proposals for any future referendum held under PPERA, the UK Government must manage the development and introduction of enabling legislation to ensure that Parliament has sufficient time to properly scrutinise proposals. Meanwhile also acknowledging the importance of allowing sufficient

time for campaigners, Counting Officers and the Electoral Commission to prepare for their respective roles.

We recommend that in planning for any future referendum, the UK Government should aim to ensure that there is confirmation that a referendum will take place (either by Royal Assent to a referendum Act or the making of an Order providing for a referendum) at least 28 weeks in advance of the proposed polling day.

Having reviewed the experience and evidence from the 2011 polls, we recommend that this is the minimum period required to allow sufficient time for the key referendum preparation activities:

- A minimum period of 12 weeks between finalisation of the campaign rules and the start of the regulated referendum period to allow sufficient time for the development and distribution of guidance and supporting materials for campaigners.
- A minimum 16-week referendum period to allow more time after the designation period for lead campaign organisations to put their arguments to voters.
- Confirmation of the key directions from the CCO to RCOs and COs at least six months before polling day to inform high level planning for the management of the poll.
- Development of instructions and supporting materials for Counting Officers so that they are in place at least four months before polling day to enable detailed planning for the administration of the poll.

We have made recommendations about the approach to specifying detailed rules for the conduct of the poll for future referendums (see Recommendation 3 below). The UK Government should also ensure that any required secondary legislation is published and laid before Parliament at least 28 weeks before polling day, so that the detailed rules are available in sufficient time to enable effective planning and preparation by Counting Officers.

The Commission will review proposals for any future referendums against this timetable, and will advise Parliament at the earliest opportunity if we think there is any risk that the timetable is insufficient to allow both appropriate time for scrutiny and sufficient time for delivery of key referendum activities for which the Commission is responsible. In scrutinising legislation for any future referendum, we also think it would be helpful for Parliament to consider any assessment and recommendations made by the Chief Counting Officer about the time available for preparation and delivery of the administration of the referendum poll.

Recommendation 2 – Amending the legal framework for future referendums

The overarching legal framework for the conduct of referendums in the UK, contained in Part 7 of the Political Parties, Elections and Referendums Act 2000 (PPERA), should be updated to reflect the lessons learned from the delivery of the March and May 2011 referendums. Amending PERA directly – rather than

providing for these changes in each individual referendum Bill – would mean that campaigners, Counting Officers and the Electoral Commission would have certainty about the framework for delivering any referendum much sooner, and would minimise the risks to the successful delivery of the referendum which might be caused by uncertainty about the statutory framework.

We recommend that the UK Government should introduce legislation to amend Part 7 of PPERA to include the following aspects for any future referendum held under the PPERA framework (more detailed information about these recommendations is provided in Chapters 3-7):

- A power for the Chief Counting Officer to appoint Regional Counting Officers.
- A power for the Chief Counting Officer to give directions to Counting Officers and Regional Counting Officers about the discharge of their functions.
- A power for the Chief Counting Officer to specify modifications to prescribed forms and notices to make them easier for voters to understand or use.
- Responsibility for the Electoral Commission to negotiate with Her Majesty's Treasury on fees and charges for Counting Officers at future referendums, and to receive and administer claims from Counting Officers relating to the referendum.
- A statutory minimum referendum period of at least 16 weeks.
- Clarification that the Electoral Commission can pay grants to designated lead campaigners in instalments.
- Clarification that media comment is not subject to spending controls for referendums.
- Clarification that the Electoral Commission can promote public awareness of the referendum, including providing information about the referendum options if it has not been possible to designate lead campaign organisations.
- Extending the period during which promotional material about the referendum by publicly-funded bodies should be prohibited to the start of the referendum period (continuing the recommendation which we made in 2004).
- Clarification that Counting Officers should be excluded from the restriction on the publication of promotional material about the referendum, in the same way that the Electoral Commission is excluded.

We recommend that the UK Government should make these amendments through a specific or relevant Bill before the end of the current Parliament, rather than waiting until the next time a referendum Bill is introduced. Making these important changes to the underlying framework for referendums as soon as possible would reduce the impact of uncertainty about the approach to delivering any future referendum.

We recommend that the UK Government should review a number of provisions relating to the regulatory framework for future referendums, and these are outlined in more detail in Chapter 5 *Campaigning at the referendum*.

We also make recommendations about the approach to specifying detailed conduct rules for future referendums (see Recommendation 3 below).

Recommendation 3 – Providing greater certainty about the detailed rules for the administration of future referendum polls

As we first recommended following the 2004 referendum in North East England, the detailed rules for the administration of the poll (including the processes for publishing referendum notices, issuing poll cards, setting up polling stations and conducting the count, for example) for all future referendums held under PPERA should be set out in a single generic order, to provide clarity for those running the referendum and those planning to campaign in the referendum and allow planning and preparation to commence sooner than waiting for the enabling legislation to be finalised. A generic order would also reduce the scope for amending the detailed rules for political reasons during the process of legislating for a referendum.

We recommend that the UK Government should use the powers provided to the Secretary of State in section 129 of PPERA to make an order providing for the administration of any future referendum poll. Such an order should:

- Be based on the detailed rules set out in Schedule 2 to the PVSC Act, which were successfully used for this referendum, and were broadly welcomed by Counting Officers.
- Take account of specific detailed learning points identified by the Electoral Commission and Counting Officers from the experience of this referendum (see Chapter 6).
- Provide for combination with other polls, which might happen on the same day, at the same time as it introduces the relevant Bill.

We will assist the UK Government by providing detailed comments on the rules in Schedule 2 to the PVSC Act, including any specific learning points which we have identified from the experience of this referendum. We will also make these comments available publicly.

Recommendation 4 – Considering the implications of holding future referendums on the same day as scheduled elections

While evidence suggests that holding a referendum at the same time as the scheduled polls on 5 May 2011 did not cause significant problems for voters, campaigners or electoral administrators, proposals in future to hold a referendum on the same day as another set of polls should continue to be considered by the UK Government and Parliament on a case-by-case basis.

The priority in considering any proposal should be that voters and campaigners should be able to understand and easily participate in all of the polls, and that those responsible for running the polls are able to do so effectively.

We have already recommended that the UK Government should take the lead in developing a more detailed assessment of the implications for voters, campaigners and electoral administrators of holding different polls – including referendums – on the same day. This assessment should:

- Encompass the range of differing electoral cycles currently in place for elections in the UK.
- Involve legislative bodies and groups from across the UK, including the Scottish Parliament, National Assembly for Wales, Northern Ireland Assembly and local governments.
- Identify actions which could be taken to mitigate the possible risks for voters, campaigners and electoral administrators in holding different polls on the same day.

We recommend that, if it introduces proposals to Parliament in future to hold a referendum on the same day as another set of polls, the UK Government should also publish at the same time its assessment of the implications of holding the polls on the same day. This will enable Parliament to consider the relative benefits and risks of the proposal as it scrutinises the referendum Bill.

We would be happy to advise and assist the UK Government in any aspect of this assessment.

3 Information for voters about the referendum

3.1 This chapter looks at how much voters said they knew about the referendum, its subject matter and how to take part in it, and what public information was available to help them find out more.

The referendum question

3.2 The purpose of a referendum is to ask people to vote on a proposal. At the heart of the referendum is the question voters are asked.

3.3 The UK Government was responsible for drafting the proposed referendum question contained in the Parliamentary Voting System and Constituencies (PVSC) Bill, and the UK Parliament was responsible for scrutinising and approving the question that would be included in the legislation and ultimately put to voters.

3.4 The Electoral Commission is responsible for considering the intelligibility of a question included in a referendum Bill, and publishing any conclusions for the Government and Parliament to take into account. In doing so, we want to make sure that the question is one that voters can understand, so that they know what they are voting on.

3.5 In November 2009, we published our preferred approach to assessing referendum questions.¹³ We advised that our preferred approach would take around 10 weeks to complete, based on a minimum of two weeks' notice of when we would receive a question for assessment.

Our assessment of the referendum question

3.6 Once the PVSC Bill was published on 22 July 2010, we were able to begin the question assessment process. The question included in the Bill when it was published was:

¹³ The Electoral Commission, *Our approach to assessing the intelligibility of referendum questions*, (November 2009) – www.electoralcommission.org.uk/__data/assets/pdf_file/0005/82625/Referendum-Question-statement-final.pdf

Do you want the United Kingdom to adopt the “alternative vote” system instead of the current “first past the post” system for electing Members of Parliament to the House of Commons?

3.7 We followed our preferred approach when we assessed the proposed UK referendum question by:

- Conducting public opinion research through focus groups and in-depth interviews.
- Writing to interested parties, (including the main political parties) and would-be campaigners to seek their views, and offering meetings to hear from them.
- Seeking advice from experts on plain language and accessibility and from the Welsh Language Board.

3.8 Our research included 15 focus groups and 41 interviews in locations in England, Scotland, Wales and Northern Ireland, with people from a range of backgrounds, of different ages and with varying levels of literacy.

3.9 The research explored how easy or difficult participants found the proposed question to understand and the reasons for this. A report of the findings of our public opinion research, including the methodology adopted, is available on our website.¹⁴

3.10 We received advice from plain language and accessibility experts and the Welsh Language Board. Although we wrote to interested parties (including the main political parties) and would-be campaigners to seek their views on the proposed referendum question, and followed up our letters with reminders, of which we received only one response.

3.11 We published our findings on 30 September 2010, just under two weeks before the start of Committee Stage’s consideration of the Bill in the House of Commons on 12 October.¹⁵ Our assessment showed that the way the question was written was broadly clear and direct, although voters and other people who gave us their views did suggest some ways in which it could be made easier to read. In particular, the structure of the question, its length, and some of the language used made it harder to read.

¹⁴ Define Research & Insight, *Voting System for Electing MPs to the House of Commons: Referendum Question Testing. Qualitative research report for the Electoral Commission*, (September 2010) - www.electoralcommission.org.uk/__data/assets/pdf_file/0006/102687/Electoral-reform-question-testing-full-report.pdf

¹⁵ The Electoral Commission, *Referendum on the UK Parliamentary Voting System. Report of views of the Electoral Commission on the proposed referendum question (2010)* – www.electoralcommission.org.uk/__data/assets/pdf_file/0006/102696/PVSC-Bill-QA-Report.pdf

3.12 We found that the main difficulty people had in understanding the question was that they did not recognise or understand the terms used for voting systems – ‘First Past the Post’ and ‘Alternative Vote’. We also found that the question was too long and included some terms and phrases that some people had difficulty in understanding.

3.13 We recommended changing the referendum question to address these concerns, including replacing formal or unfamiliar words and phrases with more everyday language, using shorter sentences to make the question easier to read and understand, and shortening some phrases (such as ‘Members of Parliament’ to ‘MP’) to make the question more concise. Our report recommended the following revised question:

At present, the UK uses the ‘first past the post’ system to elect MPs to the House of Commons. Should the ‘alternative vote’ system be used instead?

3.14 Our assessment also made clear that there was an important and necessary role to be played by potential referendum campaigners, by the Commission and by the media to raise awareness of the event itself and provide information to voters on how to vote.

The response to our report by Government and Parliament

3.15 Following publication of our report on the referendum question, an amendment was tabled by members of the House of Commons Political and Constitutional Reform Committee to replace the text of the referendum question in the Bill with the revised wording which we had proposed. Subsequently the Deputy Prime Minister added his name to the members proposing the amendment.

3.16 The amendment was debated by the House of Commons on 18 October 2010, and the Minister for Political and Constitutional Reform, Mark Harper MP, noted during the debate that:

It is very important that the referendum question should be clear and simple to understand. The Government welcome the Commission's helpful report. I have read it carefully and, based on the evidence that the Commission presented, we have decided to accept its redrafted question.¹⁶

3.17 Following the debate, the amendment proposing a revised referendum question in line with our recommended wording was passed without a division, and the revised question was incorporated in the Bill.

¹⁶ HC Deb, 12 October 2010, c286

3.18 Although further amendments were proposed to the question during the passage of the Bill through the remaining stages of consideration by both Houses of Parliament, no changes were made and the question included in the PVSC Act included the revised wording which we had proposed.

Public information for voters

3.19 The Commission had a responsibility to run public awareness activities to promote voter information for the referendum as set out in the PVSC Act 2011. We decided to focus on voter information rather than registration because of the various different electoral events taking place on 5 May.

3.20 There were broadly two strands to voter information for the UK referendum:

- public information, that is, factual information about the referendum from impartial sources, and
- campaign material from both sides of the argument explaining why people should vote in a particular way

In this chapter we review the availability of public information for voters and in the next chapter we look at the availability of campaign material for voters.

3.21 Based on evidence from our research to inform our question assessment, we anticipated that initial public awareness that a referendum was taking place, what it was about and how to participate would be low. Providing impartial information to electors therefore was going to be vital to help people take part in it. We had a key role in trying to bridge the knowledge gap.

3.22 The formal referendum campaign period began on 16 February 2011. A critical time for public information to reach people was going to be from 1 April until 14 April, which was the deadline to register to vote and for people to apply for a postal vote (15 April in Scotland). We therefore planned our public information campaign to begin on 1 April in England, Scotland and Wales which allowed enough time for the key message to build up, but crucially was a short enough period to ensure the message did not become too repetitive. In Northern Ireland the public information campaign launched on 25 March to allow time for advertising about absent vote applications, which are slightly different to those for England, Scotland and Wales.

Initial levels of voter awareness

3.23 Immediately prior to launching our public information campaign we conducted public opinion research to establish levels of public awareness about the referendum.

3.24 Only nine percent of people surveyed in March 2011 knew without prompting, when asked what electoral events were coming up in the next 12 months, that a referendum would be taking place.

3.25 Unprompted awareness of the elections that were scheduled to take place was not quite as low, although this level varied across the UK. In Scotland, 41% were aware of the forthcoming Scottish Parliamentary election; 21% in Wales for the National Assembly for Wales; 15% in Northern Ireland for the Northern Ireland Assembly and 39% for the local government elections in Northern Ireland. Across England, awareness varied between people living in those areas where elections were taking place (39%) and in areas where they were not (23%).

3.26 Awareness of the referendum and the scheduled elections was higher when respondents were prompted as to the events taking place.

Our public information campaign

3.27 As the referendum was held on the same day as elections in Scotland, Wales, Northern Ireland and some parts of England, our campaign aims were to ensure that electors:

- were aware that there were elections and a referendum taking place
- knew what the elections and referendum were about
- had all the information they needed to be able to understand how to vote

The focal point of our campaign was an information booklet, which was distributed to every household across the UK. There were four versions of the booklet – one for each part of the UK.¹⁷

3.28 The booklet was developed in consultation with experts on electoral systems to ensure that our explanations of the ‘first past the post’ and ‘alternative vote’ systems were accurate and fair. We also consulted the Plain Language Commission to ensure that the text was as accessible as possible. In addition, we conducted research with members of the public to ensure the text was understood by voters. This involved in-depth interviews with members of the public in England, Scotland, Wales and Northern Ireland. We also made drafts of the text of the booklet available for campaigners and other interested parties to see prior to its finalisation.

3.29 We received a number of comments on the text from both sides of the campaign. We carefully considered all suggestions from everyone who commented. This involved referring back to the views of the experts in electoral systems that we consulted on the draft and the outcomes of our user testing to ensure that the final text was as fair, accurate and accessible as possible. This

¹⁷ www.aboutmyvote.co.uk/referendum_2011/referendum_booklet_all_formats.aspx

text formed the narrative of the Victor the Vote Counter online video. We made one change to the booklet in response to a suggestion to ensure that there was no confusion over how many candidates to rank.

3.30 The booklet provided details of what the referendum was about, including the question voters would be asked, an explanation of the 'first past the post' and 'alternative vote' systems, and practical information on how to take part. It also contained information about relevant elections, including how to register and how to vote.

3.31 Distribution of the booklet took place via Royal Mail's door-to-door service, and was completed by 16 April (9 April in Northern Ireland), as close as possible to the last date to register to vote and to apply for a postal vote.¹⁸

3.32 Our distribution plan for the delivery of the booklets covered every postcode sector in the UK. We were aware that for a mailing of this kind to every household, it would be very difficult to ensure perfect coverage with everyone receiving a booklet. There were occasions when the booklet may not have been delivered locally or it may have arrived with other forms of promotional mail shots (seen as junk mail) and inadvertently discarded. We were contacted by some individuals who said they had not received a booklet. In these instances we sent an individually addressed booklet immediately to them through first class mail.

3.33 We used a door drop research agency¹⁹ to calculate the estimated delivery for our booklet door drop. Using the industry standard calculations, an independent evaluation of our booklet delivery found a calculated delivery rate of 96.1%, which compares well with household mailshots of this type. Further details on how this figure was reached can be found in Appendix B.

3.34 We produced a similar booklet for the Wales referendum on the law-making powers of the National Assembly that took place on 3 March. The estimated delivery for the May polls booklets was slightly better than that estimated for the Wales referendum booklet where the delivery rate is estimated at 91%.

3.35 A comprehensive media campaign was launched on 1 April (25 March in Northern Ireland), which featured adverts on television, local radio and online. In Northern Ireland the campaign ran in newspapers as well as outdoor advertising such as bus shelters and telephone boxes.

¹⁸ The deadline for receipt of absent vote applications in Northern Ireland was 5pm on Monday 11 April, while across Great Britain it was 5pm on Thursday 14 April.

¹⁹ Survey conducted by Front Door Market Research. The calculation is based on levels of 'prompted recall' and 'claimed delivery' over a specific area.

3.36 The campaign comprised two phases which were timed around the distribution of the booklet. The specific aim of the first phase of the campaign (1 – 15 April) was to inform the public that elections and a referendum were due to take place across the UK on 5 May, and to look out for the information booklet that was on its way to them.

3.37 The second phase of the campaign, ran between 25 April and 4 May (the day before polling day), and aimed to reinforce the information in the first phase, while also encouraging anyone without a copy of the booklet to download a version from our website, www.aboutmyvote.co.uk. It advertised a helpline number for people to call if they hadn't received a booklet and wished to order one or if they had any questions about the referendum or the elections being held in their area.

3.38 We also developed an online video – “Victor the Vote Counter” – which ran throughout the campaign. The purpose of the video was to aid understanding of the ‘first past the post’ and ‘alternative vote’ systems by bringing to life the explanations of the voting systems provided in the information booklet. The video was placed on www.aboutmyvote.co.uk and on [YouTube](https://www.youtube.com) and received over 200,000 hits throughout the campaign.

3.39 In Great Britain there were 9,753 calls to the helpline. These were dealt with by our helpline staff and the Commission's Public Information Team, with 1,753 additional booklets and 1,361 voter registration forms distributed (in comparison, for the UK general election in 2010 over 50,000 calls were taken and over 10,000 registration forms distributed).

3.40 Calls in Northern Ireland were dealt with on our behalf by the Electoral Office for Northern Ireland (EONI). The Northern Ireland helpline received a high volume of calls: from 21 March until polling day it received 27,886 calls, of which 9,269 were made during the first week. In comparison, 26,413 calls were made to the Northern Ireland helpline in 2010. The largest proportion of calls related to registration which accounted to 8,492 calls, followed by 6,700 calls about absent voting. The high volume of calls was influenced by the early delivery of poll cards in Northern Ireland, which would have prompted greater response from electors. More detail about this can be found in our report on the Assembly elections in Northern Ireland.

3.41 A special section of our voter website, www.aboutmyvote.co.uk provided information about the referendum and each of the elections occurring on the same day. From 16 February, when the referendum period began, we displayed information on the referendum and elections, based on the text in our booklet. From 25 March until the close of poll on 5 May 2011, our voter website received over 750,000 hits.

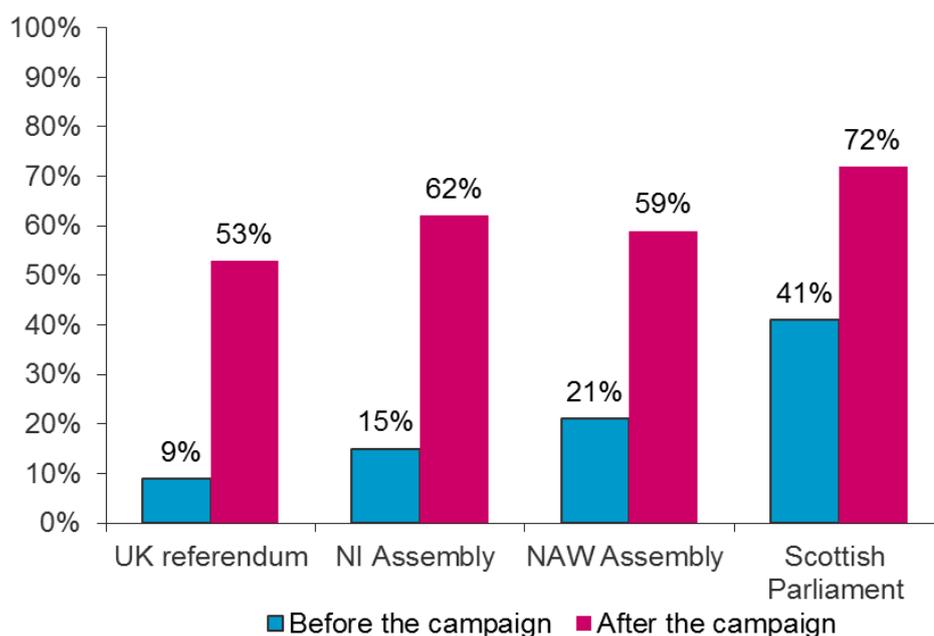
3.42 We give the costs of our public information campaign in Chapter 7 of this report, alongside other election and referendum costs.

Levels of public awareness after our public information campaign

3.43 We evaluated the levels of public awareness about the referendum and the elections through conducting opinion research before, during and after our public information campaign, so that we could compare with levels assessed before our campaign began. A mid-wave phase of fieldwork (Post-stage 1) was conducted immediately prior to polling day in order to assess the impact of the public awareness campaign before voters had been to the polls. This was to ensure that the levels of understanding were based on the public awareness activity, and were not a result of information gathered from having been through the voting process. Public awareness would have been influenced, of course, not only by our public information campaign but by media coverage of the referendum and elections as well as by material from campaigners.

3.44 The chart below shows spontaneous awareness of the different electoral events prior to and after our campaign. Findings from our campaign tracking public opinion research are published on our website.

Figure 1: Awareness of the 5 May polls before and after our campaign



Campaign tracking research: Pre-wave March 2011, Post-wave May 2011 Source: Gfk-NOP
 Base: PVS referendum - all respondents; Pre-wave (1,409); Post wave (1,392). NI assembly - all respondents in NI; Pre-wave (187); Post wave (204). NAW assembly - all respondents in Wales; Pre-wave (191); Post wave (193). Scottish Parliament - all respondents in Scotland; Pre-wave (194); Post wave (174).

Q. As far as you are aware, will there be any opportunities for you to vote in the next 12 months? What will they be?

Public awareness activities by Counting Officers

3.45 Section 125 of PPERA prohibits publicity about the referendum during the last 28 days of the referendum period by any government department, government minister or local authority. The prohibition also applies to any other person or body whose expenses come wholly or mainly out of public funds or from any local authority. An exception to this restriction is granted to the Electoral Commission or anybody acting on its behalf.

3.46 Prohibited material is that which:

- provides general information about a referendum
- deals with any of the issues raised by the referendum question
- puts any arguments for or against any particular answer to the referendum question, or
- is designed to encourage voting at the referendum.

3.47 The restriction does not apply to materials made available in response to specific requests for information or to give access to information for people specifically seeking it, the publication of information related to the holding of the poll and the issue of press notices.

3.48 Counting Officers could recover costs in the usual way under the fees and charges provisions, from the Consolidated Fund. Following lessons learnt at both the North East of England referendum in 2004 and the Wales referendum in March 2011, the Commission asked all Counting Officers to carry out public awareness activities on its behalf during this period since the Commission is the only public body not caught by the prohibition. Local authorities were prohibited from funding participation activities during this period.

3.49 We published on our website a factsheet about the publicity restrictions. We also gave specific advice about the prohibition in relation to queries about its application in particular circumstances. During the campaign we dealt with two allegations of breaches of section 125, relating to information published on the 'Yes' website – see paras 5.101 to 5.104

3.50 Counting Officers undertook a variety of activities to promote registration and to inform people about how to take part in the referendum and any elections taking place on the same day. We provided templates, such as press releases and posters, based on those we used in our own campaign for the referendum for use and adapt at a local level, and these were available to download from our website. Those Counting Officers who used these templates, plus web links to Victor the Vote Counter, noted that these were helpful.

3.51 Other campaign activities carried out by COs ranged from the traditional types of media – such as press releases, articles in newspapers and the radio – to web-based media including council web-sites, and 'social media' such as You Tube, Twitter and Facebook to encourage people to register to vote.

3.52 Following careful consideration and discussion with Regional Counting Officers and COs, the CCO directed COs not to make the Commission's voter information booklet available in polling stations. See Chapter 4 for more details.

Media coverage of the referendum

3.53 The role of the media in elections and referendums is potentially very important, since the public gets much of its information about politics and electoral events from different media sources. Given low levels of knowledge about the referendum at the beginning of the campaign, there was potential for the media to have a pronounced influence during the campaign. There was also the potential for either the referendum or the elections to dominate media coverage of the campaigns, meaning the other event received less coverage.

3.54 We commissioned the University of Exeter for two months prior to polling day to analyse media coverage for the 5 May polls across a range of sources including the press, television news, radio and online resources UK-wide and those specific to Scotland, Wales and Northern Ireland. A key objective of the research was to look at how much news and information was made available through the media about the referendum and scheduled elections.

Quantity of coverage

3.55 In the run up to the 5 May polls there were other events which dominated the news agenda, such as civil unrest in the Middle East and the Royal Wedding. This may have had an impact on the amount of information that the public received about the polls.

3.56 Across the UK-wide media, there were more stories about the referendum than there were about the elections. The number of stories on television and radio were fairly close to equal for the two types of poll, but UK newspapers carried far more referendum than election stories. Coverage of both the referendum and the elections increased as polling day grew closer, but this was generally more pronounced for the referendum. The exception to this was the BBC website (www.bbc.co.uk), which was cited as a source of news by a large proportion of respondents to our campaign tracking research. Here coverage of the elections increased considerably in the week before polling day, while coverage of the referendum remained the same.

3.57 Referendum stories also tended to be somewhat more prominently placed than elections stories in both UK newspapers and television news, though not radio news. Referendum stories also tended to be somewhat more prominently placed than elections stories in both UK-wide newspapers and television news (though not radio news), with stories covering the referendum more often front-page news. However, analysis of stories' length in newspapers showed that, although referendum stories were more prominent, when election stories did appear, they tended to be of similar length to stories on the referendum.

3.58 Exeter's analysis found a different picture for the media in England and the media in Scotland, Wales and Northern Ireland which tended to focus far more on the elections in their areas. This was particularly the case for the elections in Scotland, Wales and Northern Ireland. Indeed, for every referendum story in each of Scotland, Wales and Northern Ireland, there were at least eight stories about the elections. The effect was slightly less pronounced in Scottish editions of the UK newspapers, but here election coverage was still four times greater than coverage of the referendum. Table 2 below clearly shows the difference between the focus of the UK-wide media and media in, Scotland, Wales and Northern Ireland.

Table 2: Ratio of election to referendum stories

	Number of election stories	Number of referendum stories	Ratio of election stories to referendum stories
UK-wide	211	416	1:1.97
Scotland	995	150	1:0.15
Scottish versions of UK newspapers	442	101	1:0.23
Wales	321	39	1:0.12
Northern Ireland	425	37	1:0.09
England: London (no local elections)	10	55	1:5.1
Manchester	31	19	1:0.58

Note: the closer the ratio to 1.1 the more equal the coverage of election and referendum was.

Note: Manchester and London were selected for the study to enable comparison of a location in England which had local elections with the other which did not.

3.59 As with the UK media, the analysis found that although the number of stories about the elections and the referendum in the media across Scotland, Wales and Northern Ireland were not similar in number, where they did appear they were of similar length. Neither election nor referendum stories tended to be front page news, instead often occupying space from pages 5-16 of newspapers. The National Assembly for Wales elections were an exception to this, with many of the stories about these elections featuring near the front of newspapers in Wales. For television news in Scotland, Wales and Northern Ireland on the other hand, election stories were more often the first item of news, particularly in Scotland.

3.60 We cannot definitively say whether the elections would have attracted more coverage in the UK-wide media, or the referendum more in the other media, had the events not been combined. Exeter's study does suggest that there appeared to be no inherent disinclination on the part of the media from Scotland, Wales and Northern Ireland, and English regional media to cover the referendum; rather, the elections were considered to be a greater priority than the referendum.

Impact of the media coverage

3.61 There is no entirely objective way of judging whether there was 'enough' coverage of the electoral events, nor whether the prominence of the referendum in the UK-wide media and the elections in the national and English regional

media served to provide an overall balance in the information available to people in different parts of the UK. However, the results of our public opinion survey, conducted by ICM during the weeks following polling day, give some indication as to public perceptions about the information provided by the media about the events.

3.62 Seventy per cent of respondents across the UK agreed with the statement 'there was a lot of media coverage on the referendum' whereas only 50% of those who had elections agreed that 'there was a lot of coverage of the election'. If we look at perceptions of the amount of media coverage across Scotland, Wales and Northern Ireland, the findings are broadly consistent with Exeter's analysis that the media there focused more on elections. So, agreement that there was a lot of media coverage on the elections was higher in Northern Ireland (70%) and Scotland (72%), compared to 54% in Wales and 45% in England.

3.63 Perceptions of the amount of media coverage on the referendum varied less. Respondents in Northern Ireland (59%) were less likely to agree there was a lot of coverage than those in Wales (65%), Scotland (67%) and England (70%).

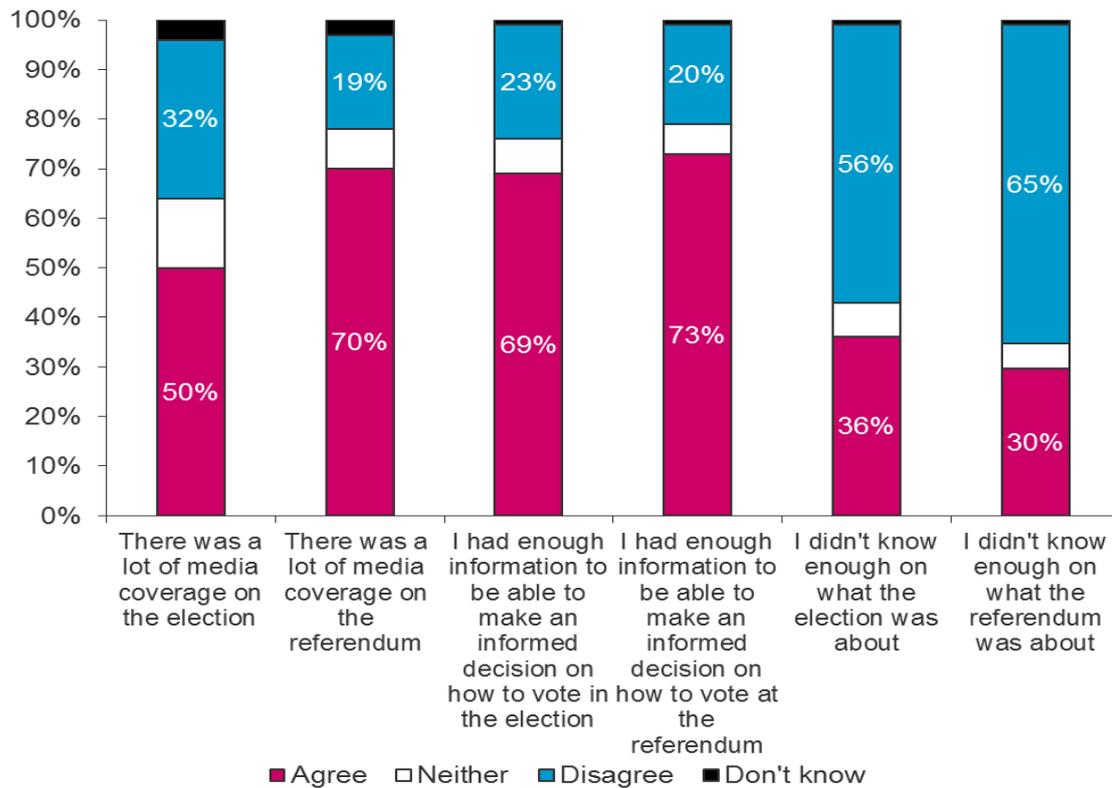
3.64 People were asked whether or not they agreed with the statement, 'I didn't know enough on what the referendum was about' and an equivalent statement for the elections. The results show that people in Northern Ireland were slightly more likely to say that they did not know enough on what the referendum was about than the UK as a whole.

3.65 For the election statement, people in Scotland were more likely to say that they knew enough on what the elections were about.

3.66 People were also asked whether they agreed or disagreed with the statement 'I had enough information to be able to make an informed decision on how to vote in the election'. A total of 69% agreed across the UK. Again, the findings follow the general theme of more election related information getting to those in Scotland (79%) and Northern Ireland (80%), compared with those parts of England with elections (67%) and in Wales (70%). This may in part be a reflection of the type of elections taking place across the country.

3.67 In response to the equivalent question about the referendum, at least 70% of all respondents agreed in each of England, Scotland, Wales and Northern Ireland. Agreement was higher among those who actually voted, with 86% of those who voted agreeing across the UK.

Figure 2: Agreement with statements on elections/referendum held on 5 May



May 2011 Post-polling day survey

Source: ICM

Base: Referendum questions all respondents UK (3,961); elections - all where an election UK (3,461)

Q. To what extent do you agree or disagree with the following statements

Lessons learned about information for voters

Assessing the referendum question

3.68 Our recent experience of assessing two referendum questions in short succession, and – in both cases – the acceptance by Government and Parliament of our recommended changes to the wording of those questions, leads us to conclude that our approach to assessing referendum questions is a good one.

3.69 The timetable for assessing the referendum question contained in the PVSC Bill, however, was very tight and left little margin for error. If the UK Parliament had not accepted our recommendations and instead proposed a new question which required further testing, it would have been difficult to carry out the required level of detailed research within the time remaining for the UK

Parliament to conclude its consideration of the Bill and for it to receive Royal Assent in time for the referendum to take place in May 2011.

3.70 The current mechanism for developing and agreeing referendum questions that are proposed in primary legislation means that there is no certainty that the final question that appears on the ballot paper will have been tested with voters before polling day. A referendum question contained in a Bill may be amended in other ways and for reasons other than specifically to improve its intelligibility. For example, amendments were tabled during the passage of the Bill which proposed changing the question by offering voters a choice of voting systems and asking voters to vote first on whether they wanted a change and if so what change they wanted.

3.71 It is not clear within the current legislative provisions whether, and at what point, the Commission's duty to assess the intelligibility of a proposed referendum question would be triggered if the question in a Bill were to change substantially from that proposed originally (other than in accordance with any recommendation we have made). We believe that if any significant changes are made to a proposed referendum question during the passage of any future referendum Bill, the revised question should be re-considered by the Commission before Parliament concludes its consideration of the legislation.

Public information for voters

3.72 This was the first time that the focal point of the Commission's campaign was the distribution of an information booklet to every household across the UK. This was the same approach that had been adopted to inform electors about the referendum that took place on 3 March in Wales.

3.73 This method ensured that information about the events taking place on both 3 March and 5 May reached as many households as possible ensuring that as many people as possible knew what events were taking place, how to take part in them and what they were voting on. The calculated delivery score of the booklet for both events in 2011 exceeded 90%.

3.74 The findings from the campaign evaluation suggest that providing a voter information booklet to every UK household and supporting its distribution with a large scale TV, radio and online advertising campaign is an effective approach to public awareness and one which we believe should be replicated going forward. We would also recommend that the method devised for developing the booklet in this instance, i.e. consulting with experts in elections, the Plain Language Commission and conducting user testing, is used in future to ensure that the information we provide continues to be accurate, fair and as accessible as possible.

Prohibition on referendum material produced by publicly funded bodies

3.75 We received and dealt with two complaints about potential breaches of the prohibition on publication of promotional material about the referendum by public funded bodies (see chapter 5); we are not aware of any evidence of any other significant breaches during this referendum.

3.76 It is an important principle that publicly funded bodies should not use their resources to influence the outcome of a referendum.

3.77 As we recommended following the 2004 North East of England referendum, for future referendums, the prohibition should commence at the same time as the referendum period begins (i.e. the date from which campaigners can be registered as permitted participants and the regulation of referendum campaign spending begins). The current 28-day prohibition leaves open the risk that the use of public money for this purpose is perceived as giving an unfair advantage to one side of the argument or the other.

3.78 On the other hand, the current prohibition meant that for 28 days before polling day we had to ask Counting Officers in local authorities to carry out local activities to provide neutral information about the referendum, on behalf of the Electoral Commission to ensure that they did not fall foul of the prohibition.

3.79 For future referendums the law should be changed so that, in addition to the specific exemption for activities carried out by the Electoral Commission, similar activities carried out by Counting Officers are exempt from the prohibition on the publication of referendum material by publicly-funded bodies or individuals.

Media coverage and levels of awareness

3.80 The media plays a key role in informing the public about electoral events. Prior to polling day some campaigners and elected representatives had expressed concern that coverage of the referendum campaign might dominate that of the campaigns for the scheduled elections, particularly in Scotland, Wales and Northern Ireland. Some others argued that campaigns on such an important constitutional question as the voting system for UK Parliamentary elections should not have to compete for media coverage with scheduled elections.

3.81 Overall, however, evidence suggests that media coverage of the 5 May polls was fairly balanced between the referendum and the scheduled elections and most people thought that there was sufficient coverage of both the elections and the referendum to enable them to make an informed decision on how to vote in these polls.

3.82 We cannot definitively say whether the elections would have attracted more coverage in the UK-wide media, or the referendum more in the Scottish, Welsh and Northern Irish media, had the events not been held on the same day. Exeter's study does suggest that there appeared to be no inherent disinclination on the part of the, Scottish, Welsh and Northern Irish media to cover the referendum; rather, the elections were considered to be a greater priority than the referendum.

Recommendations for voter information at future referendums

Recommendation 5 – Ensuring intelligible questions for future referendums

We do not recommend changing the nature of the role of the Electoral Commission in relation to assessing the intelligibility of a referendum question. Parliament is, and should remain, ultimately responsible for approving the final referendum question, and the Commission should continue to provide independent advice to enable Parliament to consider properly the implications of a particular question.

We would, however, recommend that if any significant changes are made to a proposed referendum question during the passage of any future referendum Bill, the revised question should be re-considered by the Commission before Parliament concludes its consideration of the legislation.

We recognise that, in practice, this may introduce a delay to the passage of legislation, and that there may also be an impact on the deadlines for confirmation of the legislative framework for referendums which we have outlined in Recommendation 1. Given the importance of ensuring that voters are presented with an intelligible question, however, we do not believe that thorough testing and consideration of a revised question should be sacrificed.

Implementing our recommendations to amend the PPERA framework for referendums and putting in place a generic order containing the detailed rules as outlined in our Recommendation 3, would also mean that an individual referendum Bill might be simpler and allow more time for detailed consideration by Parliament of the question.

We will wish to work with the UK Government and Parliament to identify how best to implement our recommendation on reassessing revised questions.

Recommendation 6 – Ensuring appropriate use of public money in informing voters about the referendum

Publicly-funded bodies or individuals should not use their resources improperly to influence the outcome of a referendum or give an unfair advantage to one side of the argument or the other, and this prohibition should extend throughout a referendum period. Counting Officers, however, should be free to support participation in the referendum by providing impartial information to voters about how to take part.

We recommend that the UK Government should amend section 125 of PPERA to ensure that for future referendums:

- The prohibition on publication of promotional material about the referendum by publicly-funded bodies or individuals commences at the same time as the beginning of the referendum period.
- Activities carried out by Counting Officers, under any statutory duty to promote participation and in accordance with the CCO's directions, are exempt from the prohibition on the publication of referendum material by publicly-funded bodies or individuals.

4 The experience of voters

4.1 This chapter explores voters' experience at the referendum and the scheduled elections which were held on the same day. It considers how easy it was for them to take part in the 5 May polls including whether voters were able to register to vote, if they knew how to take part and their experience of doing so, whether voting by post or in a polling station.

Registering to vote

4.2 A complete and accurate electoral register underpins any election, as inclusion in the register of electors is essential for people to be able to vote.

4.3 The main focus of electoral registration activity is the registration of electors within households which is undertaken annually in the autumn (commonly known as the 'annual canvass'). Individuals may also register or amend their existing details at any time of the year, a process known as 'rolling registration', usually as a result of moving home or having missed the annual canvass.

Who was eligible to vote?

4.4 The following people were eligible to vote in the referendum if they were aged 18 or over and on the electoral register on polling day:

- British or qualifying Commonwealth citizens²⁰ resident in the UK
- citizens of the Irish Republic resident in the UK
- British nationals living overseas who moved up to 15 years ago, and who had previously been registered in the UK
- service or Crown personnel serving in the UK or overseas in the armed forces or with Her Majesty's Government
- Peers

4.5 For the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly and local government elections in both England and Northern Ireland, the following people were eligible to vote if they were aged 18 or over and on the electoral register on polling day:

²⁰Including Rwanda which became a Commonwealth country in March 2010. Qualifying Commonwealth citizens are those who have leave to remain in the UK or do not require such leave.

- British or qualifying Commonwealth citizens resident in the UK
- European Union citizens resident in the UK
- citizens of the Irish Republic resident in the UK
- service or Crown personnel serving in the UK or overseas in the armed forces or with Her Majesty's Government

4.6 A total of 45,684,501 people were registered to vote at the referendum on 5 May across the UK. This was the largest ever electorate for a UK-wide poll and the registers contained over 80,000 more names than at the 2010 UK general election, one year earlier.

4.7 People could register up to 14 April 2011 in England, Wales and Northern Ireland, and 15 April in Scotland, 11 working days before polling day.²¹ Data collected from Electoral Registration Officers (ERO) suggests that over 200,000 people, mainly in England, successfully applied to be included in the registers in the weeks leading up to the registration deadlines. As at last year's general election this seems to have been more prevalent in urban areas, especially in London. Data also suggests that over 40,000 people tried to register after the deadline, and some 5,000 people attended polling stations wishing to vote without being registered.²²

4.8 While these figures do not give a comprehensive record of the number of people who could not vote because they were not registered (since data was not provided for all counting areas) it does indicate that, in total, at least 45,000 people across the UK either: missed the deadline for registration; thought the deadline was later than it was; or were mistaken as to whether they were registered to vote.

4.9 The facility to allow voters to register late must be weighed against the need to maintain the integrity of electoral registers by allowing time for EROs to complete processes that limit fraudulent registration. We continue to consider rolling registration (that is registration on a monthly basis) and the 11-day deadline as valuable facilities for voters.

People's experiences of registering to vote

4.10 Our public opinion research shows that people are generally satisfied with the procedure for getting their name on the electoral register. Of all respondents, 85%, a similar proportion as in 2010, said they were satisfied, with over half saying they were very satisfied (53%).

²¹ The registration deadline was earlier in England, Wales and Northern Ireland because there was an extra non-working day in those parts of the UK. Easter Monday bank holiday, which is not a bank holiday in Scotland, fell on 25 April 2011,

²² These figures should be seen as approximate as not all EROs kept appropriate records.

4.11 Although satisfaction was broadly consistent across the UK there was a slightly lower level of satisfaction in Northern Ireland where it was 77%, with 45% of respondents saying they were very satisfied. This may be a consequence of a different approach to requirements when registering to vote in Northern Ireland, or of there not having been a door-to-door canvass of electors in Northern Ireland since 2006, which means that knowledge and recall of the procedure used for registering to vote is likely to have declined.

4.12 Only two per cent of those surveyed said that they were dissatisfied with registering to vote – with those more likely to be dissatisfied being students (8%), unemployed people (5%) and those also dissatisfied with the procedure for voting in elections (10%).

Voting at the referendum

Turnout at the referendum

4.13 Schedule 1, Paragraph 9 of the PVSC Act requires the Electoral Commission to:

- (a) publish the most accurate estimate that it is reasonably possible to make of the turnout in each of England, Wales, Scotland and Northern Ireland;
- (b) include that information in any report they submit under section 6(1)(b) of the 2000 Act to do with the referendum.

4.14 Turnout is defined as ‘the percentage of those entitled to vote in the referendum who did so’ and represents all votes cast as a percentage of the eligible electorate.²³

4.15 A total of 19,285,751 people voted in the referendum which represented 42.2% of the total number of people on the register. Table 3 below shows the level of turnout for England, Scotland, Wales and Northern Ireland, together with turnout in each referendum region in England, and the proportion of people who voted Yes and No. Table Y shows the turnout at each of the polls held on 5 May 2011. Full turnout details can be found on our website:

www.electoralcommission.org.uk/elections/results

²³ Previously the Commission has primarily reported turnout based only on valid votes cast. Turnout calculated by this method for the referendum is only marginally less, at 42%. We will continue to publish data on both types of turnout on our website.

Table 3: Percentage turnout and share of the vote by referendum area

Referendum area	Turnout %	Yes %	No%
Scotland	50.7	36.4	63.6
Wales	41.7	34.6	65.5
Northern Ireland	55.8	43.9	56.3
England (made up by the regions below)	41.0	30.9	69.1
Eastern	43.1	29.0	70.0
East Midlands	42.8	28.7	71.3
London*	35.4	39.5	60.5
North East	38.7	28.0	72.0
North West	39.1	30.2	69.8
South East	44.3	29.7	70.3
South West	44.6	31.5	68.5
West Midlands	39.9	28.5	71.5
Yorkshire & the Humber	39.9	31.3	68.7

* Note: there were no scheduled elections in London.

Table 4: Turnout at the polls held on 5 May²⁴

Election	Turnout %
UK referendum	42.2
Scottish Parliament	50.6
National Assembly for Wales	41.8
Northern Ireland Assembly	55.6
Northern Ireland local government	55.7
English local government	42.0

4.16 There were also variations in turnout across different voting areas at the referendum. The highest turnout was in the constituency of Eastwood, Scotland (63.3%) and lowest in the London Borough of Newham (27.3%).²⁵

²⁴ Note the franchise was more limited for the UK referendum meaning that fewer people were eligible to vote in it.

4.17 Approximately 41,800 polling stations were open across the UK between 7am and 10pm. Three quarters of people who voted at the referendum chose to vote in person, and one quarter voted by post. Across the UK, 0.17% of electors chose to appoint someone to act as a proxy for them and vote on their behalf, although we cannot tell how many of these proxies voted on polling day.

Who voted

4.18 Our public opinion research explored the characteristics of those people who voted in the referendum and identified key drivers of turnout. Reflecting trends at previous elections our survey found that young people were the least likely of any group in society to report having voted. Less than half as many 18-24 year olds said that they voted in the referendum as those aged 65 and over.

4.19 Having an interest in politics was found to be a key driver of turnout in the referendum. Our survey found that twice as many people who said they were interested in politics said that they voted compared to those who said they had little or no interest). People who are registered to vote by post continue to be more likely to vote than polling station voters.

4.20 Our public opinion research shows that combining the referendum with the Assembly and local government elections in Northern Ireland also appears to have led people to vote in the referendum when they might not have done otherwise. Almost a quarter of voters (23%) in Northern Ireland said that they would not have voted in the referendum if the Assembly and local government elections had not been held on the same day. By comparison, 16% of voters said the same in Scotland and six per cent in England and in Wales.

4.21 On the other hand, the referendum did not appear to drive turnout to the same extent as the elections appeared to, with only five per cent of voters saying that they would not have voted in the scheduled elections if the referendum had not been held on the same day. This finding was broadly consistent across the UK and illustrates the effects of combining the polls in terms of turnout at the referendum which may have otherwise been lower. They also demonstrate that despite initial concerns that the referendum would overshadow the elections, this did not happen and the vast majority of people would have voted in the scheduled elections regardless of whether the referendum had taken place.

²⁵ Note that the voting areas in England were based on local authority areas whereas the voting areas in Scotland were on Scottish Parliamentary Constituencies. Full turnout details for all referendum voting areas are available on our website at www.electoralcommission.org.uk/elections/results

Why people did or didn't vote

4.22 Reflecting previous post-election research, the most common reasons given for voting related to a sense of having a duty to vote and a feeling that it is important to do so (46%). This was followed by voters wanting to have their say (28%) and those people who always vote in elections (18%).

4.23 Again reflecting other post-election surveys, over half of all non-voters said circumstances prevented them from doing so, with about half of these saying they were too busy to vote. This figure is higher than recorded at the 2010 UK general election (31%), but similar to reasons cited for non-voting at the 2009 European Parliamentary and local government elections (49%).

4.24 Non-voters in Northern Ireland were less likely to say that circumstances prevented them from voting (37% gave reasons such as being too busy) compared to those living in England (53%), Scotland (58%) and Wales (53%). However, they were more likely than non-voters in Great Britain to say that they didn't vote because they had no interest in voting (e.g. couldn't be bothered or see the point) – 30% in Northern Ireland compared to 19% in Great Britain overall.

People's experience of voting at the referendum

The experience of people who voted in polling stations

4.25 Over 14.2 million people chose to vote in their local polling station on 5 May. There were no reports of people being unable to cast their vote as a result of queues outside polling stations, which had been a feature of the 2010 elections. On polling day we became aware of some isolated reports that some polling station staff had asked voters if they would like a referendum ballot paper, rather than automatically giving it to them alongside their ballot for the election(s). In this instance, the relevant COs were contacted and instructed to remind their polling station staff that voters must be given all the ballot papers they are eligible to receive, rather than being asked which ones they would like.²⁶ There was no suggestion of any voters being denied ballot papers for the referendum.

4.26 Nearly all polling station voters were satisfied with voting in a polling station, finding it a convenient way to cast their vote and an accessible way of voting.

²⁶ There is a legal presumption that when someone presents themselves at a polling station they are applying for all the ballot papers to which they are entitled – unless they specifically say otherwise.

Almost all polling station voters (99%) who responded to our public opinion survey said that it was easy for them to get into their polling station. More people than in 2010 said that it was very easy, 94% compared to 85%. Polling station voters also thought that their polling station was well run by staff (96%).

4.27 Although there have been great improvements in the accessibility of polling stations over recent years, there were still some where access into or within the polling station was restricted. We received reports from a handful of accredited observers where access into or within their polling station was restricted. This was particularly apparent in places which housed one or more polling stations meaning that they were often small, cramped and inaccessible. We also received reports from some accredited observers that some polling stations would not have enabled access for a person using a wheelchair. A four-yearly cycle of statutory reviews of polling places is due to be completed across the UK by the end of 2011 which we expect to lead to further improvements in accessibility.

4.28 We previously identified issues with the accessibility of buildings used as polling stations in our report on the 2010 UK Parliamentary General election. Responding to our report, the UK Government has said that it will review existing provisions for local authorities to use buildings as polling stations and consider how best to ensure all electors are able to access an appropriate polling station. We fully support this commitment and are keen to work with the Government and others to explore these issues in more detail and develop constructive solutions.

Information for voters in polling stations

4.29 Prior to the referendum, some Counting Officers suggested that the Commission's public information booklet should be available in polling stations in order to provide electors with information on request about the referendum at the point at which they cast their vote. Following consultation with Regional Counting Officers (RCO) the CCO issued a direction not to allow our booklet to be used. The purpose of this was to help ensure that polling stations remained places where campaign material, even unbiased information about the referendum options, could not be perceived as having influenced voters as they made their choices; this mirrors the approach taken in an election, where no information is permitted in polling stations about the position or body that candidates are being elected to. The CCO also wanted to make sure that there was a consistent provision of information to voters in polling stations across the UK. The Commission did issue a 'Frequently-asked questions' document for polling station staff to respond to any questions from voters about what the referendum was about and questions related to that. We did not receive any adverse feedback from polling station staff or voters about a lack of information about the referendum in polling stations.

4.30 Our public opinion survey found that just over two-thirds of voters (69%) rated the written instructions (posters or guidance as modified by the CCO) on display in the polling station as useful, with 44% reporting that they were 'very

useful' – which is up six percentage points on the 2010 survey. Of the remaining 31%, 27% said that they did not use them or did not need them.

4.31 Two-thirds (68%) of polling station voters felt that the help/support available from polling station staff was useful, with polling station voters in Northern Ireland (87%), Scotland (75%) and Wales (73%) more likely to say this than those in England (66%). Respondents living in an area where the referendum was not combined with an election were less likely to say that help was useful – 58% compared to 70% of respondents from areas with combined polls.

The experience of people who voted by post

4.32 There has been a steady increase in the number of people choosing to vote by post since postal voting on demand was introduced across Great Britain in 2000. In 2010, approximately 6.9 million people, or 15% of eligible electors, were issued with a postal vote for the UK general election; this had risen from 4% for the 2001 UK general election and 12% in 2005.

4.33 In the 5 May polls nearly 7.2 million, or 15.8 % of the total electorate, were issued with a postal vote. In England this figure was 16.3%, in Scotland 14.1%, Wales 17.1% and Northern Ireland (which does not have postal voting on demand) 1.9%. The highest percentage of postal votes issued was 39.6% of electors in Sunderland and the lowest (excluding Northern Ireland) was 6.4% in Kingston upon Hull. Table 5 shows the differences in the take-up of postal votes across each of the referendum regions in the UK.

Table 5: Percentage of electorate issued with a postal ballot

Region	% of electors issued with a postal ballot
Scotland	14.1
Wales	17.1
Northern Ireland	1.9
East Midlands*	16.6
Eastern	14.8
London	14.2
North East*	27.1
North West*	18.2
South East	15.1
South West	16.0
West Midlands	13.1
Yorkshire & The Humber*	18.1

*All-postal pilot areas in 2004.

4.34 As in previous elections, turnout among postal voters was significantly higher than that among polling station voters – 71.9% of all those issued with a postal vote returned it, whereas turnout at polling stations was 37.5%. A quarter (25.2%) of all the votes counted were postal ballots.

4.35 Where the referendum was combined with an election, the CCO directed COs to assess the viability of combining the issuing of postal ballot packs. This meant in practice that regardless of how many ballot papers they had to fill in, voters would be required to complete only one postal voting statement. It also meant that voters would receive one pack containing all of the ballot papers and associated documentation.

4.36 People who vote by post continue to be positive about their experience. Most postal voters said that they were satisfied with the experience of postal voting, considering it a convenient way to vote, saying it was easy to understand what had to be done in order to return their postal vote and finding the written instructions on how to return their ballot useful.

4.37 There were no significant differences between referendum-only areas and areas where an election was held alongside the referendum implying that combining the two did not present problems for postal voters.

Checking personal identifiers on postal voting statements

4.38 The Electoral Administration Act 2006 (EAA) introduced a requirement for Returning Officers to carry out checks on personal identifiers provided on statements which are returned in ballot packs by people voting by post. The date of birth and signature provided on postal voting statements are compared with those which were submitted as part of the elector's original postal vote application. The requirement is intended to ensure that no fraudulently completed postal votes are included in the count. For elections before 2011, a minimum sample of 20% of returned postal ballot packs were required to be checked at each postal ballot opening session.

4.39 In order to ensure confidence in the integrity of the May 2011 referendum, the Chief Counting Officer directed Counting Officers to check the identifiers on all returned postal ballot packs. Where the issue and receipt of postal ballot packs for the referendum were combined with the process for scheduled elections, this meant that the personal identifiers on postal ballot packs for both polls were checked.

4.40 Feedback and data from both the June 2009 European Parliamentary elections and the May 2010 UK Parliamentary general election indicated that the vast majority of Returning Officers had checked or attempted to check the personal identifiers on all returned postal ballot packs, and very few had been unable or unwilling to check more than the minimum 20% sample.

4.41 Since 2007 we have repeatedly called on the Government to mandate a more robust and consistent system of postal voting security checks requiring the checking of personal identifiers on all returned postal ballot packs – rather than the current minimum 20% sample at each opening session – before postal ballot papers are included in the count.

4.42 We therefore welcome the announcement in September 2011²⁷ of the Government's proposal to make changes to the legislation to require Returning Officers to check the personal identifiers on all returned postal voting statements. As part of this change, the Government will need to ensure that sufficient funding is made available to Returning Officers to ensure continued checking of identifiers on all returned postal ballot packs.

Missing or mis-matching identifiers

4.43 More than 300,000 returned postal votes (representing approximately 5.9% of those returned by post) were not included in the count because the details provided on the postal voting statement could not be successfully checked against the details provided on their original postal vote application. This includes instances where postal ballot packs were returned with the postal voting statement missing, where the postal voting statement did not include either or both of the personal identifiers, or where either or both of the personal identifiers were completed incorrectly.

4.44 At the May 2010 UK Parliamentary general election, approximately 3.8% of returned postal votes were not included in the count because the details provided on the postal voting statement could not be successfully checked.

4.45 An analysis of postal ballot data carried out for us by Professors Rallings and Thrasher of the University of Plymouth, suggests that the combination of the polls for elections and the referendum may have had an impact on the proportion of postal ballots which were rejected because the personal identifiers could not be verified. Looking at England alone, they noted that in London (where no elections were held) 4.8% of postal vote returns were rejected, whereas in the metropolitan boroughs (which are the most comparable voting areas and where elections were also held on 5 May) the rate of rejection was 6.6%. Similarly, 3.1% of returned postal ballot packs were rejected in the other 13 voting areas in England without elections, compared with a rate of 5.6% in comparable authorities where elections were held.

4.46 Feedback from Counting Officers in areas where the poll for the referendum was combined with the polls for scheduled elections suggests that some electors chose to return only the election ballot paper and not the referendum ballot paper.

²⁷ Cabinet Office, *The UK Government's Response to Reports on the Administration of the 2010 UK Parliamentary general election* (September 2011).

4.47 It is not possible to tell how far voters choosing not to return a referendum ballot paper contributed to the differences in the rate of rejection described above, and how far they resulted from voter confusion. Our public opinion research, summarised in paragraph 4.36 above, suggests that most postal voters found postal ballot packs easy to complete. Nevertheless, 4% said that they found it fairly difficult, so voter confusion cannot be discounted as a contributory factor to rejection overall. There were no significant differences in ease of completion between referendum-only areas and areas where an election was also held. This suggests that combining the two did not present problems for the majority of postal voters. However, given the small overall number of postal voters reporting difficulties on our survey, we cannot say definitively that the combined events did not cause problems for some.

Reasons for rejecting postal votes

4.48 Counting Officers and Returning Officers were required to record data about the reasons for rejecting postal votes, categorised under seven reasons. However, some of the data returned contained inconsistencies; for example, the total number accounted for, under the different categories of rejection, was not consistent with the overall number reported as having been rejected. For this reason, we must consider the data provided as indicative of the approximate proportion of postal votes rejected for each reason, rather than representing the precise numbers rejected.

4.49 Approximately 40% of rejected postal ballot packs, over 100,000, contained either no postal voting statement or no ballot paper. This is a rise from the proportion at the 2010 UK Parliamentary general election, when around 25% of returned postal ballot packs (somewhat fewer than 50,000 in total) were reported as having been rejected for this reason.

4.50 A further 40% of rejected postal ballot packs included postal voting statements which had not been correctly completed, because one or both personal identifiers did not match the records held by the ERO. This was a smaller proportion than at the elections in 2010, when identifiers on around 50% of returned postal ballot packs did not match the original application. However, this does not reflect a significant drop in the absolute number of rejections for this reason, with slightly over 100,000 postal votes having been reported to us as being rejected because of mismatched personal identifiers in both years.

4.51 Feedback from Counting Officers suggests that the reasons for this include: people giving the date that the postal vote was completed rather than their date of birth; change of name, such as on marriage; and changes in the quality of signatures over time since the original application was made.

4.52 Approximately 20% of rejected postal ballot packs (around 60,000) included postal voting statements on which either or both of the elector's date of birth and signature were missing. This is a similar proportion as reported at the May 2010 UK Parliamentary general election, but is a rise in overall number from around 40,000.

4.53 While it is clearly important that measures are in place that are effective in detecting and preventing fraud, these measures should not inadvertently disenfranchise voters who simply make mistakes on their postal voting statements. In practice this means that some people are voting but their vote is not being counted. Allowing ROs to request a refreshed identifying signature, and also to provide electors with feedback if their postal vote has been rejected, would help address this problem.

4.54 We first made this recommendation in our July 2007 evaluation of the introduction of personal identifiers for absent voting in England and Wales, and reiterated it in our July 2010 report on the 2010 UK Parliamentary general election. In its response to that report in September 2011, the UK Government said that it would work with the Electoral Commission and electoral administrators to identify how to avoid the problems we have highlighted with the current postal voting system, while taking into consideration the need to ensure that it remains secure against fraudulent applications for postal votes. We look forward to hearing in more detail how the UK Government intends to take forward this work.

Voting by proxy

4.55 If an elector had a reason why they were unable to vote in person, such as illness, physical incapacity, work commitments, or that they live overseas, they could appoint a proxy to vote on their behalf, either in a polling station or by post. The appointed proxy may apply to vote by post on that elector's behalf.

4.56 A total of 78,758 electors chose to appoint a proxy representing 0.17% of the total electorate. There is no way of knowing currently how many proxy voters actually voted at the referendum. Table 6 shows the number of proxies appointed across the UK.

Table 6: Proxy voting at the 2011 UK referendum*

	Proxy votes cast 2011	as % of electorate
UK	78,758	0.17
GB	74,309	0.16
England	63,612	0.16
Scotland	7,206	0.19
Wales	3,491	0.16
N. Ireland	4,449	0.37

*Data missing for 4 counting areas

4.57 In Great Britain, the deadline for appointing a postal proxy was 5pm on Thursday 14 April, and 5pm on Thursday 21 April for a proxy voter to vote on an elector's behalf in the polling station. The rules for proxy voting are different in

Northern Ireland where the deadline was 5pm on Monday 11 April for both postal proxy and proxy votes.

4.58 In Great Britain, anyone taken ill after this time and unable to vote in person at their polling station could appoint an emergency proxy up to 5pm on polling day itself. A total of 568 emergency proxies were appointed. This compares to 835 for the UK general election. In just four counting areas (three in Scotland) did the number of such proxies exceed a dozen.

4.59 In Northern Ireland the deadline for all late absent vote applications on the grounds of unforeseen illness was 5pm on Thursday 21 April.

4.60 However, throughout the UK there is no provision within current legislation for people who find that they are unable to vote in person after this deadline, for reasons other than a personal medical emergency, to appoint a proxy. In our report on the May 2010 UK Parliamentary general election we recommended that the Government should review the eligibility criteria for appointing an emergency proxy as we believe that they are currently too restrictive. We are pleased the Government has recently announced its intention to extend the emergency proxy voting provisions to those called away on business or military service unexpectedly. However, the Government should take this opportunity to further extend these provisions so that those who have unforeseen caring responsibilities or who have experienced the death of a close relative would also be eligible to apply for an emergency proxy vote.

Service voters

4.61 Members of the Armed Forces (or the spouse or registered civil partner of a member of the Armed Forces) can register to vote as a service voter, which allows them to register in respect of a fixed address in the UK even if they have to move around for their job. Or they can register to vote in the normal way, as an 'ordinary' elector. In either case, as with other electors, they can either vote in a polling station, or if they are away from home on polling day, by post, or by appointing a proxy. There were a total of 30,386 service voters on the 1 December 2010 Parliamentary electoral register for the UK.

4.62 For the 5 May polls the UK Government put in place the same arrangements to support service personnel in Afghanistan to register and to vote as were in place for the 2010 UK general election. This involved the Commission working with the Ministry of Defence to develop guidance and forms (voter registration form, postal and proxy voting application forms) for service personnel in Afghanistan – 1,000 copies were dispatched in mid-March. In addition, couriers and dedicated space on military flights were used to speed up the delivery of electoral registration applications and postal ballot packs to and from service personnel based in Afghanistan.

4.63 The Government was, once again, supported by the Head of the Democratic Services Team at Rushmoor Borough Council, Andrew Colver, who acted as a central coordination point for the postal fast-track process.

4.64 The UK Government has said that 281 proxy voting applications and 61 postal vote applications were received and forwarded to Electoral Registration Officers through this initiative. Forty postal votes were successfully returned from Afghanistan to the relevant Counting/Returning Officer. For the UK general election, 294 proxy voting applications were sent out and 217 postal votes were returned.

4.65 No special arrangements were provided for Service personnel in Germany because they receive a direct daily postal service. In Cyprus, special arrangements were put in place to return ballot papers via RAF Brize Norton and then as a priority dispatch via the Royal Mail. For other personnel based overseas, the British Forces Post Office agreed to fast-track any postal ballot papers they encountered.

4.66 Details of the costs and results of this exercise are not yet available, although the UK Government provided a summary of the outcome of a similar initiative in its September 2011 response to our report on the May 2010 UK Parliamentary general election. We want the UK Government to carry out a full evaluation of the initiative carried out for the May 2011 polls, and we look forward to considering the results of that evaluation.

Overseas voters

4.67 British citizens living abroad, but who had previously registered to vote in the UK within the last 15 years, could register to vote in the UK referendum as an 'overseas voter'. Overseas voters could choose to vote by post or appoint a proxy. There were a total of 30,809 overseas electors on the 1 December 2010 electoral register. Overseas voters were only able to vote in the UK referendum and not at the local and devolved elections.

4.68 The CCO issued a direction that all postal votes should be prioritised for overseas postal voters and that these should be sent out in the first dispatch. This was to ensure there was sufficient time to allow these electors to complete and send back their postal vote. Our monitoring indicated that two local authorities did not do this.

4.69 However, even with steps such as these, the Electoral Commission remains concerned that the current timetable does not allow sufficient time for overseas electors to apply for, receive and return their postal vote in time for it to be counted. There is little incentive for overseas electors to participate if they cannot be confident that their vote will arrive in time to be counted. As one Counting Officer explained:

Overseas electors - the timescale is still too tight to allow sufficient time for overseas electors to complete and return their ballot papers. They are basically being disenfranchised every time an election is held. One overseas elector called on polling day as he had just received his postal vote despite an early turnaround and issue by airmail

CO/RCO – Scotland

4.70 Changes are needed, within a longer election timetable, to enable postal votes to be issued earlier than at present to ensure that overseas electors' votes are counted and that the likelihood that they will be disenfranchised is reduced.

4.71 We therefore welcome the Government's proposal to extend the timetable for UK parliamentary elections from 17 to 25 working days from dissolution of Parliament to polling day, with a longer period between the close of nominations and polling day. We are, however, concerned that the full benefits of an extended election timetable as set out in the Government's proposals will not be available to all postal voters. The Government has not indicated that it intends to amend the relevant rules which specify that ballot packs cannot be dispatched until 5pm on the eleventh working day before polling day. This means that overseas voters in particular will still have a relatively short period in which to receive, complete and return their postal ballot packs in order for their votes to be counted. We believe that the Government should amend the rules to allow an earlier dispatch of postal ballot packs than that which is possible under the current timetable for nominations and applications.

4.72 We are also disappointed that the Government has not taken this opportunity to carry out a more comprehensive assessment of the optimum length for the election timetable and the relevant electoral registration and absent voting deadlines. We continue to recommend that the UK Government should undertake a comprehensive review of electoral timetables, including associated electoral registration and absent voting deadlines, in order to identify the best possible timetable for the range of elections in the UK.

The impact of advance issuing of poll cards

4.73 The CCO set specific deadlines for COs for their first dispatch of poll cards to ensure that electors would receive the same information regardless of where they lived across the UK, at a similar time. It also meant that people received their poll card well in advance of polling day when they still had time to register to vote or change their voting method and that they were given more notice about the arrangements for the 5 May polls.

4.74 This requirement was a significant change in Northern Ireland where poll cards are not usually dispatched until 10 days before polling day and was instrumental in increasing the number of people registered to vote. Over 17,000 voters were added to the register during the period of late registration.

4.75 The early issue of poll cards meant that electors were able to contact Electoral Office for Northern Ireland to notify them of a name or address change and have this new information included on the register used on polling day. It also prompted those not on the register in a household to take action to register in advance of polling day. The early dispatch of poll cards was also useful in alerting electors to the deadline for applying for a postal or proxy vote. Information about postal or proxy votes was not usually included on poll cards in Northern Ireland as by the time poll cards were issued the deadline for applying had passed. The number of postal and proxy votes also increased at this election.

4.76 The majority of people who responded to our public opinion survey in Northern Ireland said that they did not mind when they were sent their poll card. Just over a fifth of respondents said they would like to receive it a number of weeks before polling day; 16% said a week before.

4.77 Respondents who would prefer to receive their poll card some weeks before polling day stated this was because it gave them a timely reminder about electoral events coming up (43%) or additional time to apply for a postal or proxy vote (43%). Sixteen per cent said that it reassured them that their name was on the electoral register.

4.78 Those who were happy with the current arrangement said that any longer would give them more time to lose it (59%), and that they thought a week in advance was a timely reminder that an election was taking place.

Completing the ballot paper

4.79 A key priority for the Commission is that voters are able to vote easily and confidently, knowing that their vote will be counted in the way they intended. The CCO issued a direction to all COs that they should use the Commission’s template when designing and printing referendum ballot papers based upon principles from *Making Your Mark* (www.dopolitics.org.uk/making-your-mark). In order to see whether voters did in fact find it easy to complete their ballot paper we asked respondents to our public opinion survey how difficult they thought it was to fill in their referendum ballot paper. In total 95% said that they found it easy, with the majority (81%) finding it very easy.

4.80 As shown in the table below there were variations across the UK on how easy someone found it to complete their ballot paper depending upon the electoral event they were voting in. Sixty four per cent of voters in Northern Ireland said that they found it very easy to fill in the Northern Ireland Assembly and local government papers, 75% very easy to fill in the Scottish Parliament paper, 76% the National Assembly for Wales paper and 81% the English local government paper.

Table 7: Completing ballot papers: very or fairly easy

Electoral event	% very easy	% fairly easy	% total easy
UK referendum	81	14	95
English local government	81	16	97
Scottish Parliament	75	22	97
National Assembly for Wales	76	20	96
Northern Ireland Assembly	64	29	93
Northern Ireland local government	64	29	93

4.81 Completing more than one ballot paper did not appear to have caused any problems for voters. Nearly all voters (96%) said that they found it easy to fill in more than one ballot paper on the same day, with 81% saying they found it very easy.

4.82 However, just under one in ten voters (9%) said that they found it confusing which ballot paper to use (3% agree strongly; 6% tend to agree), rising to 12% among voters in Scotland and 23% in Northern Ireland. The higher figure in Northern Ireland, where people were entitled to vote in Assembly and local government elections as well as the referendum, may in part be explained by the rules preventing the name of the contest being printed on the two election ballot papers, in contrast to the ballot papers for the elections in Scotland and Wales.

4.83 In circumstances where elections are combined it would be helpful to the voter to have the official name of the election stated on the ballot paper. We recommend that the law be changed to permit the name of the election being contested to be clearly marked on the ballot paper when elections are combined.

Rejected ballot papers

4.84 Overall the number of ballot papers that were rejected at the count represented a small proportion of the total number of ballot papers cast. However, at 0.62% of all ballot papers at the count, the proportion rejected was twice as high as at the UK general election in 2010 (0.28%) and comparable to the level rejected at the 2009 European Parliamentary election (0.7%). Table 8 shows the number of ballot papers rejected at the count across the UK. As shown the highest proportion of ballot papers rejected were in Northern Ireland.

Table 8: Rejected ballot papers at the referendum

	Ballot papers rejected at the count (out of 19,285,751 ballot papers at the count)	Rejections as % of all ballots at count
UK	120,021	0.62
GB	112,959	0.61
England	95,322	0.61
Scotland	12,370	0.63
Wales	5,267	0.56
Northern Ireland	7,062	1.06

4.85 It is notable that the rejection rate at the local elections was also higher than expected given the type and nature of the elections taking place. More than 120,000 ballot papers were rejected, accounting for 1% of all those at the count. The University of Plymouth say the following in their report:

This [the rejection rate] is twice as high as at the local elections at the same point of the cycle in 2007, and rather higher than the rejection rate at other recent 'combined' elections such as the 2010 general and local elections and the 2009 European Parliament and local contests. The rejection rate in the metropolitan boroughs (0.7%) which had single member contests was lower than that in either the unitaries (0.9%) or the districts (1.1%) where multi-member vacancies were common. The more votes electors are asked to use at a given electoral event, the more the chances of a mistake being made.

4.86 They also assess the impact of combining the elections and the referendum on the number of ballot papers rejected at the count by looking at the rejection of referendum papers in those local authorities in England which had no local elections. In London 0.24% of referendum ballots were rejected at the count, whereas in the metropolitan boroughs the figure was 1.02%. Similarly, 0.16% of referendum ballots were rejected at the count in those 13 authorities outside London with no local elections, whereas the proportion for the rest of 'shire' England was 0.53%.

4.87 These differences may indicate greater voter confusion where there was combination. However, they may also have resulted from people deliberately leaving their papers blank in election areas – local election voters may have wanted only to vote in elections and have chosen not to vote in the referendum.

4.88 The following table shows the number of postal votes rejected at the referendum for each of the possible reasons available to the Counting Officer. Over nine in 10 were rejected as being unmarked or void for uncertainty as to the voter's intention. This is a considerably higher proportion than was seen at the 2010 UK general election, when it was approaching seven in 10, and is more than double the 2010 figure in absolute terms. We cannot say for certain what accounts for the rise in the number of ballot papers deemed unmarked or uncertain. However, it seems likely that at least some were accounted for by deliberate abstention by voters who intended only to vote in the local elections.

Table 9: Reasons for rejected ballot papers at the count

	No official mark (%)	Voting more than once (%)	Voter could be identified (%)	Unmarked or uncertain (%)
UK	242 (0.2)	7,855 (6.5)	2,853 (2.4)	109,071 (90.9)
GB	242 (0.2)	7,218 (6.4)	2,829 (2.5)	102,670 (90.9)
England	210 (0.2)	6304 (6.6)	2,608 (2.7)	86,200 (90.4)
N. Ireland	0 (0.0)	637 (9.0)	24 (1.3)	6,401 (90.6)
Scotland	30 (0.2)	541 (4.4)	162(1.3)	11,637 (94.1)
Wales	2 (0.0)	373 (7.1)	59(1.1)	4,833 (91.8)

4.89 As shown in the tables below, Blackburn (5.8%) topped the table for rejected ballots as it did in 2010, followed by Luton (3.6%) and Oldham (3.2%). At the other extreme the rejection rate in Fareham was just 0.08% and in Northumberland it was 0.09%. It is difficult to conclude without further evidence the extent to which differences between counting areas are down to variations in voters' ability to cast a vote, voters choosing to only vote in the local elections, or to differing practices by Counting Officers in their approach to reject ballot papers. It is currently not possible under election and referendum law to examine rejected ballot papers after the poll, except where a court has ordered that they may be inspected for the purpose of a prosecution or challenge to the result.

Table 10: Voting areas with the highest percentage of rejected ballots

Voting area	Percentage (%)
Blackburn with Darwen	5.79
Luton	3.56
Oldham	3.24
Telford & Wrekin	2.76
Leicester	1.98
Bradford	1.94
Manchester	1.82
Leeds	1.71
Birmingham	1.66
Kingston upon Hull	1.56

Table 11: Voting areas with the lowest percentage of rejected ballots

Voting area	Percentage (%)
Fareham	0.08
Northumberland	0.09
Havering	0.11
Hastings	0.11
Cheltenham	0.12
Bromley	0.12
Nuneaton & Bedworth	0.13
Richmond upon Thames	0.13
Wiltshire	0.13
Sutton	0.14

People's confidence that their votes were counted

4.90 Voters across the UK were confident that their vote was included in the count, with only 2% of people saying that they were not confident. There were no significant differences in levels of confidence across the UK.

4.91 Postal voters and polling station voters were equally confident that their vote was included in the count. However, polling station voters were more likely to say that they were **very** confident – 75% compared to 67% of postal voters.

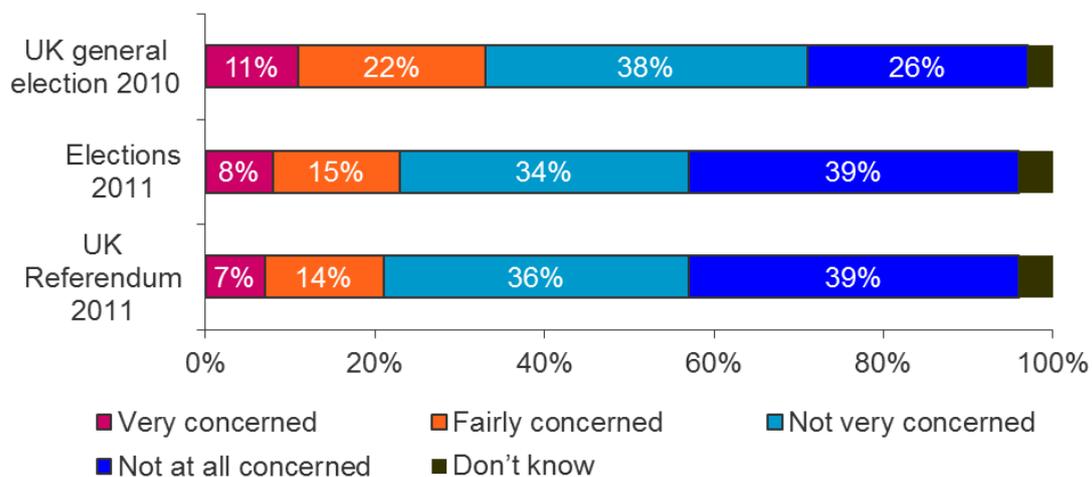
Electoral integrity

4.92 Over half of our survey respondents (54%) reported knowing hardly anything about fraud relating to elections and voting, with 24% saying that they knew nothing at all. This is a similar proportion to 2010. Nevertheless, three quarters of respondents (77%), said that they thought voting in general was safe from fraud and abuse, a figure that has remained consistent over the last few years.

4.93 People generally think that voting in polling stations is safer from fraud and abuse (86%) than postal voting (57%). Those who use each method of voting are much more likely to see their method as safe: 93% of polling station voters consider voting in a polling station safe compared to 79% of postal voters, and 89% of postal voters rated postal voting as safe compared to 48% of non-postal voters.

4.94 A fifth of respondents (21%) who were asked if they were concerned that fraud had taken place at the referendum said they were concerned. As shown in the graph below this is lower than people who said that they were concerned that fraud had taken place at the 2010 UK general election – 33%.

Figure 3: Percentage of respondents concerned that electoral fraud took place



May 2010 Post-election survey

Source: Ipsos MORI

Base 2010 general election: All respondents UK (3,586)

May 2011 Post-polling day survey

Source: ICM

Base referendum 2011: All respondents UK (3,961); Base elections 2011: All in election areas (3,461)

Q. How concerned, if at all, are you that electoral fraud and abuse took place at the INSERT POLLING EVENT HERE on Thursday 5th/6th May?

4.95 When asked why they were concerned some kind of fraud took place at any of the electoral events on 5 May, respondents tended to focus on why electoral fraud is a problem rather than why they were concerned it took place. One in seven (16%) felt that fraud undermines the fairness of the voting process, and one in ten (10%) said they would lose confidence in the electoral system if it were present. A further 10% of those who were concerned about electoral fraud said that they recall it happening at previous elections.

4.96 The Commission has worked with the Association of Chief Police Officers in England, Wales and Northern Ireland and the Association of Chief Police Officers in Scotland to collect data on the number of allegations of malpractice reported to the police. Initial analysis of this data suggests that there has been one case of alleged malpractice that was solely related to the referendum. We will publish our full analysis of data from the 2011 polls in February 2012.

4.97 The contrast between the very low levels of recorded cases of electoral malpractice and the levels of concern about electoral fraud expressed by people in response to public opinion research suggests that overall confidence in the safety and security of the voting process can be strongly influenced by the wider context and in particular reporting of electoral fraud.

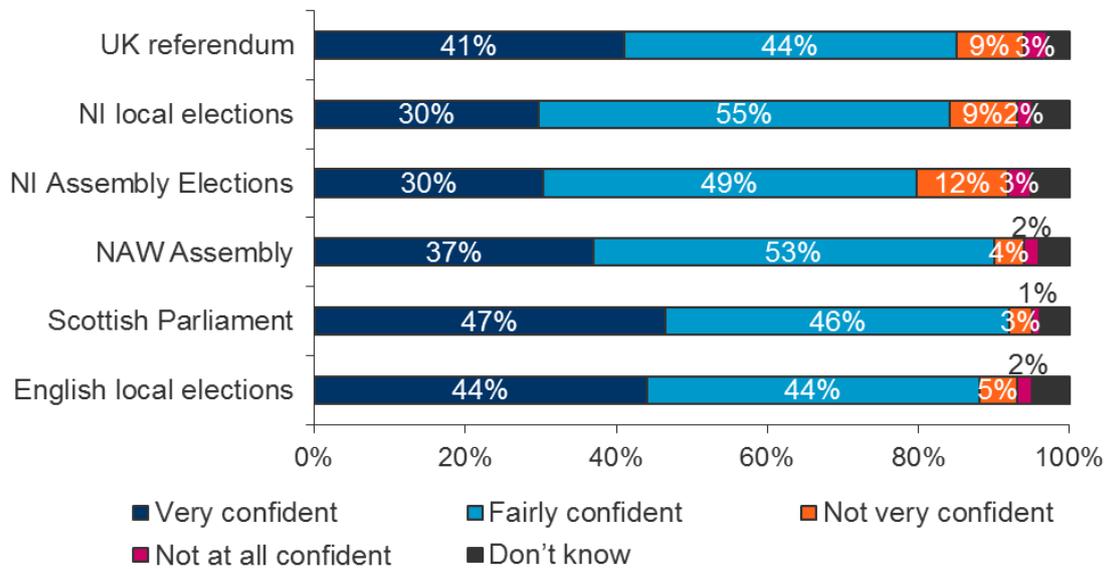
Confidence and satisfaction with the way the referendum was run

4.98 Nearly three quarters (72%) of respondents were confident that the referendum was well run on 5 May, with those who voted being the most confident – 85% compared to 58% of non-voters. This compares to 69% of those who voted saying they were confident that the 2010 UK general election was well run.

4.99 When asked why they were confident that the referendum was well run, a quarter of respondents said that they were confident as they thought it was well publicised, and almost the same proportion thought it was well organised and everything went smoothly. Seventeen per cent said that the referendum was not well run. Of these, 28% said that information was scarce and confusing and 11% thought there was a lack of publicity.

4.100 The chart below shows confidence among voters for all the polls that took place on 5 May. While confidence was high across all polls, people who voted in the Scottish Parliamentary elections were the most confident that that election was well run – 93%.

Figure 4: Voters confidence that the May 2011 electoral events were well run



May 2011 Post-polling day survey

Source: ICM

Base: All voters; UK Referendum (2,294), NI assembly/local elections (301), NAW assembly (566), Scottish Parliament (594), English locals (549)

Q.How confident, if at all, are you that the referendum//INSERT RELEVANT ELECTION HERE was well run on Thursday 5th May?

4.101 All respondents (voters and non-voters) in Northern Ireland (64%) were the least likely to report confidence that the referendum was well run. This may be due to the count taking so long to complete and for the results to be announced.

Lessons learned about the experience of voters

Lessons learned about materials for voters

4.102 Voters at the May 2011 polls were provided with important information materials, including poll cards, postal voting statements and polling station notices, which had been designed with input from accessibility and usability professionals and research. This was also the first set of polls where key materials were consistently designed and produced across the UK, according to a single set of specifications issued by the Chief Counting Officer.

4.103 There is evidence from our public opinion research to suggest that voters found these revised materials more useful than the prescribed statutory forms and notices which were provided by ROs at the UK Parliamentary general election in 2010.

4.104 Feedback from Counting Officers has also been broadly positive, although we recognise that earlier communication about the purpose, approach and nature of the modifications would have helped them to implement the improved designs. Some Counting Officers and electoral administrators have expressed disappointment that the improved templates which were produced for the 2011 polls cannot be used in future years.

4.105 To build on the good practice that was established in 2011 and help Returning Officers to produce consistent and well-designed voter materials for future elections, the Commission is developing templates that can be used at future polls, based on those produced in 2011. We will ensure that the templates are available in good time ahead of the relevant polls, and intend to include requirements in our revised Performance Standards for Returning Officers relating to the production of accessible voter materials according to our templates.²⁸

Lessons learned about the issue of poll cards

4.106 For previous elections the issuing of poll cards has taken place 'as soon as practicable' after the publication of notice of election. This has meant in practice that poll cards were issued at various times across the country. This could range from the maximum 25 working days prior to the poll for local government elections in England and Wales to some issuing poll cards a week later after nominations have closed. In Northern Ireland, poll cards have traditionally been dispatched 10 days before polling day.

4.107 The CCO's direction on the earlier dispatch of poll cards not only meant that people knew about that the referendum and/or election taking place in their area well in advance but also prompted people to register to vote. We are aware of some people who received a poll card that was not addressed to them, and therefore registered to vote themselves, and others who were prompted to apply for a postal vote after receiving their poll card.

4.108 In Northern Ireland, the early issue of poll cards have played a part in the higher than normal number of calls to the helpline, the majority of which related to enquires about how to register to vote and register for a postal vote.

Lessons learned about access to the voting process

4.109 Voters continue to express high levels of satisfaction with the voting process, and there was no repeat of the problems which arose at polling stations at the close of polls at the 2010 UK general election. This is likely to be because turnout at the May 2011 polls was lower than in 2010. Improved

²⁸ We are currently consulting on our draft Performance Standards which are due to be published in December 2011.

planning by Counting Officers, supported by clear directions from the Chief Counting Officer about the size and staffing levels for polling stations also ensured that the potential risk of queues at polling stations and running out of ballot papers was minimised.

4.110 Overall, our public opinion research shows that voters were confident that the referendum was well run on 5 May and that polling station voters and postal voters were very positive about their experience of their chosen method of voting. Combining the referendum with elections also held on the same day did not appear to pose any problem for voters, and combination was not cited as a reason why people decided not to vote.

4.111 There appears to be a lack of confidence that voting is safe from fraud and abuse when in reality allegations of electoral malpractice is low. There is clearly work to be done to ensure greater confidence and trust in the electoral process across the UK and we will continue to work with Governments, police forces, political parties and Returning Officers to consider what further action can be taken to address this.

4.112 We were disappointed that the Government did not take, and has not taken, the opportunity to act on our May 2010 recommendation to change the law so that eligible voters who are in a queue at a polling station at 10pm can be issued with a ballot paper and allowed to vote. Turnout at future elections – such as the next UK Parliamentary general election – is likely to be higher than at the 5 May polls and there can be no guarantee, even if ROs continue to staff polling stations at the same level as was achieved this year, that the problem of queues of voters at the close of poll will not be repeated.

4.113 In its September 2011 response to the Electoral Commission's report on the 2010 UK Parliamentary general election in, the Government said that its priority was to address administrative failings that may prevent people from voting, rather than seeking 'a legislative solution'. Our report on the problems experienced at some polling stations at the May 2010 elections identified that poor planning by some Returning Officers was one of the factors that contributed to those problems, along with inadequate or ineffective contingency arrangements. We identified the issues that needed to be addressed and set out how we would support Returning Officers in planning for adequate polling station and staffing provision for all future elections.

4.114 However, we believe that changes are still needed to change the restrictive legislation which means that people in a queue at polling station at 10pm cannot be issued with a ballot paper. Changing the law would not be a substitute for good planning and effective administration, but it would provide a safety net to ensure that no elector who is in a queue to receive a ballot paper at 10pm is prevented from voting by circumstances beyond their control. We continue to recommend that the UK Government should implement this change in advance of the next UK Parliamentary general election in 2015. We are pleased that the Scottish Government has indicated that it intends to implement this recommendation for the May 2012 local government elections in Scotland.

Lessons learned about postal voting

4.115 While it is clearly important that measures are in place that are effective in detecting and preventing fraud, these measures should not inadvertently disenfranchise voters who simply make mistakes on their postal voting statements. In practice this means that some people are voting but their vote is not being counted. Allowing Returning Officers to request a refreshed identifying signature, and also to provide electors with feedback if their postal vote has been rejected, would help address this problem.

4.116 We first made this recommendation in our July 2007 evaluation of the introduction of personal identifiers for absent voting in England and Wales, and reiterated it in our July 2010 report on the 2010 UK Parliamentary general election. In its response to that report in September 2011,²⁹ the Government said that it would work with the Electoral Commission and electoral administrators to identify how to avoid the problems we have highlighted with the current postal voting system, while taking into consideration the need to ensure that it remains secure against fraudulent applications for postal votes. We look forward to hearing in more detail how the Government intends to take forward this work.

4.117 It is clear that some Counting Officers have either not kept accurate records of postal vote rejections or have not correctly reported the total number of cases in which they rejected a postal vote. The statement as to postal ballot papers provides an audit trail of the number of postal ballots issued, received and rejected. It is important that ROs and COs are able to interpret and fill in the statement correctly. The Commission has refined its guidance on these forms in recent years, working with electoral administrators, software suppliers and others. However, the continued difficulty that many ROs encounter in completing the statement indicates that a more fundamental review of the statutory forms is required. We will work with the UK Government and electoral administrators to identify whether changes are needed to the regulations which specify the information on the statement as to postal ballot papers, and we would aim to ensure any changes are made in time before the scheduled 2014 European Parliament elections.

²⁹ Cabinet Office, *The UK Governments Response to Reports on the Administration of the 2010 UK Parliamentary General Election*, Cabinet Office (September 2011).

Recommendations for improving the experience for voters at future referendums and elections

4.118 The recommendations set out in this section have relevance both for future referendums and elections.

Recommendation 7 – Ensuring accessible voter materials for future referendums and elections

Given the relative novelty and infrequency of referendums in the UK, it is essential that key voter-facing forms and notices (poll cards, postal voting statements and explanatory notes, polling station notices and polling booth notices) for future referendums are designed with the needs of voters in mind.

The UK Government should:

- Reflect the modifications specified by the Chief Counting Officer to key voter-facing forms and notices for the May 2011 referendum in the generic referendum conduct order which we have recommended (in Recommendation 3 earlier in this report).
- Amend Political Parties, Elections and Referendums Act 2000 (PPERA) to provide a power for the Chief Counting Officer to specify further modifications to voter facing materials for future referendums held under the PPERA framework.

The lessons learned from the experience of developing clear and usable voter materials for the referendum are also applicable for elections, particularly given the increasing number and complexity of electoral events held each year in the UK.

The UK Government should:

- Work with the Electoral Commission to review and revise the key statutory voter-facing forms and notices for all elections (except local government elections in Scotland) in line with our published *Making your mark* guidelines, and ensure that the necessary changes to legislation are made by:
 - November 2012 for local government elections in England in 2013
 - December 2013 for European Parliament elections in 2014
 - November 2014 for the next UK Parliamentary general election in 2015
 - November 2015 for elections to the Scottish Parliament and National Assembly for Wales in 2016

- Amend PPERA to provide a power for the Electoral Commission to specify modifications to the format, layout and wording of key voter-facing forms to ensure usability and intelligibility at future UK parliamentary and European Parliamentary elections and for local government elections in England and Wales.
- Provide the Chief Electoral Officer for Northern Ireland with a power to specify modifications to voter-facing forms and notices to ensure usability and intelligibility at elections to the Northern Ireland Assembly and local government elections in Northern Ireland.

The Scottish Government should:

- Review and revise the key statutory voter-facing forms and notices for local government elections in Scotland elections after the 2012 elections, and ensure that the necessary changes to legislation are made by November 2016 for the local government elections in 2017 elections.

Recommendation 8 – Ensuring access and confidence in the voting process at future referendums and elections

In our July 2010 report on the 2010 UK Parliamentary general election we set out the Electoral Commission's agenda for change to improve access and confidence in the voting process before the next general election, expected in 2015.

The UK Government's September 2011 response to the Commission's report on the 2010 UK Parliamentary general election indicated that it intended to legislate and implement many of the important recommendations for change which we made in our report, including widening the scope of those eligible to appoint an emergency proxy. We have also welcomed the recent consultation by the UK Government on changes to extend the timetable for UK Parliamentary elections, currently specified in the Parliamentary Election Rules, and we look forward to the introduction of legislation to amend the timetable.

Several of our recommendations remain outstanding, however, or have not yet been adequately addressed in the Government's response or by its current programme of constitutional reform.

Specifically, the UK Government should introduce legislation to:

- Amend the Parliamentary Election Rules in the Representation of the People Act 1983 to make clear that eligible electors who are entitled to vote at a polling station and who are in the queue to enter the polling station at the close of poll will be allowed to vote.
- Amend the Representation of the People Act to clarify that it should be the responsibility of (Acting) Returning Officers rather than local authorities to designate polling places for polling districts at UK Parliamentary elections, and that any public building may be available for use as a polling place.

The UK Government should bring forward proposals for a comprehensive electoral modernisation strategy to set out how it intends to address the following significant policy issues:

- Improving voting opportunities for service personnel and other overseas electors.
- Considering what role advance voting might play in helping to provide more flexible options for people wanting to vote.
- Reviewing the case for requiring proof of identity for voters at polling stations.

The necessary changes to legislation should be made (and any secondary legislation required should be published and laid before Parliament for approval) by the beginning of November 2014, to enable Returning Officers to plan and prepare to implement any procedures in good time before the expected 2015 UK general election.

Recommendation 9 – Ensuring access and confidence in the postal voting process at future referendums and elections

Our July 2010 report on the 2010 UK Parliamentary general election also set out the Electoral Commission's agenda for change to improve access and confidence in the postal voting process before the next UK general election.

The UK Government has indicated that it will work with the Commission and electoral administrators to explore how the issues we have identified can be addressed. We look forward to working with the Government to take forward this work, but reiterate here the specific changes which we believe need to be made to legislation.

The UK Government should introduce legislation to amend the Representation of the People (England and Wales) Regulations 2001 to:

- Enable Electoral Registration Officers to request corrected or refreshed personal identifiers from absent voters at any time in addition to the current required five-yearly refresh.
- Require Returning Officers to provide information about electors whose postal votes were rejected due to a mismatch of personal identifiers to enable Electoral Registration Officers to request corrected or refreshed identifiers or, where necessary, further investigate possible electoral malpractice.

The necessary changes to legislation should be made (and any secondary legislation required should be published and laid before Parliament for approval) by the beginning of November 2014, to enable Returning Officers to plan and prepare to implement any procedures in good time before the expected 2015 general election.

5 Campaigning at the referendum

5.1 This chapter explores the experience of those who campaigned at the 2011 UK referendum and deals with the immediate regulatory issues arising from the referendum. We will issue a further report in early 2012 drawing on the spending and donation returns that campaigners are required to submit to us in August and November 2011 for publication.

5.2 This chapter explains the legal framework that regulated the campaigns and how we undertook our statutory roles. Where appropriate, we make recommendations for change drawing on the experience of both the UK referendum and the referendum on the law-making powers of the National Assembly for Wales that took place in March 2011.

Introduction

5.3 The Commission has a number of statutory roles relating to campaigners at elections and those also apply at referendums. We provide advice and guidance to campaigners and are responsible for registering them. We also publish both the full statutory returns and expenditure data extracted from them, undertake compliance checks on invoices, expenditure levels, and the permissibility of donations, and take enforcement action in cases where the rules are broken.

5.4 Both 2011 referendums were held under the campaigning rules in Political Parties, Elections and Referendums Act 2000 (PPERA). This legislation gives the Commission the additional referendum-specific statutory roles of designating lead campaign groups and setting the level of the publicly funded grant available to them.

Background

5.5 As explained earlier in the report (paragraph 2.28 and 2.29), PERA provides for a regulated referendum period to start on a date specified in the enabling legislation and end on the day of the poll. During that period, campaigners must comply with the campaigning rules and report their income and expenditure.

5.6 The minimum referendum period is ten weeks and is based on the statutory timetable for appointing any lead campaign groups³⁰. PERA provides that, starting on the first day of the referendum period, applicants for lead

³⁰ Also known as 'designated organisations'.

campaigner status have 28 days within which to submit their application. The Commission then has a further 14 days to decide whether it can designate lead campaigners for the referendum. It is only at the point of designation that any lead campaign groups know whether they will have access to free mailings, broadcasts and a grant paid by the Commission to use in the remaining period before polling day, which is a minimum of 28 days.³¹

Phase 1 (Day 1–28)	Phase 2 (Day 29–42)	Phase 3 (Day 43+)	Polling day
Campaigner registration period 			
Registered campaigners can apply to be designated organisations	Commission makes designation decision	Designated organisations use their entitlements	

5.7 For the referendum on the voting system for the UK Parliament, the Parliamentary Voting System and Constituencies Act 2011 (PVSC) provided for the referendum period to start on Royal Assent and a polling date of 5 May 2011. The legislation received Royal Assent on 16 February 2011. The statutory designation timetable therefore required the Commission to take its designation decision by 29 March 2011. In fact, the Commission announced its decision on 18 March 2011 which resulted in the designated lead campaigner groups having an extra 11 days, over the statutory timetable, before polling day to use the benefits available to them.

Timing of legislation

Guidance for campaigners

5.8 The PVSC Act 2011 received Royal Assent only some 11 weeks before polling day, resulting in a regulated referendum period only one week longer than the statutory minimum. The linkage between Royal Assent and the start of the campaign timetable meant that we could not produce conclusive guidance on the rules for campaigners until the regulated period had begun. For example, we were unable to tell prospective lead campaign groups when the designation application period would open, the deadline for applications, or when the statutory deadline for our decision would be, until the start of the referendum period.

³¹ The benefits available to designated lead campaign groups are discussed in more detail in paragraphs 5.37 and 5.55–5.68.

5.9 In order to allow campaigners to familiarise themselves with the rules as far as possible in advance of the PVSC Bill being finalised, we published a set of initial guidance documents on 2 November 2010 based on the rules as introduced in the legislation. We then published final guidance confirming the rules as agreed in the PVSC Act, and the timetable for the referendum period, on the day following Royal Assent. To supplement this guidance we published campaigner updates from autumn 2010 onwards, covering the progress of the legislation and other issues of interest to prospective campaigners.

5.10 Campaigners have highlighted the fact that some guidance was not available when needed, because it could not be finalised until the referendum period had begun. Campaigners acknowledged that this was due to the timing of the legislation rather than being the fault of the Commission.

5.11 However, the feedback suggests that our campaigner updates were widely recalled and read by most of the interviewed campaigners. Individual campaigners made specific comments about the quantity of information in the updates and their structure and we will take these views into account when publishing future updates. In general, it appears that in the particular circumstances of the referendum the campaigner updates were an effective way of keeping campaigners up to date with relevant information before the legislation was finalised.

5.12 The experience at the 2011 referendums suggests that a longer timetable is needed between the rules being finalised and the start of the regulated period. This is to allow the Commission to produce conclusive guidance for campaigners, and to give campaigners an opportunity to become familiar with the guidance before the rules come into effect. We suggest that campaigners should have access to final guidance at least six weeks before the start of the referendum period, and that the Commission should have six weeks from the rules being finalised to complete, publish and distribute the guidance. We therefore recommend that the Government ensures there is a period of at least 12 weeks between the campaign rules being finalised and the start of the regulated referendum period.

Ability of lead campaigners to use benefits of designation

5.13 PPERA sets a minimum period of 28 days for campaigning between the deadline for the Commission's designation decision and polling day.³² In the case of the UK referendum, the eventual date of Royal Assent of the enabling legislation provided for a post-designation campaign period of 36 days, only eight days longer than the statutory minimum.

³² s.103(1) PPERA

5.14 The short post-designation campaign period made it difficult for prospective lead campaign groups to plan their campaigns. This was because the statutory designation timetable meant that campaigners were uncertain about whether they would be eligible for a higher spending limit, and the other benefits associated with designation³³, until a significant part of the referendum period had already elapsed.

5.15 We attempted to assist campaigners by making the designation decision as quickly as possible, three days after the deadline for applications.

5.16 However, the designation decision for the UK referendum was a relatively straightforward process with only one applicant on each side that met the statutory test. This will not necessarily be the case in future referendums, as the complexity of the designation process will depend on the number and quality of applications. Had we had to use the full 14 days available to reach a decision, six weeks of the 11 week referendum period would have elapsed before we could designate lead campaign groups. This would have left only five weeks for the campaigners to prepare and make use of the benefits available to them and this would have been insufficient.

5.17 Despite the fact that the referendum period was a week longer than the statutory minimum and we took all steps to make the designation decision as quickly as possible, the resulting timetable still produced problems for prospective lead campaign groups. The No to AV campaign group has provided feedback that the lead-in time required to arrange the free mailing to voters meant that they were obliged to pre-empt designation and place the order with their printers and consequently to take on considerable financial risk before they knew they had been designated.

5.18 As part of the campaigner feedback process, both lead campaign groups commented on the length of the campaigning period after designation. Both felt that it was too short. The Yes to Fairer Votes campaign group commented that the timetable meant that key decisions needed to be taken before designation. No to AV highlighted the practical difficulties of collecting and processing electoral register data to enable the free mailings to be delivered in time.

5.19 For the UK referendum, the date of Royal Assent provided for a post-designation period of around five weeks and our early designation decision extended this to nearly seven weeks. Despite this timetable, both lead campaigners still felt that the period was too short and caused them difficulties in mounting their campaigns, especially in using the free mailings. For campaigners, the key date for the free mailings is the first delivery of postal ballots to voters, which is much earlier than polling day. This shows that the

³³ See 'Designation of lead campaign groups' paragraph 5.36.

PPERA minimum of a four week post-designation period is always likely to be too short for a UK referendum, and, in practice, even seven weeks may be too short. We would suggest that a minimum 10-week post-designation period may be more prudent. We therefore recommend that at future PPERA referendums the statutory minimum referendum period should be at least 16 weeks, consisting of the current 28-day designation application period, the current 14-day designation decision period, and a minimum of 70 days between the final date for the designation decision and polling day.

5.20 This would give designated lead campaign groups – many of which are coalitions or newly formed organisations – more time to plan and use the benefits that PPERA provides to these groups in order to put campaign arguments to voters.

5.21 An extension to the timetable between the designation decision and polling day would also provide us with time to consider what more, if anything, the Commission could do to help provide voters to access the arguments of campaigners.

Advice and guidance

5.22 At PPERA referendums, as at many elections, we have a statutory responsibility to provide advice and guidance to campaigners. The guidance we published for both the Wales and UK referendums followed our new principles based format, which is based on a review drawing on feedback from users of the guidance, with top-level introductory documents linking into more detailed guidance on particular aspects of the rules.³⁴

5.23 As discussed earlier in this chapter under ‘Timing of legislation’ (paragraph 5.8), the date of Royal Assent of the PVSC Act 2011 and the campaign timetable meant that we could not produce conclusive guidance on the rules for campaigners until the regulated period had begun. We mitigated this through the publication of initial guidance and campaigner updates; final guidance was published on the day following Royal Assent.

5.24 As part of our outreach work we contacted new groups which were forming to campaign and other established organisations which were likely to register as campaigners, to offer advice on the referendum campaigning rules. We began to meet the campaign groups that ultimately sought designation early in autumn 2010.

³⁴ <http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/campaigners-in-referendums>

5.25 The 2011 referendums were also the first time that the Commission implemented a 'single point of contact' for lead campaigners. Our intention was to make it as easy as possible for campaigners to contact the Commission to find the answer to their queries about the regulation and administration of the referendum, rather than them having to find the correct person to deal with their specific enquiry. We felt that this was particularly important in the case of the referendum where the lead campaign groups were new organisations with little experience of the Commission, and would need quick answers to queries because of the tight timetable for the campaign.

5.26 From January 2011 to July 2011 we received 93 queries relating to our guidance on both the referendums held in 2011. We responded to all 39 queries classed as 'complex' within our target period of 30 working days. Of the remaining 54, we responded to all but one of these queries within our target period of five working days.

5.27 Following the referendum, campaigner feedback confirms that the Commission's written guidance was used by campaigners. Those campaigners at the Wales referendum who gave us feedback reported being satisfied with the guidance. Most interviewed campaigners at the UK referendum were broadly satisfied with the written guidance, but some made specific comments concerning the quantity of content, layout, and distribution of guidance, and we will take these into consideration for future publications.

5.28 The use of a single point of contact generated particularly positive feedback with designated lead campaign groups commenting that responses to enquiries were professional, quick, of good quality, and enabled a build-up of trust required to get good advice. Other feedback included that the Commission was helpful in clarifying things quickly and professionally, and was '1st class' in answering queries.

5.29 We will build on the feedback we have received to improve the experience for those using our guidance at future electoral events, and will consider the potential benefits of using the 'single point of contact' model where appropriate.

Registration of campaigners

5.30 Campaigners that want to spend more than £10,000 at a referendum are required to register with the Commission to become a 'registered campaigner', also known in electoral law as a 'permitted participant'.³⁵ The registration period starts at the beginning of the referendum period.

³⁵ s.177(1) PPERA

5.31 The requirement to register with us applies even if the individual or organisation is already registered with us as a political party or a non-party campaigner at elections. PPERA sets out limitations on who can be registered and as part of the application process, applicants are required to inform us which side of the question they are campaigning for.

5.32 The benefits of registering as a campaigner are:

- a spending limit above £10,000³⁶
- access to the electoral register to assist campaigners in putting campaign arguments to voters, and checking the permissibility of donations
- the right for representatives to attend postal vote opening sessions, polling stations and the counting of the votes

5.33 Once registered, campaigners must comply with the PPERA rules on spending and donations. These include registering someone to be a 'responsible person' to ensure the rules are followed, reporting campaign donations and spending after the referendum, and rules about who in the campaign can authorise spending.

5.34 For the referendum on the voting system for the UK Parliament, the period for registration ran from 16 February 2011 to 5 May 2011. Twelve groups or individuals registered to campaign and applications took an average of two days to process (our target was to process applications within five days).

5.35 Post-referendum campaigner feedback showed that in general those interviewed found the registration rules and the instructions straightforward. No issues or concerns were raised about the Commission's application forms or guidance.

Designation of lead campaign groups

5.36 PPERA gives the Commission the statutory role of designating lead campaign groups from among those registered campaigners who apply for designation. If designated, lead campaign groups are entitled to support in promoting the case for each side of the referendum question. We must either designate one registered campaigner for each side of the question or not designate at all.

5.37 If designated, lead campaign groups are entitled to:

- a higher spending limit than most other campaigners
- free mailings to voters

³⁶ See 'Level of expenditure limits' paragraph 5.69.

- referendum campaign broadcasts
- free use of certain public rooms
- a publicly funded grant

5.38 The statutory test we must consider when assessing applications for designation is set out in PPERA:

- If there is only one application for a particular outcome, then the Commission shall designate the applicant unless the Commission is not satisfied that the applicant adequately represents those campaigning for that outcome.³⁷
- If there is more than one application for an outcome, then the Commission shall designate whichever of the applicants appears to them to represent to the greatest extent those campaigning for that outcome unless they are not satisfied that any of the applicants adequately represents those campaigning for that outcome.³⁸

5.39 A registered campaigner seeking to be designated must submit an application with supporting information within 28 days of the referendum period commencing. The Commission must then make a decision on designation within a period of 14 days of the closing date.

The designation process

5.40 In advance of the 2011 referendums, we revisited the designation process we used at the 2004 North East of England referendum. We concluded that although the general approach used at that referendum should continue to be used, the process could be streamlined to make it more straightforward for applicants during a heightened period of campaign activity.

5.41 PPERA does not set out detailed guidance about how we should assess whether or not an organisation meets PPERA's statutory test. Given the range of factors that could be involved in the decision, we decided that the application form for designation should include the different types of evidence we would need in order to make a decision on which organisation or individual to designate. Therefore we specified and invited applicants to include the following criteria in their application:

- the organisation's objectives
- the level of support for the application
- how the applicant represented other campaigners
- the applicant's campaigning capacity, and

³⁷ s.109(4) PPERA

³⁸ s.109(5) PPERA

- their organisational capacity

5.42 We also introduced the possibility of an interview so that, if necessary, any additional information needed to consider applications against our criteria could be gained more quickly than by exchanges of correspondence.

5.43 In anticipation of the PVSC Act 2011, and the start of the application period for designation, we published the designation criteria and application form on 12 January 2011. The intention behind the early publication was to provide prospective lead campaign groups with as much notice of the application requirements, and time to consider and start to prepare their applications, as possible. We published our final guidance on the designation process, including the final timetable dates which were dependant on the date of Royal Assent, on 17 February 2011, the day after Royal Assent.

5.44 By the close of the application period on 15 March 2011, two campaign groups had applied to become the official lead campaigners groups – ‘Yes in May 2011 Ltd’ (campaigning as ‘Yes to Fairer Votes’) submitted an application to become the lead ‘Yes’ campaigner and ‘No Campaign Limited’ (campaigning as ‘No to AV’) submitted an application to become the lead ‘No’ campaigner.

5.45 Within three days of the close of the application period, on 18 March 2011, we were able to announce that we considered both applicants met the statutory test of adequately representing those campaigning for the outcome they supported and that they had been designated accordingly. To provide transparency about the decision we published, on our website, the application forms, the paper on which the Commission based its decision and the minutes of the Commission meeting at which the decision was taken.³⁹

5.46 On 19 April 2011, an application for a judicial review of our designation decision was filed in the High Court.⁴⁰ The Court refused permission for the applicant to proceed with their judicial review application on 20 April 2011 and an appeal against that refusal was also declined on 27 April 2011.

5.47 Post-referendum feedback from campaigners indicates that the application process ran smoothly and that the application form with explanatory notes was easily understandable. There were no issues raised with either the statutory test or the criteria set by the Commission and how it was applied.

Frustrating the designation process

5.48 At both 2011 referendums prospective lead campaign groups, and other campaigners and commentators, raised concern that the supporters of one side

³⁹ <http://www.electoralcommission.org.uk/elections/referendums/referendum>

⁴⁰ R(Brennan) v Electoral Commission: case number CO/3585/2011

of the referendum outcome would not apply for designation. As we are required to designate on both sides of the referendum debate or not at all, a decision by one side not to apply may frustrate the other side's ability to use the benefits of designation to get their campaign arguments to voters. For example, it may deprive the other campaign of the higher spending limit (ten times the spending limit for a registered campaigner), free mailings, a grant and free broadcasts. This could in turn reduce turnout and be perceived as reducing the credibility of the referendum result.⁴¹

5.49 We are aware of media speculation that one of the prospective lead campaigners at the UK referendum considered not applying for designation. The experience of the referendum on the law-making powers of the National Assembly for Wales also demonstrated issues with the designation process.⁴²

5.50 In feedback, both lead campaign groups at the UK referendum raised concern about the prospect of the other side not applying for designation. Yes to Fairer Votes highlighted the impact that one side 'shutting down the process' would have had, particularly due to the low levels of public debate. No to AV raised concerns around the ability of campaign groups to organise their funding within legal limits if there was no designation. There was also a general feeling that campaigners would have found it hard to campaign effectively within the spending limits and other campaign rules (discussed later in this chapter, paragraph 5.75) if designation had not taken place.

5.51 This raises the questions of whether the current designation process is the best way of ensuring that there is sufficient information available to voters and whether steps could be taken to remove the incentive for one campaign to not apply for designation.

5.52 The statutory designation process relies on the assumption that there will be campaign groups on either side of the referendum question which are willing and able to use the benefits of designation to mount a lead campaign. If that is not the case – either because most prospective campaigners are on one side of the debate, or because a campaigner sees tactical advantage in not seeking designation – then the referendum campaign, and the process of putting the campaign arguments to voters, may suffer.

5.53 The Commission will raise the following with the UK Government:

- When considering the case for future referendums, legislators should take into account whether the referendum is likely to stimulate a level of debate which would generate willing and able applicants for designation.

⁴¹ The Commission's role in providing information to voters is discussed in chapter 3 under 'Public information for voters' paragraph 3.19–3.22.

⁴² http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/118603/Wales-ref-report-FINAL-web-mail.pdf paragraphs 4.50-4.73

However, this step would not in itself ensure that such campaigners will seek designation at a particular referendum in future.

- The Government should take steps to reduce the potential advantages to a prospective lead campaigner of deciding not to apply for designation.

5.54 We discuss later in this chapter our intention to revisit the value and scope of the grant available to lead campaign groups, and, in doing so, we will take into account the need to encourage applicants for designation.⁴³

Benefits of designation – grants

5.55 Designated lead campaign groups are entitled to a higher spending limit, free mailings, broadcasts and a publicly funded grant. The Commission is responsible for setting the terms and conditions of the grant, administering its payment and auditing its use.

5.56 In 1998, the Committee on Standards in Public Life (CSPL) recommended in its fifth report, 'The Funding of Political Parties in the United Kingdom' (R87) (Fifth Report of the CSPL) that the core funding provided to the two sides in a UK-wide referendum should be enough, for all referendums, to cover the establishment of a campaign headquarters with basic equipment and staff. In its response the UK Government agreed with the report's rationale for grants.

5.57 PPERA provides that when the Commission has designated lead campaign groups it must make a grant of the same amount to each of them. It is for us to set the level of the grant, up to a statutory maximum of £600,000, for both UK and sub-UK referendums. However, PPERA does not stipulate how we should calculate the level of the grant for either type of referendum.

5.58 As discussed earlier in this report, in advance of the 2011 referendums we reviewed the lessons learned from the 2004 North East of England referendum, the PPERA provisions and the Fifth Report of the CSPL and set out some general principles that should underpin the payment of grants to designated lead campaign groups. These are set out in the Commission's key principles document.⁴⁴

5.59 For both 2011 referendums, we set the value and terms of the grant on the basis of the Fifth Report of the CSPL recommendations that the amount of the grant should be enough to cover the establishment of a campaign headquarters, the purchase or rental of office equipment supplies, and the salaries of up to three or four administrative staff for the duration of the referendum period. We set this out in our November 2010 campaigners'

⁴³ See 'Benefits of designation – grants', paragraph 5.62-5.66.

⁴⁴ www.electoralcommission.org.uk/_data/assets/pdf_file/0004/87412/Referendum-Principles-Paper-2010-06-02-FINAL.pdf

update⁴⁵. On that basis, the grant available at the UK referendum was £380,000 for each designated lead campaign group.

5.60 In order to safeguard the distribution of public money, we paid 30% of the grant up-front, with the balance payable against evidence of eligible spending.⁴⁶ Following the designation announcement on 18 March 2011, we paid the initial 30% instalment of the grant to the designated lead campaign groups within two days. There were no subsequent claims against the grant during the referendum period. The final evidence of claims was submitted by 4 July 2011 and the total claims against the grant were:

- 'No Campaign Limited', known as 'No to AV' £147,479.22
- 'Yes in May 2011 Limited' known as 'Yes to Fairer Votes' £140,457.06

5.61 There was little comment from campaigners on the level of the grant available to the designated lead campaign groups. Those that did comment either suggested that the level we set was about right or, if the scope of the eligible spending for the grant had been wider, then the level could have been higher to cover all permissible costs. Some campaigners raised issues with some elements of the administration of the grant, including uncertainty about how much eligible expenditure they would actually incur. We will take these into account for the payment of future referendum grants.

Scope of the grant

5.62 As set out above, the scope of the grant followed the recommendation of the Fifth Report of the CSPL. Our view was that it was reasonable to provide public funds to enable both sides to put in place the arrangements needed to organise a campaign, whilst making it their responsibility to raise the funds needed to cover the costs of campaigning materials.

5.63 In the lead up to the referendum on the powers of the National Assembly for Wales, we sought views on our position. A written response was received from Plaid Cymru indicating that their view was that public funds should not be used for campaigning. 'True Wales' (a potential 'No' campaigner) put the opposite view in the Western Mail on 23 March 2010.

5.64 Following the referendum on the powers of the National Assembly for Wales, True Wales provided feedback that the grants should be available for the

⁴⁵ www.electoralcommission.org.uk/_data/assets/pdf_file/0003/106365/update-pvs-ref-2-nov.pdf

⁴⁶ The payment of the grant in instalments is discussed in more detail at paragraph 5.67.

costs of direct campaigning, as ‘In this age of the internet, buildings and offices are far less important than campaigning materials.’⁴⁷

5.65 Post-referendum feedback from campaigners at the UK referendum suggested that in practice it would have been impossible for them to spend the entire grant under the current scope of the grant.

5.66 For future referendums we will review the value and scope of the grant to be made available, taking into account the feedback received from campaigners at the 2011 referendums and the need to encourage applicants for designation.

Payment of the grant in instalments

5.67 The terms and conditions we set out for payment of the grant for both referendums provided that 30% would be paid up-front and the balance paid against evidence of eligible spending. This was in order to safeguard the distribution of public money. We recognised that providing only a part of the grant up-front could create difficulties for new organisations seeking to set up their campaigning infrastructure, and so in March 2010 we undertook some informal consultation with political parties and groups that may have had an interest in applying for designation in a referendum. No significant response was received from those consulted; however, the Government queried from a strict legal perspective whether PPERA allowed the grants to be paid in instalments. In order to put the matter beyond doubt, a provision was made in the Parliamentary Voting System and Constituencies Act 2011⁴⁸ which confirmed the Commission’s ability to pay the grant in instalments.

5.68 We recommend that this clarification provision be incorporated into PPERA so that the Commission’s ability to pay grants to designated lead campaign groups in instalments is confirmed for future referendums.

Expenditure limits

Level of expenditure limits

5.69 The expenditure limits for the UK referendum were determined by PPERA,⁴⁹ which sets a limit of £500,000 for most registered campaigners and a limit of £5m for the designated lead campaign groups. For registered campaigners that are also registered political parties, varying levels are set

⁴⁷ www.electoralcommission.org.uk/__data/assets/pdf_file/0019/118603/Wales-ref-report-FINAL-web-mail.pdf paragraph 4.31

⁴⁸ Schedule 1, paragraph 16

⁴⁹ s.118, sch.14 PPERA

according to the percentage share of the vote that the party received at the last Parliamentary general election.

Table 12: Expenditure limits for registered campaigners

Type of organisation	Limit on Expenditure	Political Parties registered as a campaigner
Designated lead campaign groups	£5,000,000	-
Political Parties with a percentage of the vote at the last UK Parliamentary general election of:		
• More than 30%	£5,000,000	Conservative Party
• Between 20% - 30%	£4,000,000	Liberal Democrats
• Between 10% - 20%	£3,000,000	-
• Between 5% - 10%	£2,000,000	-
• Less than 5%	£500,000	-
Other registered campaigners	£500,000	-

5.70 The Labour Party did not register and was therefore subject to the £10,000 expenditure limit for unregistered campaigners.

5.71 None of the campaigners interviewed raised any concerns with the spending limits for the UK referendum, which were felt to be appropriate. However, campaigners submitted that it was not possible to say whether the limits would be appropriate for all future referendums because of the wide range of potential topics that may be covered.

5.72 We will not be in a position to assess the level of campaign spending at the UK referendum, and how it compares to the spending limits, until we receive campaigners' spending and donation returns later this year. We will publish a report in early 2012 on spending at the referendum and any regulatory issues arising from it.

Expenditure limits for registered campaigners that are subsequently designated

5.73 As indicated earlier in this chapter, we understand that at least one of the eventual designated lead campaign groups took the risk of printing their free mailing material before they were designated. This was due to the limited timetable between designation and the date by which material had to be with Royal Mail for distribution to voters in good time before the poll. This raises the question of whether prospective lead campaigners may have to commit to expenditure in relation to the mailings, or other expenditure depending on how they intend to campaign, before they are designated. Significant expenditure of this type could potentially lead to the campaigner exceeding the spending limit

of £500,000 which applies to campaigners other than political parties and designated lead campaign groups.

5.74 In the course of the campaign period, we were asked whether a pre-designation commitment by a campaigner to spend more than £500,000, on materials that would only be used after the campaigner is designated, would breach the spending limit that applies to non-designated campaigners. Our view is that the lead campaign group spending limit applies across the entire campaign period, not just after designation. This appears to be the only fair and reasonable way in which PPERA can be applied in these circumstances, and is consistent with the legislation. We therefore suggest that the Government consider whether the legislation in this area should be clarified to avoid any doubt at future PPERA referendums.

Expenses incurred by persons acting in concert

5.75 The law does not place any limit on the number of campaign groups that a given individual or organisation can register to campaign at a referendum. Each registered campaigner is able to spend up to the relevant expenditure limit. Following the North East of England referendum in 2004, we recommended that provisions should be introduced to prevent people circumventing the spending limits on campaigning by setting up multiple campaigns for the same referendum outcome. This is a similar provision to an amendment made to PPERA in relation to third party campaign activity at elections.⁵⁰

5.76 We are pleased that in response to that recommendation, the PVSC Act 2011 included a new rule: 'Expenses incurred by persons acting in concert'.⁵¹ This provision provided that if campaigners worked together, all the spending they incurred would count against the limit of each campaigner involved.⁵² There was an exception to this where a campaigner worked together with one of the designated lead campaign groups, since this would allow a lead campaigner to bring together other registered campaigners to engage in a united campaign.

5.77 The conduct rules for the referendum on the law-making powers of the National Assembly for Wales, held in March 2011, were contained in secondary legislation, which was the responsibility of the Secretary of State for Wales. Although in principle the Secretary of State supported the inclusion of the 'acting in concert' provisions in the conduct rules for Wales, this could not be achieved through secondary legislation. This meant that the two referendums, UK-wide

⁵⁰ s.94(6) PPERA

⁵¹ Schedule 1, paragraph 17

⁵² We considered that 'working together' involved spending money as a result of a plan or arrangement between one or more campaigners. Examples of this included: joint advertising campaigns, leaflets or events or coordinating activity with another campaigner.

and Wales, which had overlapping campaign periods, had differing rules applying to campaigners.

5.78 We have considered what the impact of the provision on working together might have been in the event of designation not being possible at the UK referendum. If no lead campaign groups are designated at a referendum, all registered campaigners (apart from some political parties) are limited to the standard expenditure limit for registered campaigners.⁵³ If designation had not been possible at the UK referendum, the spending limit for prospective lead campaign groups would have fallen from £5m to £500,000. Campaigners that may have been viewed as the natural lead campaigner would then have found their ability to deliver their campaign and get their message to voters seriously curtailed. This could have a significant impact on the information available to voters.

5.79 At the referendum on the law making powers of the National Assembly for Wales, there were a total of 23 registered campaigners. Sixteen of those registered after we had announced that we were unable to designate lead campaign groups, and all but one of those 16 were 'Yes' campaigners. This may suggest that the campaign spending that would have been incurred by a designated Yes campaign was instead substituted by spending through a number of registered campaigners, who were not subject to an 'acting in concert' provision. Had there been no designation at the UK referendum, such a substitution of campaign spending may have been reduced or prevented by the 'acting in concert' provision, depending on how far the substitute campaigns were co-ordinated.

5.80 Post UK referendum feedback has indicated that campaign organisations felt that the 'acting in concert' provision had not been tested as the majority of spending would be declared on the lead campaigners' returns. No to AV commented that the rules were a 'good thing in principle' but that the provisions would probably favour well-funded campaigners.

5.81 However, there was some concern that if we had been unable to designate lead campaigners, then the rules would have restricted spending by 'genuine' campaign groups which shared a platform or had organisational links. Yes to Fairer Votes suggested that had they not been designated, it would have been very difficult to separate out some of the organisations on the 'yes' side sufficiently to meet the conditions on spending, given the longstanding working and organisational relationships between them.

5.82 Subject to any further lessons arising from the UK lead campaigners' spending returns when these are submitted in November 2011, it appears that the current 'acting in concert' provisions broadly work as intended by

⁵³ See 'Level of expenditure limits' paragraph 5.69.

discouraging attempts to circumvent the spending limits by setting up multiple campaigns. However, the experience at the Wales referendum, and feedback from the lead campaign groups at the UK referendum, indicate that in the event of the Commission being unable to designate lead campaigners at a referendum, the provisions introduced for the UK referendum could artificially restrict campaigners' ability to put their arguments to voters.

5.83 We therefore recommend that the Government consider amending the 'acting in concert' provisions to remove or relax them in cases where there are no designated lead campaign groups. For instance, the provisions could fall away completely in the event of non-designation, or could apply but subject to a significantly higher overall spending limit.

Expenses exclusion for the media

5.84 In early 2010, concerns were raised that the PPERA rules about spending on referendum campaigning might apply to spending by media organisations as well as campaigners. Under PPERA the media are specifically excluded from the spending limits on non-party campaigning at elections, but there is no explicit exclusion for referendums. We welcomed the fact that the Parliamentary Voting System and Constituencies Act 2011 clarified this by providing that press comment was not subject to spending controls.⁵⁴

5.85 Subject to any further consideration by Parliament of how the regulation of political campaigning should apply to the media in general, we recommend that this clarification be incorporated into PPERA so that the position is confirmed for future PPERA referendums.

Donation reporting

5.86 PPERA requires registered campaigners to submit their donation and expenditure returns to the Commission for publication within three months of polling day if they have spent up to £250,000, or within six months if they have spent more than £250,000. Returns for the referendum on the voting system for the UK parliament were due on 5 August 2011⁵⁵ and 5 November 2011 respectively. We will publish a report on spending and related issues at the referendum in early 2012.

⁵⁴ Clause 5

⁵⁵ Summary tables, direct links to the returns and invoices of campaigners are at <http://www.electoralcommission.org.uk/party-finance/party-finance-analysis/referendum-expenditure>

Reported expenditure

5.87 As discussed earlier in this chapter (see paragraph 5.5), the referendum period during which registered campaigners are required to record and subsequently report their expenditure does not start until the date set in the enabling legislation. For the UK referendum, this was 16 February 2011, the date on which Royal Assent was given to the PVSC Act 2011. Campaigning before that date did not count against spending limits and was not required to be included in spending returns.

5.88 The relatively late start to the referendum period potentially provided the opportunity for significant unregulated spending before the rules came into force. In the event, the level of pre-referendum period campaigning did not appear to raise concerns about high levels of unregulated spending. We will, however, keep this situation under review at future referendums.

Regulation of loans

5.89 In 2006, PPERA was amended to provide controls and reporting requirements on loans and credit arrangements entered into by political parties, regulated individuals and members associations for political activities. However, PPERA does not set such requirements for registered campaigners in referendums, other than registered political parties and regulated individuals.

5.90 The PVSC Act 2011 applied controls to loans to registered campaigners at the UK referendum. The legislation replicated the PPERA controls where loans taken out in respect of campaigning, including credit facilities and guarantees, can only be entered into with permissible sources. All loans over £7,500 taken out for referendum purposes must then be reported.

5.91 The Government has powers to introduce loan controls for referendum campaigners, and for candidates and non-party campaigners at elections, via secondary legislation. We understand that that Government intend to do this.

5.92 We recommend that the relevant secondary legislation be brought forward as soon as practicable.

Reporting of donations

5.93 As discussed above (see paragraph 5.86), PPERA's reporting requirements provide that registered campaigners⁵⁶ must submit returns, including details of donations of over £7,500 towards campaigning in the regulated period, either three or six months after polling day depending on how

⁵⁶ Except those who are also political parties in which case they must continue to report donations on a quarterly basis.

much they have spent. We then publish the information as soon as is practicable after we receive them. Similar provisions apply to candidates and non-party campaigners at elections. This means that information on the funding of referendum campaigns is only available sometime after the referendum and potentially some significant time after the funding has been received.

5.94 During the referendum period for the UK referendum, both of the lead campaign groups were publicly critical of the lack of transparency of funding prior to polling day. Both organisations voluntarily published details of donations they had received in the lead up to polling day; however this information covered different periods and was therefore not directly comparable.

5.95 During the campaign period, No to AV commented in the media that: *‘the current rules relating to disclosure of donations should be strengthened.....It is extremely important that these details are published before polling day so that voters can see who is funding our campaign.’*⁵⁷

5.96 There was only limited post referendum feedback from interviewed campaigners on the reporting of donations. However, those that did comment felt that transparency should be improved by requiring campaigners to report on their funding before polling day.

5.97 In all three referendums that had taken place under the PPERA rules, the main campaigners had been formed by new organisations which were not political parties, and do not therefore have a track record of published information about the sources of their funding. The current donation reporting requirements mean that voters are not guaranteed access to information about who has funded the campaigners until long after polling day.

5.98 There is clearly a good case for amending the current rules for future referendums, so that the funding of at least the largest campaigners is made more transparent before polling day. It will be important to do this in a way that does not impose unreasonable administrative burdens on campaigners during the referendum period. We recommend that the Government consider the options for an element of pre-poll reporting of donations, and introduce a suitable provision for future PPERA referendums. We also recommend that such a pre-poll reporting requirement should also apply to loans.⁵⁸

5.99 Issues that would need to be considered include:

- Whether pre-poll reporting should apply to all reportable donations and loans (those worth above £7,500) made to registered campaigners, or only to designated lead campaign groups. The latter would avoid imposing new

⁵⁷ www.no2av.org/02/no-to-av-confirms-commitment-to-publishing-details-of-donors/

⁵⁸ See paragraphs 5.89–5.92

burdens on other campaigners, but could create a new incentive not to seek designation.

- Whether the pre-poll reporting requirement should apply at a higher threshold than £7,500, with donations valued between £7,500 and the higher threshold reported after the poll
- whether pre-poll reporting should relate to all reportable donations received by campaigners, rather than to donations that have been accepted as being from a permissible source
- whether reportable donations should be reported as and when received, or on a specified periodic basis (e.g. weekly or monthly)

Breaches of the rules

5.100 During the course of the referendum campaign, we received only two allegations that met our criteria to warrant a review of the case for a breach of the campaigning rules.

Restriction on publication of material by publicly funded organisations

5.101 During the referendum period for the UK referendum, we received two complaints asking us to intervene in alleged contraventions of section 125 PPERA. This legislation restricts the material that organisations whose expenses are wholly or partly met by public funds can publish in the 28 days prior to polling day⁵⁹. The restriction applies to information about the referendum and the question, as well as material related to the campaign arguments or that which is designed to encourage participation. The Electoral Commission is exempt from this restriction.

5.102 The first allegation was on the basis that logos of organisations in receipt of public funds and which were not themselves registered campaigners appeared on the 'Yes to Fairer votes' website. This complaint was followed by an allegation from the same source regarding one of the organisations publishing information supporting the 'Yes' outcome on their own website.

5.103 We assessed each allegation in line with our procedures. In the case of the first allegation, we took the view that the facts did not indicate a potential breach of section 125 because a logo is not covered by section 125 and the publication was undertaken by Yes to Fairer Votes rather than the organisation themselves. In the case of the second allegation, we considered that the allegation disclosed a potential breach of section 125. However, this second allegation was set out on the day before polling day, so we were not able to

⁵⁹ It also applies to Ministers, government departments and Local Authorities.

raise the issue with the organisation in question in time to have any impact on the campaign. In fact, PPERA does not provide for any sanction for such breaches of section 125.

5.104 We have discussed the question of sanctions for breaches of section 125 with Government and understand that the Government may wish to revisit the overall scope of section 125 to clarify it. We have also suggested that it would be helpful to set out what sanctions, if any, should apply to breaches. We recommend the Government proceeds on this basis.

Regulation of campaign arguments

5.105 During the referendum campaign, several campaigners called for the Commission to take steps to deal with alleged misinformation in the content of campaign materials.

5.106 Our statutory remit in respect of regulating referendum campaign materials, as set out in PPERA, provides for us to issue guidance on the rules relating to campaign materials, such as the need for printed material to carry an imprint showing who has produced it. We do not have a remit to regulate the accuracy of the content of campaign materials, either at referendums or elections.

5.107 In a referendum campaign, campaign materials, like normal advertising materials, may be subject to defamation laws. Parliament has also legislated for certain criminal offences regarding political campaign materials at elections, such as making false statements about the personal character or conduct of candidates. Complaints of this nature would be investigated by the police.

5.108 The Commission is an independent body tasked with running the administration of UK referendums as well as regulating the spending of registered referendum campaigners. We do not think that any role in policing the truthfulness of referendum campaign arguments would be appropriate for the Commission. It would be very likely to draw the Commission into political debate, significantly affecting the perception of our independent role, and posing substantial operational and reputational risks. We therefore invite the Government and Parliament to confirm that a role of this nature would be inappropriate for the Commission.

Recommendations for campaigning at future referendums

Recommendation 10 – Timing of legislation

We recommend that the Government ensure that there is a period of at least 12 weeks between the campaign rules being finalised and the start of the regulated referendum period. This period would allow the Commission to complete,

publish and distribute guidance and give campaigners an opportunity to become familiar with the guidance before the rules come into effect.

Recommendation 11 – The referendum period

We recommend that at future PPERA referendums the statutory minimum referendum period should be at least 16 weeks, consisting of the current 28 day designation application period, the current 14 day designation decision period, and a minimum of 70 days between the final date for the designation decision and polling day. This would give designated lead campaign groups more time to plan and use the benefits that PPERA makes available to them in order to put campaign arguments to voters.

Recommendation 12 – Designation of lead campaign groups

We recommend that:

- When considering the case for future referendums, legislators should take into account whether the referendum is likely to stimulate a level of debate which would generate willing and able applicants for designation. However, this step would not in itself ensure that such campaigners will seek designation at a particular referendum in future
- The Government should take steps to reduce the potential advantages to a prospective lead campaigner of deciding not to apply for designation.

The Commission will raise this with the UK Government.

Recommendation 13 – Grants to designated lead campaign groups

We recommend that the Commission's ability to pay grants to designated lead campaign groups in instalments be confirmed for future referendums.

Recommendation 14 – Expenditure limits for registered campaigners that are subsequently designated as a lead campaign group

We suggest that the Government consider whether the legislation on spending limits for registered campaigners that are designated as lead campaign groups should be clarified for the avoidance of any doubt at future PPERA referendums.

Recommendation 15 – Expenses incurred by persons acting in concert

We recommend that the Government consider amending the 'acting in concert' provisions to remove or relax them in cases where there are no designated lead campaign groups. For instance, the provisions could fall away completely in the event of non-designation, or could apply but subject to a significantly higher overall spending limit.

Recommendation 16 – Expenses exclusion for the media

Subject to any further consideration by Parliament of how the regulation of political campaigning should apply to the media in general, we recommend that the clarification that press comment is not subject to spending controls should be incorporated into PPERA for future referendums.

Recommendation 17 – Regulation of loans

The Government has powers to introduce loan controls for referendum campaigners, and for candidates and non-party campaigners at elections, via secondary legislation. We understand that that Government intend to do this and we recommend that the relevant secondary legislation be brought forward as soon as practicable.

Recommendation 18 – Reporting donations

We recommend that the Government consider the options for an element of pre-poll reporting of donations, and introduce a suitable provision for future referendums. Once the loan controls for referendum campaigners are in place, as recommended above, we recommend that such a pre-poll reporting requirement should also apply to loans.

Recommendation 19 – Restriction on publication of material by publicly funded organisations

We understand that the Government may wish to revisit the overall scope of section 125 to clarify it. We recommend that this review should consider what, if any, sanctions should apply to breaches of this provision.

Recommendation 20 – Regulation of campaign arguments

We invite the Government and Parliament to confirm that a role in policing the truthfulness of referendum campaign arguments would be inappropriate for the Commission.

6 Delivering the referendum

6.1 This chapter provides an account of the approach adopted and activities undertaken to prepare for and deliver the May 2011 polls. It focuses particularly on the management arrangements in place for the referendum, and the approach adopted by the Chief Counting Officer (CCO), and it identifies lessons which the Electoral Commission believe should be learned by the Chief Counting Officer for any future referendum.

Co-ordinating the delivery of the referendum

Roles, responsibilities and the management structure for referendums

6.2 The accountability structure for a referendum is very different to the structure in place for most elections, including elections to the UK Parliament. At most elections, each individual Returning Officer (RO) is responsible for the conduct and delivery of the election and declaring the result for a specific constituency or local authority area. At a referendum held under the Political Parties, Elections and Referendums Act 2000 (PPERA), the Chief Counting Officer is responsible for certifying the result of a referendum, but is not directly responsible for the delivery of the poll locally.

The Chief Counting Officer

6.3 Under section 128 of PERA, the Chair of the Electoral Commission – or someone they appoint – is the CCO for a referendum held under PERA across the UK or in any part of Great Britain. The Electoral Commission agreed in July 2010 that Jenny Watson, the Chair of the Commission, should be the CCO for the May 2011 referendum on the voting system for UK Parliamentary elections. Ms Watson was also the CCO for the March 2011 referendum on the law-making powers of the National Assembly for Wales.

6.4 The principal statutory responsibilities of the CCO are to:

- certify and declare the total number of ballots counted
- certify and declare the total number of votes cast in favour of each answer to the question asked in the referendum
- appoint a Regional Counting Officer (RCO) for each of the 11 electoral regions across Great Britain

6.5 The Commission also agreed that Max Caller CBE, an Electoral Commissioner, should be appointed as Deputy Chief Counting Officer (DCCO).

The main duty of the DCCO is to support the CCO by ensuring that the referendum is conducted effectively in the manner provided by law.

6.6 For the May 2011 referendum, the CCO gave specific responsibility to the DCCO for overseeing the management of the referendum count and the result process. In particular, the DCCO was responsible for managing the implementation of a referendum count results collation process, to enable the transmission of count totals from individual local voting areas to the Chief Counting Officer.

6.7 The Electoral Commission also agreed that the staff of the Commission should be made available to support the Chief Counting Officer in the exercise of her statutory duties and functions.

Counting Officers

6.8 The conduct of the poll in each of the 440 referendum voting areas was the responsibility of individual Counting Officers (COs). Counting Officers were designated, under the Parliamentary Voting System and Constituencies Act (PVSC), by virtue of their existing appointment as Returning Officers for the following elections:

- In England, Returning Officers for local government areas were appointed.
- In Scotland, Returning Officers for Scottish Parliament constituency elections were appointed.
- In Wales, Returning Officers for National Assembly for Wales constituency elections were appointed.
- In Northern Ireland, the Chief Electoral Officer was designated as Counting Officer for the single voting area covering the whole of Northern Ireland.

6.9 The principal statutory responsibilities of COs for each of the 440 voting areas were to:

- print ballot papers
- issue and receive postal ballot packs
- conduct the poll, including the provision of polling stations and polling staff
- verify the contents of ballot boxes against ballot paper accounts
- count the votes cast
- certify the number of ballot papers counted, and the number of votes cast in favour of each answer to the referendum question.

6.10 In areas where the referendum poll was combined with the poll for scheduled elections (Scotland, Wales, Northern Ireland and many parts of England except London), the individual appointed as CO fulfilled two roles, as both the CO for the referendum and the Returning Officer for the election. This meant that the CO was not only responsible for the referendum but also for the elements of the election poll that were combined with the referendum. The role of ROs was therefore complicated by the necessary alternations and additional duties that were required by the role of a CO.

Regional Counting Officers

6.11 Following the 2004 referendum on regional government in the North East of England, the Electoral Commission identified the need for an intermediate level of management to address the challenge of overseeing the delivery of a UK-wide referendum, which would involve a large number of Counting Officers spread over wide a geographic area. We recommended that the role of Regional Counting Officer should be provided for in legislation to ensure consistency of approach and effective communication between individual local COs and the CCO.⁶⁰

6.12 The PVSC Act included provisions giving the CCO the power to appoint RCOs for each of the eleven constituencies in Great Britain used for European Parliamentary elections, including Scotland and Wales. The Bill also provided that RCOs would be given authority to give directions to COs about their preparation for the referendum and in the discharge of their statutory referendum functions.

6.13 The CCO appointed an RCO for each of the eleven specified electoral regions in Great Britain. Because the Chief Electoral Officer for Northern Ireland was appointed as the CO for the whole of Northern Ireland, there was no provision or need for him to also be appointed as RCO.

6.14 The CCO considered that eight of the 11 RCOs should be designated by virtue of their previous experience in the role of Regional Returning Officers (RROs) for the European Parliamentary elections in 2009. The CCO indicated that, in Scotland, she would appoint the Convener of the Electoral Management Board for Scotland as the RCO. The CCO wrote to each of these individuals in October 2010 outlining her intention to appoint them formally as RCOs once the PVSC Bill received Royal Assent, and enclosed a copy of a role description outlining the duties they were expected to perform on behalf of the CCO.

6.15 In both the East Midlands and Yorkshire and Humber regions, the specific individuals who had held the office of Regional Returning Officer in 2009 had since retired, and the CCO decided to invite applications from Returning Officers in each region to fill the role of RCO. Final appointments for the East Midlands and Yorkshire and Humber regions were made following interviews in November 2010.

⁶⁰ The Electoral Commission, *The 2004 North East regional assembly and local government referendum* (November 2005).

Table 13: Regional Counting Officers

Regional counting area	Regional Counting Officer
East Midlands	David Cook, Kettering Borough Council
Eastern	David Monks, Huntingdonshire District Council
London	Barry Quirk, London Borough of Lewisham
North East	Dave Smith, Sunderland City Council
North West	Sir Howard Bernstein, Manchester City Council
South East	Mark Heath, Southampton City Council
South West	Paul Morris, Borough of Poole Council
West Midlands	Stephen Hughes, Birmingham City Council
Yorkshire and the Humber	Joanne Roney, Wakefield Council
Scotland	Mary Pitcaithly, Falkirk Council
Wales	Bryn Parry-Jones, Pembrokeshire County Council

6.16 Bryn Parry-Jones had also taken on the role of Deputy Chief Counting Officer for the Wales referendum on additional powers for the National Assembly in March 2011.

6.17 The CCO wrote to each of the designated RCOs to confirm their appointment as soon as the PVSC Act received Royal Assent in February 2011.

6.18 The role description sent by the CCO to each RCO-designate outlined the following main functions and duties:

- Exercising the CCO power of direction as instructed by the CCO and complying with the direction of the CCO.
- Co-ordinating the planning and administration of the poll at a regional level.
- Taking all necessary steps to ensure that Counting Officers comply with instructions and directions as specified by the CCO.
- Monitoring and reporting on the performance of Counting Officers for each voting area within the RCO's electoral region in conjunction with the CCO.
- Participating in UK planning and management structures, including attending national events such as Election and Referendum Steering Group meetings.
- Working with Electoral Commission staff, leading in regional planning and management structures, including at all regional events.
- Securing the delivery of training and briefing for COs in conjunction with the CCO.
- Managing the results collation process including the staffing and management of the event, and collation and preparation of the result at a regional level.

- Doing whatever duties were necessary for conducting the referendum in the manner provided by law.

6.19 Regional Counting Officers were also given specific statutory responsibilities under the PVSC Act for certifying the total number of ballot papers counted in the region for which they were appointed, and the total number of votes cast in favour of each answer to the question asked in the referendum for the region as a whole. This function was similar to the role of RROs for European Parliamentary elections, although in this case RCOs acted as an intermediate stage in the count process before the CCO certified the result of the referendum, rather than undertaking the final calculation and declaration of results as for European Parliamentary elections. Regional Counting Officers were also given additional powers to require a CO to undertake a recount of local totals if there was any doubt as to their accuracy.

Groups established to support the delivery of the referendum

Elections and Referendums Steering Group

6.20 The Electoral Commission set up an Elections and Referendums Steering Group (ERSG) to bring together the CCO, each of the RCOs, representatives of the relevant legislatures and UK Government departments, and the Association of Electoral Administrators. Its purpose was to provide UK-wide strategic oversight to the development of legislation and the planning, management and delivery of the referendum and combined elections. It also acted as a forum for monitoring high-level strategic risks to the delivery of the 5 May polls.

6.21 The ERSG considered proposals from the Chief Counting Officer and the Electoral Commission at its meetings, and it also regularly reviewed progress against high-level plans and monitored key strategic risks to the successful delivery of the spring 2011 polls.

6.22 The ERSG met monthly between September 2010 and June 2011. The CCO also held some additional teleconference discussions with members of the ERSG. Terms of reference for the ERSG and minutes of the meetings are published on the Electoral Commission's website.⁶¹

Elections, Referendums and Registration Working Group

6.23 The Elections, Referendums and Registration Working Group (ERRWG) was established to assist the CCO and the Electoral Commission in delivering their respective functions and duties for the May 2011 polls. The group was a continuation of the group that was initially constituted for the 2009 European

⁶¹ <http://www.electoralcommission.org.uk/elections/elections-and-referendums-working-groups>

Parliamentary election and continued for the UK Parliamentary general election in 2010.

6.24 The objectives of the ERRWG were to provide the CCO and the Electoral Commission with advice and support in the development and delivery of referendum and election instructions, guidance and resources, and to ensure the needs of the electoral registration and elections staff in Great Britain were reflected in the development of instructions, guidance and resources. The Group was also intended to respond to any issues identified by the ERSG and the electoral regions during the planning process for the spring 2011 electoral events, and to enable overall effective communication between the individuals and groups involved in delivering the spring 2011 polls.

6.25 The membership of the ERRWG included a representative of each Regional Counting Officer in Great Britain and of the Greater London Returning Officer, and representatives from the Cabinet Office, the Association of Electoral Administrators and the Scottish Assessors Association. It met monthly between August 2010 and February 2011, and minutes of the meetings are also published on the Electoral Commission's website.

Communications Network

6.26 The Electoral Commission also established a Communications Network with representatives of the Regional Counting Officers to build a stronger working relationship between the CCO, the Commission, RCOs and Counting Officers. The group provided a forum in which staff of the Commission could share and discuss plans with RCOs and provide updates on the public awareness activity. This allowed RCOs to see the campaigns, marketing materials and media plans which were being developed by the Commission at a UK-wide level and provided an opportunity for the Commission to share any public awareness templates that would be made available for COs to adapt and use at a local level.

Ensuring consistent delivery of the referendum

6.27 A referendum has one overall result, unlike elections that comprise a series of individual contests between candidates. A central aim of the Chief Counting Officer was to achieve a consistent approach across the UK to the counting of votes and the delivery of the referendum, to ensure both a high quality of service for voters and public confidence in the outcome of the referendum.

Instructions and directions for Counting Officers

6.28 The primary mechanism for ensuring consistency was through a set of instructions and directions which were issued by the Chief Counting Officer to Counting Officers. The PVSC Act required Counting Officers to discharge their functions in accordance with the Chief Counting Officer's directions.

6.29 On 2 December 2010 the Electoral Commission issued a circular to prospective Counting Officers on behalf of the CCO setting out the key elements and assumptions underpinning the Chief Counting Officer's proposed approach to giving instructions and monitoring delivery of the referendum. In order to limit the risks inherent in making substantial changes to established processes in the short time available before polling day for the referendum, the Chief Counting Officer set out her assumption that procedures and processes would not be significantly different from those in place for other electoral events in the UK. The key exception to this general assumption was where there was a clear need to make amendments to improve the experience of voters participating in the polls, or to reflect the UK-wide nature of the referendum.

6.30 Detailed instructions from the Chief Counting Officer were issued to prospective Counting Officers between December 2010 and January 2011. The purpose of the instructions was to assist Counting Officers in the discharge of their functions and to ensure consistency of practice in delivering the referendum. Each set of instructions referred to different stages in the administration of the referendum including:

- planning and organisation
- administering the referendum
- absent voting
- verification and count
- after the declaration of result

6.31 The instructions were supported by a range of templates and materials including a PowerPoint briefing for polling station staff, a template project plan and risk register, and flowcharts covering postal vote processes.

6.32 The instructions and directions for Counting Officers at the referendum were based on the guidance which the Electoral Commission had issued to Returning Officers at elections in previous years. In several key areas, however, the Chief Counting Officer's directions required Counting Officers to take particular steps or meet specific standards. These included:

- Maximum numbers of electors allocated to any polling station.
- Minimum staffing levels for polling stations.
- A requirement to print and provide ballot papers for the maximum number of people who could attend a polling station.
- Specific deadlines for the first dispatch of poll cards and postal ballot packs.
- A requirement to put in place plans to check the personal identifiers on all returned postal ballot packs, rather than the minimum 20% sample currently required by regulations.
- A deadline for the completion of the verification of the contents of ballot boxes for the referendum by 1pm on 6 May 2011 – this was to ensure that everyone could commence counting the referendum votes at 4pm on Friday 6 May as directed by the CCO.

6.33 The Chief Counting Officer also wanted to ensure a consistent approach to the handling of returned postal ballot packs across Great Britain. At elections, including UK Parliamentary general elections, individual Returning Officers are responsible for deciding whether or not to contract the Royal Mail to carry out 'sweeps' – searches of mail centres on polling day, to collect any postal ballot packs which might have been posted by electors on or very close to polling day, in order to deliver them to, or make them available for collection by, the Returning Officer before the close of poll.

6.34 For the May 2011 referendum, the Chief Counting Officer directed all Counting Officers to make arrangements with the Royal Mail locally to provide a sweep, to ensure – as far as was possible – consistent treatment of returned postal ballot packs. The CCO agreed a contract with Royal Mail requiring them to deliver all postal ballot packs picked up by each sweep directly to Counting Officers, rather than Counting Officers having to collect them.

6.35 The advantage of having a single UK-wide contract with Royal Mail was that it helped to ensure there was consistency of service across the UK and that the most cost effective processes were in place to collect and deliver as many postal votes as possible to Counting Officers. This approach also secured a more cost-effective service overall than would have been possible with multiple contracts across the country.

The ballot paper and modifications to voter materials

6.36 The Chief Counting Officer also used the power provided by the PVSC Act to specify modifications to certain statutory voter-facing forms and notices to make them easier for voters to use or understand. This power applied to materials for the referendum and also for scheduled elections where these were combined.

6.37 The relevant forms and notices which the CCO was able to be modify are:

- poll cards
- postal voting statements
- guidance for voters notices (situated inside polling stations)
- instructions to voters notices (situated in each polling booth)

6.38 For each of these forms and notices the CCO specified the wording to be used and provided printing specifications covering format and style requirements. These modifications were specified in line with the Electoral Commission's published *Making your mark* good practice design guidance for voter materials, which was based on research conducted with voters and

existing good practice for accessible communication.⁶² Around 150 templates were provided, covering the full range of possible electoral combination options.

6.39 The CCO also provided a postal voting quick start guide (a supplementary, non-statutory guide) tailored to the referendum and combined polls, which Counting Officers could include in postal ballot packs for the referendum.

6.40 In developing the modification templates, the Chief Counting Officer sought input and advice from the Elections, Referendums and Registration Working Group and also from a group of electoral management software suppliers and printers. Templates for those forms and notices which needed to be printed as quickly as possible after the PVSC Bill was given Royal Assent were prioritised, which meant that some templates for materials which were not needed until later in the election and referendum timetable – polling station notices, for example – were issued later.

6.41 The Chief Counting Officer's power to specify modifications did not extend to the layout and wording used on the referendum ballot paper, which was prescribed in the PVSC Act. Drawing on the Electoral Commission's 2009 *Making your mark* guidelines research, the CCO developed a template which specified the font styles and sizes that should be used in printing the ballot paper and illustrated how the ballot paper should look when printed. Counting Officers were directed to follow this template when printing their ballot papers. This approach was intended to ensure that each ballot paper followed good practice design guidelines and appeared the same for voters regardless of where in the UK they voted.

6.42 The PVSC Act also required the referendum ballot paper to be a different colour from the ballot papers used for other polls combined with the referendum. To ensure that voters in areas with combined electoral events knew which ballot paper related to which event, and that the same ballot paper was used across the UK, the CCO issued directions to Counting Officers on the colour of the referendum ballot paper.

6.43 The CCO directed that the ballot paper should be light grey and, based on advice from the RNIB, also provided detailed specifications for the tint and contrast ratio between the black text and the grey background. In determining the colour of the referendum ballot paper, the Chief Counting Officer took into account a range of factors:

- Ensuring that colour and contrast enabled voters with visual impairments to distinguish the text on the ballot paper easily.

⁶² The Electoral Commission, *Making your Mark Good practice for designing voter materials guidance for electoral administrators* (2009) www.dopolitics.org.uk/making-your-mark

- Avoiding colours which would normally be used at the polls being held on 5 May 2011, including tendered ballot papers which use pink paper.
- Avoiding colours which had obvious political connotations, either with the campaign colours of the potential lead referendum campaigners or a political party in the UK such as lilac, orange, yellow, red, or blue.

6.44 The guidance also said that the official mark should be printed in the blank space to the left of the 'Yes' and 'No' answers, covering both the 'Yes' and 'No' rows in equal measure to avoid any accusations of bias. This was to address the risk of voters cutting off the bottom section of their ballot paper (which might otherwise have contained the official mark) before returning it as has happened in the past.

Monitoring delivery

6.45 At elections, where the Electoral Commission has no operational role or responsibility for delivery, the performance of Returning Officers has been monitored since 2009 against published standards and the Commission has reported on their performance after polling day. Given the different role of the Commission, particularly the role of the Chief Counting Officer at the referendum, the existing performance standards approach was revised to enable early identification and intervention to resolve potential problems with performance and delivery.

6.46 Alongside the Chief Counting Officer's instructions and directions, the performance of local Counting Officers was monitored proactively as the referendum period progressed. This allowed the Chief Counting Officer, working with each of the RCOs, to intervene quickly if circumstances required and to give additional guidance, support and advice where it was needed.

6.47 The Chief Counting Officer's monitoring strategy comprised the following four main strands:

- **Monitoring planning and organisation:** ensuring that appropriate plans and resources were in place as the foundation for delivering the referendum and any combined polls on 5 May 2011. Counting Officers were required to provide copies of their plans and risk registers along with a statement confirming that they were satisfied that they had adequate resources in place to enable them to deliver the polls effectively and in line with the legislation and CCO directions.
- **Checking compliance:** general monitoring that directions were carried out by all Counting Officers through the completion of checklists at pre-determined points in the electoral process.
- **Risk-based monitoring:** detailed monitoring of performance on a risk-based approach through monitoring visits and scrutiny of information and evidence.
- **Exceptions:** where a Counting Officer believed that they have a legitimate reason for not complying with a direction, they were able to inform the

RCO and seek to be granted an 'exception' to allow them to carry out a specific process or procedure in a different way to that set out in the direction.

6.48 All COs were requested to send copies of their referendum project plan and risk register to the Chief Counting Officer's team by the end of January 2011. These documents were subsequently analysed to check that COs had covered appropriately all the key tasks outlined in the CCO's instructions.

6.49 In addition Counting Officers were asked to return checklists on a weekly basis requiring confirmation that all the directions were being followed. A total of five checklists were sent out – the first on 28 March and the last on 21 April. The CCO received returns from all COs for each of the five checklists.

6.50 This monitoring data enabled the CCO to identify areas where insufficient progress had been made towards planning and delivery of the polls, and to intervene to provide appropriate support to Counting Officers. Following the initial submission of project plans and risk registers, 47 Counting Officers were considered 'high risk'. The CCO subsequently arranged visits by staff from the Electoral Commission's offices across the UK to each of these COs, and by 31 March the number had reduced to 18. By 6 April, when weekly monitoring of performance by COs began, the number of COs considered 'high risk' had reduced to three. In two of these instances, the risk assessment rating was related to the relative inexperience of the electoral services team, which the CCO considered merited continued monitoring throughout the planning and delivery of the polls; in the other case, concerns about the Counting Officer's approach to conducting the verification and count were resolved in the week before polling day.

6.51 Active performance monitoring also enabled the CCO to ensure that certain tasks had been carried out on time and that COs had complied with the CCO's directions. For example the CCO was able to determine that:

- Ninety-eight per cent of COs who provided us with an example of their poll card (248 out of 254) followed all or most of our style sheet and example templates.
- The first CO dispatched poll cards on 11 March, and the last on 4 April. Over 75% of COs dispatched their poll cards between 25 and 28 March.
- Only five Counting Officers (from a total of 440) had provided a polling station with over 2,500 electors (the maximum number directed by the CCO) – exceptions were sought and granted in four of these instances.
- Twenty-five COs failed to meet the 1pm deadline for verifying all the ballot boxes.⁶³

⁶³ This is based on returns from 331 local authorities.

- All COs printed ballot papers based on 100% turnout for the referendum and where relevant for the combined election(s).
- All but one CO allocated the directed number of staff to each polling station.⁶⁴
- We received example referendum ballot papers from 326 out of 381 Counting Officers, all of which followed our template style guide. Those that were outstanding were followed up but were not received prior to polling day.
- Of the 270 Counting Officers who printed the official mark on the front of the ballot paper, 153 did so in accordance with our guidance. The remainder printed the official mark on the top or across the ballot paper.

Exceptions to the Chief Counting Officer's directions

6.52 The Chief Counting Officer put in place a process for Counting Officers to seek an exception to a direction where they could demonstrate either that it would not be possible to comply with the direction, or that compliance with the direction would introduce an unacceptable level of risk to the delivery of the referendum.

6.53 The CCO delegated authority to Regional Counting Officers (RCOs) to consider applications for an exception to her directions. In Northern Ireland, the Counting Officer could apply for an exception directly to the CCO. The CCO agreed with RCOs how exceptions should be considered and what factors should be taken into account in reaching any decisions, and issued guidance setting out the process for making and considering an application. This process required the CO to discuss the issue with their RCO, before deciding whether or not to submit a formal application. Formal applications had to be made by the CO in writing to the RCO (or in Northern Ireland to the CCO) and provide the following information:

- The specific direction from which an exception was being sought.
- Information about the steps taken by the CO to attempt to comply with the direction.
- An explanation of why it was not possible for the CO to take any further steps to comply with the direction, or an assessment of the consequences of complying with the direction.
- Any alternative steps proposed by the CO to meet the principles of the CCO's direction.
- An assessment of the possible risks associated with the CO's alternative proposal.

⁶⁴ This CO was granted an exception because of the practical space constraints in the specific polling station, and taking into account the history of low turnout within the polling district.

6.54 The final decision to grant an exception was made by the relevant RCO, following consultation with the CCO. RCOs could refuse applications for exceptions without consulting the CCO, although the CCO was able to give advice to RCOs in relation to particular applications on request.

6.55 Across the UK as a whole, a total of 19 exceptions were requested by COs: six were granted and 13 were rejected. Of those exceptions which were granted, the majority were to the CCO's direction on polling station size and staffing numbers. Two related to the use of prescribed polling station notices where the Counting Officers in question were dealing with particularly complex combination arrangements that meant the notices needed further adaptation to suit their specific local circumstances.

Example of a successful application for an exception to the Chief Counting Officer's direction that a polling station must not have more than 2,500 electors allocated to it.

A polling station located at a Bowling Club currently has 2,582 electors in person allocated. This is the only suitable building in this polling district for use as a polling station and this has been investigated on a number of occasions. The space within the room is not of a suitable size or design to easily accommodate two separate polling stations with two Presiding Officers and it would not make for a better experience for electors.

No further steps can be taken to comply with the direction because there are no other suitable buildings in the area and using a temporary polling station would offer a lesser service to electors with disabilities.

This polling area has been considered many times and other buildings which may be suitable are not in the centre of the community and would be much less accessible for the majority of the electors.

The total room area measures 24 ft by 38 ft but that is not the whole story. It is a bar area with fixed fittings and furniture and does not lend itself to be split into two distinct polling stations and would be difficult and confusing for the electorate who have voted there for a number of years without any problems, including last May where there was a combined poll.

There are two elections taking place at this polling station and so I propose to allocate four poll clerks to this station in addition to the Presiding Officer. This will ensure that there should be at least four people at the desk all the time and so sufficient staff to deal with the register, two corresponding number lists and two sets of ballot papers and oversee the voting process within the station.

In determining the risks associated with this I have noted that only 57.66% of voters in person attended at this polling station in May 2010 and so the addition of one additional poll clerk at a polling station where no problems were encountered last year will be sufficient to mitigate any possible risk.

6.56 An exception to the completed deadline for verification was also granted to the Chief Electoral Officer in Northern Ireland, who indicated that it would not be possible for verification of all ballot boxes used in the Northern Ireland Assembly elections, the local elections and the referendum to be verified by 1pm on Friday. Northern Ireland was still required to commence its count at 4pm.

The referendum count

6.57 Because the referendum poll was held on the same day as polls for scheduled elections in different parts of the UK, the Chief Counting Officer considered when the ballot papers for the referendum should be verified and counted. In November 2010, the CCO issued a consultation paper seeking views on her preferred option from Counting Officers and Returning Officers, political parties and campaigners, the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

6.58 The principles which the CCO took into account in determining her preferred timings for verification and the count for referendum ballot papers were: first, that the results of scheduled elections should be available as soon as possible; second, that the referendum was a UK-wide poll providing one result for the UK as a whole; and third, that the result of the referendum must be accurate.

6.59 Having taken into account comments from more than 60 responses to the consultation, the Chief Counting Officer set out in December 2010 her intention to direct Counting Officers to ensure that they could:

- Conclude the verification of ballot paper accounts for the referendum by 1pm on Friday 6 May 2011.
- Begin counting of the ballot papers for the referendum at 4pm on Friday 6 May 2011.

6.60 These timings formed part of the Chief Counting Officer's directions to Counting Officers. The CCO also issued a detailed count communication protocol to Counting Officers, setting out how verification and results data should be provided to and checked by Regional Counting Officers before being transmitted to the Chief Counting Officer. This protocol emphasised in particular the need for accuracy in the counting process, given that each individual local count total would form a small part of the overall result of the referendum across the UK as a whole.

6.61 The Chief Counting Officer also provided a results collation software system to Regional Counting Officers, which enabled them to collate and transmit referendum count totals from Counting Officers to the Chief Counting Officer. The CCO provided training and support to the members of the RCOs' teams who would be operating the software, and also ran an initial trial of the system in early March 2011. The CCO also asked all Counting Officers to take part in a UK-wide rehearsal of the count communication system in early April 2011.

6.62 The Chief Counting Officer held the official declaration of the referendum result at the ExCeL conference centre in east London on Friday 6 May. The venue was chosen on the basis of its size and communication facilities, given the expected level of interest in the event by campaigners and the media. The DCCO, Max Caller, was responsible for managing the collation of verified votes and count totals from COs across the UK to ensure an accurate result, underpinned by strong processes and a clear audit trail.

6.63 The results collation software enabled the Chief Counting Officer to provide a real-time overview of progress of the verification and counting of referendum ballot papers across the UK, including turnout and running totals for the 'Yes' and 'No' votes, based on confirmed figures from COs. The CCO used the data to publish live updates on a dedicated referendum result website. The CCO also screened live updates at the ExCeL result venue, and provided data feeds directly to press and media representatives who were present at the venue.

6.64 The Chief Counting Officer invited anyone with an interest in attending the result event on Friday 6 May to do so by registering via the Electoral Commission's website. A total of 260 guests attended the event, including referendum campaigners, Members of Parliament and members of political parties, UK Government officials, press and media representatives, academics and accredited electoral observers. Regional Counting Officers were not required by law to allow observers to be present during the collation of local voting totals, but all accredited observers were invited to indicate whether they wished to attend any of the regional collation centres.

6.65 The first count totals from local voting areas were certified and transmitted to the Chief Counting Officer by 4.30pm on 6 May. The first count totals for an entire region were certified and declared by 6.30pm. By 7pm more than 300 out of 440 Counting Officers had certified the count totals for their voting areas, and by 8pm count totals had been certified by 400 Counting Officers. At just after 10pm, the Chief Counting Officer had received certified count totals from all but one Counting Officer, and all Regional Counting Officers had also certified the totals for their regions.

6.66 The overall outcome of the referendum became clear at approximately 9pm on Friday 6 May, when it became apparent that the remaining certified totals which had not yet been received from Counting Officers could not change the outcome. The No to AV lead campaign group sought, and was granted, permission from the CCO to make a short speech at the referendum result venue, and the Yes to Fairer Votes campaign group also made a short speech.

6.67 The Chief Electoral Officer for Northern Ireland certified the count totals for the Northern Ireland voting area just after 2am on Saturday 7 May, and the Chief Counting Officer was then able to certify and declare the result of the referendum across the whole of the UK. We have explored in more detail in our report on the May 2011 Northern Ireland Assembly elections the circumstances and factors which may have contributed to the significant delay to the completion of the count in Northern Ireland compared with the rest of the UK.

6.68 Regional Counting Officers were able to direct Counting Officers to re-count local totals for any voting if they had reason to believe that the totals were inaccurate. The Chief Counting Officer was able to direct the Chief Electoral Officer in Northern Ireland as Counting Officer to re-count the total for Northern Ireland.

6.69 The Chief Counting Officer had no power to direct all Counting Officers to undertake a re-count of all local totals across the UK as a whole, regardless of the size or closeness of the overall referendum result. The detailed directions and instructions for the count process and the communication of verification and count totals were therefore intended to ensure that the count process for each voting area was conducted accurately and transparently.

6.70 While the result of this referendum was not close and was not challenged, we have heard some concerns that the absence of a power for the CCO to direct a re-count of all local totals across the UK might leave the result of a future referendum open to challenge. We will consider further whether such a power should be available to the CCO for any future referendum, taking into account comparative practice and experience of referendums in other countries.

Lessons learnt about the delivery of the referendum

Overall management structure

6.71 Overall, evidence suggests that the management structure put in place by the Chief Counting Officer for the referendum worked well, and ensured an appropriate level of coordination and accountability for a UK-wide electoral event. The structure enabled effective management by ensuring that the referendum was planned and delivered to a consistent standard, allowing appropriate local management of delivery while also ensuring that good practice in key areas was monitored and followed.

6.72 Feedback from Counting Officers and Regional Counting Officers has also acknowledged the importance of having an appropriate management structure for referendums, and has recognised the value of a regional management structure. We also received positive comments from RCOs and COs that having a sounding board of front-line professionals was a helpful part of the process.

6.73 The structure provided for the May 2011 referendum was set out in the PVSC Act rather than PPERA, and would not automatically be in place for future referendums. We believe that PPERA should be amended to allow for the same structure to be put in place for any future PPERA referendum of a similar scale, across one or more European Parliament constituency for example.

Groups

6.74 Members from the ERSG, the ERRWG and the Communications Network said that the groups provided a useful forum for exchanging ideas and should be continued for future elections and referendums. It was acknowledged that in the future the relationship between the ERSG and the ERRWG could be more clearly specified, and that better communication between the two groups could support a more constructive relationship.

6.75 The Commission will continue to convene all three groups to support the development and implementation of our functions in relation to future elections. We also believe that the UK Government would benefit from input from both groups to support the development and implementation of policy and legislation for future referendums, and we recommend that appropriate mechanisms to engage with them should be established in advance of the scheduled May 2012 elections.

Feedback on Regional Counting Officers

6.76 Almost three quarters of the COs who responded to our survey said that they were very (47%) or fairly (26%) satisfied with their experience of working with their RCO. Some respondents thought that the relationship was much improved on the European Parliamentary elections in 2009, and were positive about the on-going communication they had with their RCO and the way in which they supported them in delivering the referendum.

6.77 Four per cent said that they were fairly dissatisfied with their relationship with their RCO; none said that they were very dissatisfied.⁶⁵ The limited negative feedback received included comments about training sessions being held during very busy times and at short notice; the counting and results collation taking too long, and the inflexibility of the RCO in refusing to grant an exception to a direction from the CCO.

Feedback on the Electoral Commission

6.78 Two-thirds of Counting Officers (66%) expressed satisfaction with the support provided by the Electoral Commission; 13% were dissatisfied. There were a high number of positive comments made in all regions about the support provided by staff in the Commission's offices in Scotland, Wales, Northern Ireland and across England, such as:

Staff in the EC's Scotland Office were helpful as usual and easily contactable. Any problems were resolved as quickly as possible.

CO/RO, Scotland

⁶⁵ Nineteen per cent said that they were neither satisfied nor dissatisfied.

The Wales office is very supported and will always come back to you with advice if they cannot help you first time around.

CO/RO, Wales

6.79 However, a few made negative comments about the quality of support provided by the Electoral Commission:

Generally the support provided was good e.g. telephone queries to the regional office, but there were a number of times where responses were not received, including:

- a) we were not given any feedback on the quality of the project plan/risk assessment submitted in January;
- b) a question regarding the purchase, and therefore recharging, of tactile devices solely for the referendum was not answered despite several attempts.

CO/RO, Midlands

6.80 Others felt that the Chief Counting Officer's approach (often viewed or referred to erroneously as the Electoral Commission's approach) went too far towards 'micro-managing' the referendum:

Electoral Commission advice and views on best practice is always welcome but the role of the Electoral Commission has amounted to an attempt to micro-manage the referendum (and effectively the local elections as well as they are so closely linked). Whilst accepting the need for a co-ordinated national approach it does feel as if the Commission has been somewhat over-zealous in its approach.

CO/RO, Eastern & South East region

Lessons learnt from the provision of instructions and directions and performance monitoring

6.81 The provision of instructions and monitoring the performance of COs in real time meant that there was clarity and consistency about the standards required for the delivery of the referendum by Counting Officers. There was assurance for the CCO and RCOs that certain tasks had been carried out on time and in accordance with her directions. The monitoring approach adopted by the CCO also meant that she was able to identify any problems in preparing for the 5 May polls before they affected voters, and enabled RCOs to intervene quickly to deal with specific issues. The 47 areas where concerns were initially identified about the Counting Officer's approach to planning and delivery of the referendum poll were reduced – following intervention by the Electoral Commission staff working on behalf of the CCO and the relevant RCO – to only three areas where continued monitoring up to polling day was considered necessary.

6.82 Regional Counting Officers said that they found the monitoring process useful in identifying those COs who were failing to follow the directions and allowed them to support and work with them in a timely manner so that they could address any problems prior to polling day. The performance monitoring process was therefore influential in reducing examples to a minimum of non-compliance with the CCO's directions in the run up to the poll.

6.83 Specific comments from RCOs illustrate the benefits of a proactive performance monitoring approach:

It helped to minimise examples of bad practice, facilitated effective discussions with COs and was a good source of information in order to gauge how COs were performing.

The clarity of the Commission's requirements were such that no-one at a working level could have been in any doubt about what was expected of them. To the extent that issues were identified we were able in a timely way to deal with them.

6.84 Responses to the quantitative data in our feedback form found that just over half of Counting Officers who responded (52%) agreed that the CCO's directions were clear and easy to understand; just over a fifth (22%) neither agreed nor disagreed. Almost two-thirds of respondents (65%) said that they were very or fairly easy to implement. Most said that they were already in place for the election scheduled in their area and therefore were easy to apply to the referendum.

6.85 These findings echoed those from the Electoral Commission's wider evaluation of the instructions, guidance and resources provided to Counting Officers and Returning Officers for the May 2011 polls. Half (53%) of respondents rated the instruction modules as very or fairly useful and the majority of other respondents (42%) rated them as a '3' on a 5-point scale (with 5 being the highest score). Feedback on the instructions should be seen in the context of the Chief Counting Officer's power to direct local Counting Officers, particularly given that feedback has also indicated that many COs thought that there were too many directions and that they were too prescriptive.

6.86 It also found that just over half of respondents (52%) said that they found the Commission's guidance and resources very (7%) or fairly (52%) useful. Some 38% of respondents, however, said that they were not very or not at all useful. Some Counting Officers said that the guidance gave them clarity and meant that there was no ambiguity in applying the guidelines and instructions.

6.87 Qualitative feedback from Counting Officers presents a slightly different picture, however. A small proportion of COs said that the Chief Counting Officer's materials were useful for planning and reference purposes, with COs finding the project plans, templates and information about mini counts particularly useful. More common comments, however, suggested that COs

found them too numerous, too detailed and too prescriptive, resulting in COs being unable to read them all in sufficient detail.

6.88 Some COs commented that the CCO's instructions were provided too late in the planning process, meaning that they had already commenced most of their preparations for the poll and had to make late changes as a result. Some COs also disagreed with the CCO's approach of ensuring consistency across the UK, and felt that the instructions were inappropriately generic and prescriptive, and did not take account local practices and experiences of individual COs.

6.89 Some COs also expressed concern that some directions, in particular relating to the maximum number of electors allocated to any single polling station and minimum staffing ratios, meant that they were being penalised for 'mistakes' made by other COs or ROs:

It appeared that directions were introduced to solve problems that had been experienced by other local authorities at previous elections. It would have been better to let the Returning Officer run the referendum as they had run previous elections, smoothly without any problems.

CO/RO/ERO, Eastern & South East region

6.90 Other negative feedback focused on the presentation of the CCO's instructions and the Electoral Commission's website. Comments included the website being difficult to navigate, problems with downloading the forms and the guidance, and the need for the guidance to be more defined and indexed.

6.91 We have taken all of this feedback into account as we develop plans for the Electoral Commission's guidance and performance standards functions for elections in 2012 and future years. Based on the approach taken to monitoring the performance of Counting Officers at the referendum in identifying and addressing risks to the successful delivery of the May polls, the Commission is currently developing a new performance standards framework for Returning Officers. Rather than asking Returning Officers to report on performance against the standards after polling day, we instead intend to monitor their performance in real time during the months and weeks before polling day. We have begun consulting on a new performance standards framework and approach, with the intention that the new standards and approach will be in place for elections in 2012.

6.92 We will also ensure that the lessons we have learned about the format, presentation and delivery of guidance products are reflected in materials which the Electoral Commission will provide to Returning Officers for elections in 2012. In particular, we will clearly set out when and how guidance materials will be made available, following input and consultation with the Steering Group and Working Group. We have also begun to review and improve the presentation and referencing of guidance and supporting materials for ROs on our website, in time for the scheduled May 2012 elections in England and Wales. The recommendations we have made earlier in this report about the timescales for

finalising the legal framework for the conduct of any future referendum should also enable the CCO to issue timely and relevant directions to Counting Officers.

6.93 Despite these concerns about the presentation and communication of the Chief Counting Officer's instructions and directions, we are confident that they were both appropriate and necessary. In conjunction with the CCO's performance monitoring strategy, the directions ensured a consistent standard of administration in key areas which closely reflected existing good practice. The directions reinforced the expectations of Counting Officers, and were supported by the requirement for Counting Officers to comply with them. The exception application policy also allowed for local deviation from the directions where there was a justified need.

Lessons learned about commercial suppliers

6.94 As part of their post-referendum feedback, the No to AV campaign expressed concern about the relationship between a referendum campaign organisation and a commercial supplier of administrative services to Returning Officers and Counting Officers.

6.95 A business subsidiary of the Electoral Reform Society (ERS), Electoral Reform Services Limited, has provided a range of election support services to Returning Officers for a number of years, including producing election stationery such as postal voting packs, poll cards and ballot papers, and did so again at the 5 May polls. No to AV expressed concerns relating to the registration of ERS as a permitted participant at the referendum. PPERA does not prevent a person or organisation from campaigning in a referendum on the basis of any direct or indirect commercial involvement in providing services related to the administration of referendums. However, No to AV were of the view that the links between ERS and Electoral Reform Services Limited created a conflict of interest and suggested that this situation could be perceived as undermining the integrity of the referendum.

6.96 The Chief Counting Officer was aware prior to the referendum of the relationship between ERS and Electoral Reform Services Limited, which was commonly and openly known among Returning Officers and electoral administrators, and also that the ERS intended to campaign at the referendum and had an interest in the outcome. The CCO expected that Electoral Reform Services Limited would provide services to Returning Officers and Counting Officers at the referendum, and she was satisfied that the relationship was not improper. There was a proper contractual basis for Electoral Reform Services Limited to provide services to Counting Officers and Returning Officers at the referendum and elections, and the CCO was also satisfied that the necessary safeguards were in place to ensure that the integrity of the electoral process were not compromised by the involvement of contracted suppliers of services to Counting Officers or Returning Officers.

6.97 Suppliers of ballot papers, postal ballot packs or IT support services to Counting Officers or Returning Officers are bound by normal public

procurement, contractual and legal confidentiality requirements. Applications for postal ballots were handled by the staff of the Electoral Registration Officer, and postal ballot packs were received and processed by staff of the Counting Officer or Returning Officer. We have received no evidence that suppliers of services to Counting Officers to support the administration of the referendum, including Electoral Reform Services Limited, acted in any way unlawfully or partially in the delivery of those services.

Lessons learned about verification and the count

6.98 Before votes for any poll are counted, ballot paper accounts must be verified. The verification of ballot paper accounts is the process for checking that the number of ballot papers in each ballot box either matches the number of papers recorded by the Presiding Officer as having been issued in the polling station, or if it does not, that the source of the variance can be identified and explained. It also gives a figure that can be used to reconcile the total number of votes counted. The verification process is complete once the statement of verification for each poll has been prepared and signed. Verification is crucial in achieving an accurate election or referendum result.

6.99 The verification of the contents of ballot boxes for the May 2011 polls took place at different times across the UK, starting at the close of polls at 10pm on Thursday 5 May in some areas (particularly where the count for scheduled elections also commenced immediately after the close of polls), or on the morning of Friday 6 May in others.

6.100 Twenty five Counting Officers did not meet the deadline specified in the Chief Counting Officer's directions that the verification of referendum ballot papers should be completed by 1pm on 6 May. Information provided by these Counting Officers indicates that many had not provided sufficient staff to count the number of ballot papers given the level of turnout. Some Counting Officers also cited examples of poor communication with the RCO during the verification process, which led to delays in finalising the verification statement.

6.101 In many areas of the UK where the referendum poll was combined with the poll for scheduled elections, Counting Officers were required by law to complete the verification of the contents of the ballot boxes for each poll within the voting area before any individual election results could be declared.⁶⁶ This requirement is intended to ensure that all ballot papers for each contest are included in the count before any final declarations are made.

⁶⁶ Paragraph 46, Schedule 5 to the PVSC Act 2011; Paragraph 51, Schedule 6 to the PVSC Act 2011; Paragraph 50, Schedule 7 to the PVSC Act 2011; Paragraph 37, Schedule 8 to the PVSC Act 2011.

6.102 Again, despite the Chief Counting Officer highlighting this requirement in her instructions and directions, and again in the count communication protocol issued to Counting Officers, we are aware of several instances where Returning Officers declared the results of the scheduled election before information about the verification of the ballot papers for the referendum had been provided to Regional Counting Officers. While there may not have been an actual breach of the legal requirement in all of these instances, we are concerned that the requirement may not be well understood or implemented by Returning Officers and Counting Officers for future referendums.

6.103 To ensure an accurate count process, the Chief Counting Officer's instructions and count communication protocol set out the steps that COs should go through to resolve and minimise any discrepancies between the verification figure and the ballot paper accounts, and again at the count stage if there were any discrepancies between the verification total and the number of ballot papers counted. The CCO recognised that there might not always be a precise match between the verification figure and the ballot paper accounts, particularly in areas with combined polls where electors might choose not to use all of the ballot papers which had been given to them. However, the CCO has also highlighted concerns about the approach which appears to have been adopted by some Counting Officers at the count stage:

While we might expect a slight divergence in the two figures I was genuinely taken aback by the readiness of some electoral administrators to write off potentially significant differences in the numbers of votes verified and the number counted as inevitable, and nothing to worry about.

**Jenny Watson, Chief Counting Officer, speech to the UCL
Constitution Unit June 2011⁶⁷**

6.104 The data collected by the CCO's results collation software indicate that in 183 out of 440 voting areas there were variances between the verification total and the total number of ballot papers counted. In 25 voting areas the variance was greater than 10 ballot papers, and in five voting areas the variance was greater than 500 ballot papers. The largest variance was 2,853 ballot papers.

6.105 Having discussed these variances with the relevant Regional Counting Officers on the day of the referendum count, the Deputy Chief Counting Officer was satisfied that they were the result of inaccuracies at the verification stage, and that large numbers of ballot papers were not missing at the count stage.

⁶⁷ www.electoralcommission.org.uk/news-and-media/speeches

6.106 Nevertheless, we are concerned that verification and count processes need to be improved in several areas. The Electoral Commission will use the information obtained during the referendum verification and count process as part of its risk assessment analysis. This will support our performance standards monitoring framework for Returning Officers from the 2012 elections onwards. For example, in areas where we are aware that there were errors of delays in the verification and count process for the May 2011 polls, we will be able to focus attention on scrutinising count plans from ROs and providing additional support where it might be needed.

6.107 We are not aware that any recounts of local count totals were requested by referendum agents, although we also understand that referendum campaigners were not able to appoint agents for all voting areas. We are aware that 10 Counting Officers were directed by the relevant Regional Counting Officer to re-count local totals because they had reason to believe that the totals were inaccurate.

Lessons learned about the referendum result event

6.108 Both of the lead campaign organisations have indicated that they thought the Chief Counting Officer's referendum result event was well run, with a quick availability of turnout data for each counting area. We have, however, heard some negative feedback. Both organisations have expressed concern, for example, that the venue was too far from Westminster for the media and many campaigners to attend. We are also aware that the website used to display live and cumulative count totals as they were transmitted by Counting Officers was not able to keep pace with the flow of data at its peak, and was therefore not as up to date as the Chief Counting Officer had expected.

6.109 While both the Yes and No campaign organisations agreed that there was a need for some kind of central event for the communication of the final result of the referendum, they also questioned the value of declarations of regional results at ExCel London, which came after the media had already reported the results from the regional declarations. Regional Counting Officers also expressed some frustration and concern that arrangements intended to coordinate the announcement of regional count totals caused confusion and some unnecessary delays.

6.110 Finally, both campaign organisations felt that arrangements at the referendum result event should have allowed for the result of the referendum to be announced once it was clear one side had gained more than half of the total verified number of votes, and the overall result could therefore not be changed by subsequent local count totals. In the event, the overall result of the referendum was not close, and this point was therefore passed long before the final counting area or region had announced their local totals. By 2am on Saturday 7 May when the Chief Counting Officer announced the final result of the referendum for the whole of the UK, no campaigners and only a very small number of media representatives were present at the result venue.

6.111 While the Chief Counting Officer's overriding responsibility must be to certify and declare the final result of the referendum across the whole referendum area, comprising the totals from all local voting areas, it is nevertheless important for campaigners to be able to acknowledge the point at which the overall outcome of a referendum cannot be altered.

Lessons learned for the management of future elections

6.112 Reflecting on feedback and the experience of the management framework in place for the delivery of the May 2011 polls, we believe that there are important lessons which can also be learned for the management of future elections in the UK.

6.113 We have considered earlier in this report feedback provided about the presentation and communication of the Chief Counting Officer's instructions and directions. It is clear that there are lessons to be learned for the Electoral Commission's guidance for Returning Officers, particularly to minimise any ambiguity about the approach or actions which the Commission recommends. We also recognise that more effectively linking and integrating performance standards for Returning Officers with the Commission's guidance would help to ensure that Returning Officers are clear about the levels of performance required and the steps which they should take to meet their duties to the standard required.

6.114 We also welcome evidence of the benefits of proactive performance monitoring during the period before polling day. Rather than simply reporting on performance some months after polling day, the CCO and RCOs were able to monitor the progress of planning and delivery by Counting Officers at key stages during the months leading up to polling day. This meant that there was greater assurance about the quality of planning and delivery, and also meant that any weaknesses which were identified could be addressed through additional support or intervention before any problems actually occurred. We have highlighted earlier in this chapter that we intend to revise the Electoral Commission's approach to monitoring the performance of Returning Officers at future elections, and we are currently consulting on new performance standards in advance of elections in 2012.

6.115 It remains the case, however, that for most future elections in the UK, there is no mechanism to intervene to ensure compliance by Returning Officers with any agreed standards of performance. A power to issue directions to statutory office-holders, similar to that which was available to the Chief Counting Officer under the PVSC Act, is currently available to others at only a limited number of elections: the Electoral Management Board for local government elections in Scotland; Regional Returning Officers at European Parliamentary elections; and the Greater London Returning Officer for elections for the Mayor of London and Greater London Assembly.

6.116 In the absence of such powers for other elections – which include UK Parliamentary elections – it is not possible for the Electoral Commission or any

other individual or body to intervene to ensure performance by Returning Officers and provide effective assurance about the quality of electoral management and administration in the way that the CCO was able for the May 2011 polls.

6.117 After two years of assessing Returning Officers' performance against the Electoral Commission's performance standards framework we are confident that a more consistent base-level of performance is being reached by the vast majority of Returning Officers, against both the essential statutory requirements and key areas where a higher level of service is appropriate. Ultimately, however, the Commission cannot intervene to require Returning Officers to make improvements to meet the appropriate level of performance which voters should be able to expect. Our experience to date has been that having identified Returning Officers' performance as below standard and encouraging them to make improvements, has not always led to the necessary changes being implemented.

6.118 Following the 2010 UK Parliamentary general election, for example, we highlighted the impact of the well-publicised problems with queues at some polling stations on levels of confidence in the administration of those elections. The main factors that we identified as having contributed to those problems included: evidence of poor planning assumptions by ROs in some areas; the use of unsuitable buildings and inadequate staffing arrangements at some polling stations; and contingency arrangements that were not properly triggered or were unable to cope with demand at the close of poll. Members of Parliament and other elected representatives were rightly angered by the failure of ROs in those areas to adequately plan and prepare for the number of people who wanted to vote.

6.119 For the May 2011 polls and the March 2011 referendum in Wales, the Chief Counting Officer was able to direct Counting Officers to take specific steps to minimise the risk of similar problems occurring. This includes specifying maximum sizes for polling stations and minimum staffing ratios, and was therefore able to provide greater assurance that eligible electors would not be prevented from voting. Similarly, addressing concerns about the clarity and usability of explanatory materials for voters in some polling stations, the Chief Counting Officer was able to direct Counting Officers to use a consistent set of templates which reflected good design and usability principles.

6.120 These improvements – which the evidence available suggests that voters welcomed – cannot be guaranteed for future elections. While we are confident that the majority of ROs will continue to evaluate and improve their performance and the service provided to electors, the risk remains that there is no effective mechanism which allows intervention to ensure improvements are made if individual ROs are unwilling or unable to change established practices.

6.121 Following the experience of the May 2011 polls, we believe it is time to think carefully about whether it is still appropriate for important elections, such as those of MPs to the House of Commons, to continue to be administered

without any coordination or accountability for delivery above the local level, and with the risk of significant variations in practice. The risk of inconsistent practice and service for voters is greater where electoral areas cross different local authority areas, such as for the upcoming elections of Police and Crime Commissioners in England and Wales and future elections to the House of Commons following the implementation of current proposals to create a smaller number of larger-sized Parliamentary constituencies.

6.122 We believe that the level of consistency provided for voters at the spring 2011 polls is both desirable and achievable at future elections. We do not, however, believe that there is a need to create a new structure of bureaucracy to improve coordination and consistency. The Commission's performance standards provide a framework for establishing clear expectations about the level of service which voters should be able to expect from ROs, and there are already several examples of elections where the power to intervene and ensure a consistent level of performance is already established (see paragraph 6.115 above).

6.123 We welcome the recent confirmation⁶⁸ by the UK Government that it intends to consider whether the financial performance accountability mechanisms which were in place for the May 2011 referendum (see Chapter 7) could be introduced for UK Parliamentary elections. We still want to see, however, a more comprehensive reform of the range of management and accountability mechanisms which might be put in place to ensure consistent high-level of service for voters.

6.124 We believe that the UK Government must also consider, as part of this work and the associated review of the current funding system for UK Parliament and European Parliament elections, the wider question of how to achieve an appropriate level of consistency and performance for all types of elections in the UK. While we recognise that this will be a significant and fundamental review, we want the UK Government to make progress towards identifying and implementing any necessary legislative changes by mid-2014, in advance of the scheduled 2015 UK Parliamentary general election.

⁶⁸ Cabinet Office, *The UK Government's Response to Reports on the Administration of the 2010 UK Parliamentary General Election* (September 2011).

Recommendations for the delivery of future referendums and elections

Recommendation 21 – Ensuring an effective management structure for future referendums

The overarching management structure that was in place for the delivery of the March and May 2011 referendums worked well and should be used as the basis for any future referendums held under PPERA.

We have recommended earlier in this report (Recommendation 2) that the Government should introduce legislation to amend Part 7 of PPERA to reflect the lessons learned from the delivery of the March and May 2011 referendums. In particular, we recommend that the Government should amend PPERA to establish a standard management structure for any future referendum held under the PPERA framework:

- The Chief Counting Officer should have a power to appoint Regional Counting Officers.
- The Chief Counting Officer should have a power to give directions to Counting Officers and Regional Counting Officers about preparations for the referendum and the discharge of their functions.
- Regional Counting Officers should have powers to give directions to Counting Officers about preparations for the referendum and the discharge of their functions, if authorised by the Chief Counting Officer.
- The Chief Counting Officer should also have an explicit power to give advice and guidance to Counting Officers in support of any directions.
- The Chief Counting Officer should have powers to specify modifications to prescribed forms and notices to make them easier for voters to understand or use.
- There should be greater flexibility to allow voting areas for future referendums to be consistent with other types of election voting area, including constituencies for UK Parliament, Scottish Parliament and National Assembly for Wales elections.
- The Chief Counting Officer should have a more flexible power to appoint Counting Officers consistent with the voting areas for the referendum.

The UK Government should make these amendments before the end of the current Parliament, rather than waiting until the next time a referendum Bill is introduced.

Recommendation 22 – Supporting the effective delivery of future referendum polls by Counting Officers

Detailed instructions and directions from the Chief Counting Officer provide important and binding guidance to support Counting Officers in the delivery of their statutory functions, and should be communicated in good time to ensure they are reflected in planning and preparation for the referendum poll.

We recommend that the Chief Counting Officer for any future referendum should communicate to Counting Officers and referendum campaigners details of the proposed approach to overseeing the delivery of the referendum no later than six months before polling day.

This approach should include:

- Publishing details of the key directions which COs will be required to follow.
- Establishing a policy and process to consider request by COs for exceptions to the CCO's directions.
- Establishing a process for monitoring the performance and delivery of key referendum activities by COs during the months leading up to polling day.

The Chief Counting Officer should also aim to ensure that detailed instructions and supporting materials are issued to Counting Officers no later than four months before polling day.

We have also recommended earlier in this report (Recommendation 1) that the Government should plan to ensure that all required legislation is published no later than six months before polling day. If the legislative framework for the proposed referendum is not clear by six months before polling day, the CCO would need to consider whether it would be feasible to issue directions and whether there is sufficient time for the referendum to be delivered effectively. Parliament should consider any assessment and recommendations made by the Chief Counting Officer about the time available for preparation and delivery of the administration of the referendum poll.

Recommendation 23 – Ensuring the efficient administration of future referendum polls

Evidence and feedback from Counting Officers suggests that overall the rules for the administration of the May 2011 referendum poll worked well, and we believe that they should provide a template for the rules for future referendums, which we have also recommended should be set out in a generic conduct order (Recommendation 3). The lessons learned from the experience of the May 2011 referendum have highlighted a small number of changes which we believe should be made to the detailed conduct rules.

We recommend that the UK Government should include the following specific changes in the conduct order which should be in place for any future referendum:

- Observers who are properly accredited by the Electoral Commission should be allowed to attend proceedings carried out by Regional Counting Officers.
- For a referendum where the Chief Counting Officer has appointed Regional Counting Officers, the rules should not require the certification or announcement of count totals at a regional level.

Recommendation 24 – Improving the management and delivery of future elections

Building on the experience and lessons learned from the 2011 polls, existing mechanisms for providing assurance about the quality of electoral administration should be strengthened, including consideration of powers which the Electoral Commission might need in future, to achieve an appropriate level of consistency and performance for all types of elections in the UK. This is so that voters, candidates and campaigners can be confident that action will be taken to improve elections management and delivery where a need is identified.

The UK Government should ensure that its review of the funding arrangements for elections to the UK Parliament and the European Parliament also considers the wider question of how to achieve an appropriate level of consistency and performance for all types of elections in the UK.

The UK Government should ensure that any necessary legislative changes are made in time to allow Returning Officers and, where appropriate, the Electoral Commission, to prepare in advance of the next UK Parliamentary general election at the latest. That means any required legislation should be commenced by the beginning of November 2014, six months before the expected polling day in May 2015.

7 The cost of the referendum

7.1 This chapter provides a summary of the cost of the May 2011 referendum on the voting system for UK Parliamentary elections. The figures include details of all known costs incurred to date by the Electoral Commission, Regional Counting Officers, Counting Officers, the Designated Organisations and broadcasters.

7.2 We will prepare in the summer of 2012 full accounts setting out spend by the Electoral Commission in relation to the referendum. We will also produce a comprehensive report analysing the overall costs of the referendum, including the costs charged by Counting Officers and Regional Counting Officers and reviewing in detail the current fees and charges framework. This report and accounts will be published by October 2012.

Electoral Commission costs

7.3 As an independent public body, the Commission is accountable to Parliament for its expenditure. Parliamentary approval for our spending plans is sought through a Main Supply Estimate each year, presented to the House of Commons, specifying the estimated expenditure and requesting the necessary funds to be voted. We then draw down voted funds during the year from the Consolidated Fund as required.

7.4 In accordance with the Parliamentary Voting System and Constituencies Act 2011 the Commission is also able to draw down funds for RCOs and COs Counting Officers' Fees and Charges, the delivery of campaign information by the designated lead organisations and sweeps by the Royal Mail on polling day which are financed directly from the Consolidated Fund as approved by Parliament.

7.5 The Commission's expenditure for the May 2011 referendum was split over two financial years, 2010–11 and 2011–12. During 2010–11 we funded activities in connection with the May 2011 referendum using savings from the Commission's existing budget. The savings had been identified as part of the work the Commission undertook in response to the Government Spending Review; other savings were made from the Commission's budget for the March 2011 Wales referendum. The activities that took place in 2011–12 were funded through the Commission's Main Estimate 2011–12, which was approved by the Speaker's Committee in March 2011.

7.6 The total expenditure for the referendum up until the 31 August 2011 is £16,348,000. In total £3,251,000 was incurred in 2010–11 and £13,097,000 between 1 April 2011 and 31 August 2011. A detailed breakdown of these costs is shown in the table below.

Table 14: Expenditure 2010/2011 & 2011/2012

Description	Amount £000s	
	Financial year 2010/2011	Financial year 2011/2012 ⁶⁹
Staff costs	23	55
Grants to Designated Organisations	228	63
Designated Organisations mailing	671	7,859
Royal Mail sweeps	-	269
Public awareness activity:		
Booklet printing	1,079	-
Booklet distribution	-	1,356
Advertising production	485	-
Online advertising	32	616
Radio advertising	-	320
TV advertising	-	1,992
Other*	227	292
Other**	506	275
TOTAL	3,251	13,097

* includes advertising testing, call centre costs and public opinion tracking research

** includes insurance premiums, venue hire, web-hosting costs, travel and subsistence and costs relating to the production and publication of guidance materials

7.7 In addition to the mailings by the designated organisations, other significant costs were in relation to public awareness activity in advance of the referendum. This included TV, radio and online advertising, our information booklet; advertising testing and public opinion tracking research.

7.8 We have also received £56,395 of participation claims from COs. These relate to costs incurred as a result of COs carrying out public awareness activities on behalf of the Commission during the last 28 days of the referendum campaign (see para 3.45–3.46 for further details). The amounts to be paid out

⁶⁹ Expenditure 2011/2012 – these figures have not been audited and are subject to change as some costs are still being finalised. Costs as at 31 August 2011.

are yet to be agreed and therefore are not included in the table above, but will be reported in our full report on the costs of the referendum.

7.9 With regard to the Commission's expenditure using non-voted funds drawn down directly from the Consolidated Fund, the largest area of costs incurred by the Commission to date has been for the for the provision of mailings on behalf of the designated campaign organisations. Designated organisations were entitled to certain benefits similar to those provided to candidates at elections, including the delivery of a referendum address to each elector or each household in the referendum area. This was a statutory entitlement under Section 110(4) Political Parties, Elections and Referendums Act 2000 and the Commission facilitated this through specific arrangements with Royal Mail. The Treasury provided funding so that both the Yes and No designated campaigns could exercise this entitlement to the extent they chose within this permitted framework.

7.10 The cost of those mailings can be broken down into an administrative fee of £319,000 plus VAT (total £382,800), and the costs shown in table 15 below, which can be related specifically to the two designated organisations.

Table 15: Cost of mailings for the designated organisations

Designated organisation	No. of deliveries	Cost £
Yes to Fairer Votes	8,551,948	1,459,894
NO to AV	40,043,360	6,687,686

Counting Officer and Regional Counting Officer costs

7.11 The UK Government is responsible for establishing the funding frameworks for UK Parliamentary and European Parliamentary elections. The current approach to funding follows reforms set out in the Electoral Administration Act 2006 whereby each Returning Officer is allocated a 'maximum recoverable amount' within which they may allocate resources as they see fit, provided that the sums spent are necessary for the efficient and effective conduct of the election. This framework has been used in England and Wales since the June 2009 European Parliamentary elections, and in Scotland since the 2010 UK Parliamentary general election.

7.12 The UK Government was also responsible for establishing the funding framework for the May 2011 referendum on the voting system for UK Parliamentary elections. The amounts which each Counting Officer and Regional Counting Officers could recover for their costs in running the referendum, including the specific amounts which could be claimed as a fee for their services, were set out in the *Referendum on the Voting System (Counting Officers' and Regional Counting Officers' Charges) Order 2011 (Charges Order)*.

Based on the returns received from the 2009 and 2010 elections, the UK Government was confident that the assumptions and calculations which underpinned the specified maximum recoverable amounts would provide adequate funding for the effective running of a UK-wide referendum.

7.13 Overall, the total maximum amount which could be claimed by Counting Officers and Regional Counting Officers was £79.8m. Taking into account experience from previous elections, it is likely that the actual amount claimed by COs and RCOs will be less than this maximum amount.

7.14 The Electoral Commission was given overall responsibility for administering the claims submitted by Counting Officers and Regional Counting Officers under the Charges Order. We engaged the Department for Communities and Local Government's Election Claims Unit to receive and process claims on our behalf, drawing on their experience of administering the framework for processing claims for UK Parliamentary and European Parliamentary elections in England and Wales since 2009.

7.15 The Commission stipulated a submission deadline of 5 January 2012 for receiving completed accounts from RCOs and COs, reducing the time for submitting claims from the 12 month period that had been set for previous election events. This deadline is consistent with the accounts submission dates applicable to Returning Officers at the May 2011 Scottish Parliamentary and National Assembly of Wales elections. The revised deadline will enable the Commission to prepare and publish accounts in the summer of 2012, more quickly than the accounts for previous election events. The accounts covering the June 2009 European Parliamentary elections, for example, were published in January 2011.

7.16 An issue that will affect the deadline for finalising the referendum accounts is that the Communities and Local Government (CLG) still need to make regulations to enable payment of CO superannuation. The CLG intend to make these no earlier than Spring 2012. Implications of this include:

- Whilst the superannuation element of claims can be submitted on time, the Commission will not be able to pay this element of COs' claims until the CLG regulations are in place.
- The need to make a further tranche of payments separate from dealing with the rest of COs' claims may lead to the Commission incurring some additional costs.
- There may be some delay in finalising the Commission's accounts for 2011-2012, and the referendum accounts.

7.17 To ensure that payment was related to overall satisfactory performance of the duties by Counting Officers and Regional Counting Officers, including timely submission of accounts, the Commission also made clearer the separation between claims for expenses and claims for the fee for services. An advance of 75% of the maximum recoverable amount for **expenses** was paid to each Counting Officer at the beginning of April 2011, and 75% of the Counting

Officer's **fee** was paid immediately following the poll. The remaining portion of each Counting Officer's fee will be paid upon submission and clearance of the referendum accounts, and subject also to their satisfactory performance.⁷⁰

7.18 Feedback from COs about the process for distributing referendum funds and the amount recoverable has been generally positive overall. We believe there is now a valuable opportunity for the UK Government to evaluate and reflect on the current arrangements for funding elections, and we are pleased that the Government has recently confirmed that it intends to undertake a full review of the current funding system before the European Parliamentary Elections in June 2014.⁷¹ We will support and provide input to the Government's review, and look forward to the implementation of any changes in time for the June 2014 elections.

Referendum campaign broadcasts

7.19 The Political Parties, Elections and Referendums Act (PPERA) requires that certain broadcasters carry referendum campaign broadcasts on behalf of the lead designated campaign organisations in a referendum. For the 2011 referendum these rules applied to the BBC, ITV, Channel 4, S4C and Channel 5. Independent national radio services (talkSPORT, Classic FM and Absolute Radio) were also required to carry broadcasts. It was up to the broadcasters to determine the policy on length and frequency of referendum campaign broadcasts, but they were required to have regard to the Commission's views in doing so.

7.20 For the 5 May referendum, each designated referendum organisation was allocated two broadcasts. These were aired on BBC One, BBC Two, ITV, Channel 4, S4C and Channel 5 and were either three or four minutes in length.

7.21 The Yes Campaign broadcasts were aired on 12 April and 3 May, at various times by the different broadcasters between 6:30pm and 7:30pm. The No Campaign broadcasts were aired on 11 April and 2 May at various times by the different broadcasters between 6:30pm and 7:30pm.

Estimated costs

7.22 The costs of party political or referendum campaign broadcasts have not been estimated before. Such estimates are not straightforward, as there was no lost revenue from advertising to the BBC, and the commercial broadcasters reduced the length of their scheduled programmes rather than replace adverts

⁷⁰ Paragraph 20 (1), (2) and (3) of Schedule 1 of the PVSC Act provides that, if the Commission considers that the service provided by a Counting Officer was inadequately performed, the fee payable may be reduced or withheld altogether.

⁷¹ Cabinet Office, *The UK Government's Response to Reports on the Administration of the 2010 UK Parliamentary General Election* (September 2011).

to accommodate the referendum broadcasts. The only costs to broadcasters were staff time in getting the broadcasts to air (e.g. making compliance checks) and, although not inconsiderable, these are not easily quantifiable.

7.23 However, the commercial broadcasters were able to estimate approximately how much three minutes of advertising at the time of the broadcasts would have cost if they had had to pay for the space. This provides a broad estimate of the value of the broadcasts to the campaigners, but it is worth noting that political advertising (as distinct from allocated party political or referendum campaign broadcasts on television and radio) is banned in the UK, and it is not clear that campaigners would choose three-minute adverts if they were free to buy commercial advertising.

7.24 The aggregate cost of the Yes and No campaign broadcasts combined, based on three minutes air time per broadcast using this methodology has been estimated by the commercial broadcasters at £420,000. It was not possible to collect information from all the radio broadcasters but based on the information we received we estimate that equivalent figure for radio, based on one minute and thirty seconds per broadcast, was around £30,000. It is perhaps better to see these as estimated 'benefits' to the designated referendum campaigners than 'costs' to the broadcasters and to note that the figures, for obvious reasons, exclude the BBC.

Recommendations for the funding of future elections and referendums

Recommendation 25 – Improving the process for funding elections and referendums.

The current funding framework for UK Parliamentary and European Parliamentary elections has been in place since 2009. We believe it is now time for the UK Government to reflect on the experience of implementing this framework for the 2009 and 2010 elections and the May 2011 referendum, and to consider how the funding of future elections and referendums might be improved.

We are pleased that the Government has recently confirmed that it intends to undertake a full review of the current funding system before the European Parliamentary Elections in June 2014. We will support and provide input to the Government's review, and look forward to the implementation of any changes in time for the June 2014 elections.

We will also publish in the autumn of 2012 a comprehensive report analysing the overall costs of the referendum, including the costs charged by Counting Officers and Regional Counting Officers and reviewing in detail the current fees and charges framework.

For future referendums held under the PPERA framework, we recommend that the UK Government should amend PPERA to give responsibility to the Electoral Commission for negotiation with Her Majesty's Treasury on fees and charges for Counting Officers, as well as for receiving and administering claims from Counting Officers relating to the referendum.

Appendix A

Research Methodology

This report uses information from a number of research projects which were carried out by the Electoral Commission or by contractors working on our behalf. Details of the methodologies used for each of these projects follow.

Public opinion survey

ICM interviewed a representative quota sample of 3,961 voters and non-voters across the UK by telephone on 7–23 May 2011. Sample breakdown is as follows: England 1,458, Scotland 1,001, Wales 1,001 and Northern Ireland 501.

Data were weighted to the known national population profile in devolved each area of the UK. Findings are statistically significant at the 95% confidence level or above.

Comparisons made between the different polls held in 2011 and elections held in previous years are indicative and should be treated with some caution.

Campaign tracking survey

GfK NOP conducted face to face interviews in-home, with the sample drawn using random location sampling.

Pre and post wave interviews were conducted using GfK NOP's Random Location Omnibus, and ad-hoc top up interviews were completed in Scotland, Wales and Northern Ireland to provide around 200 interviews in each country. Mid wave interviews were conducted as an ad-hoc study.

All interviews were sampled using the random location methods, and were conducted in the same way, to enable them to be combined and comparisons to be made.

Number of interviews completed			
Country	Pre wave	Mid Wave	Post wave
England	837	106	821
Scotland	194	107	174
Wales	191	103	193
Northern Ireland	187	102	204
Total	1,409	418	1,392

Campaigner feedback

The Commission's Research and Evaluation Team conducted semi-structured interviews with referendum campaigners for both the Yes and No sides including representatives from both lead campaign organisations between late May and early July 2011.

Electoral data

Professors Colin Rallings and Michael Thrasher at the Elections Centre, University of Plymouth collected and collated electoral data on our behalf, working with Professor David Denver of Lancaster University in Scotland. This included data relating to electoral registration, turnout, absent voting and rejected ballots. Data was collected from Counting and Returning Officers in Great Britain and from the Electoral Office for Northern Ireland.

Media analysis

The Centre for Elections, Media and Parties at the University of Exeter captured and analysed news content across 41 outlets for a 53-day period in the run up to polling day.

Returning Officers' and Counting Officers' feedback

The Commission issued an optional qualitative feedback form to Returning Officers and Counting Officers across Great Britain to comment on their experience of administering the 5 May polls. Analysis is based on approximately 100 returns.

We also held post-election seminars for Returning Officers and electoral administrators.

Further technical details of projects are available on request.

Appendix B

Voter information booklet

Front Door Market Research – Validation Methodology Background

The Front Door is accredited by DMA UK and The Market Research Society. The Front Door uses a bespoke door drop validation methodology that has been developed over the past 12 years, with over 2 million audit interviews completed.

Recall and delivery are calculated differently. Prompted recall is based upon showing the delivered item to a respondent. To ascertain delivery levels, the patterns of positive claimed receipt are analysed.

A postcode or delivery area is divided into six sub-sectors/different roads. Within the sub-sector a minimum of six interviews are completed. If all six respondents claim non-delivery, then this is deemed negative. Each sub-sector is 'worth' 17% ($100\% / 6 = 16.7\%$), therefore if 5 of the 6 sub-sectors have high positive claimed leaflet receipt, then the score for that area is – $100\% - 17\% = 83\%$.

The Front Door is independent & the findings are fully accepted by all UK distributors, including Royal Mail.

The Electoral Commission

3 Bunhill Row
London EC1Y 8YZ

Tel 020 7271 0500

Fax 020 7271 0505

info@electoralcommission.org.uk

www.electoralcommission.org.uk

We are an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. We regulate party and election finance and set standards for well-run elections.

Democracy matters