

European Union Referendum Bill 2015

11 June 2015

Introduction

This briefing provides an overview of the roles, responsibilities and rules that apply at referendums, according to the provisions contained within the Political Parties, Elections and Referendums Act 2000 (PPERA), which also currently apply to the European Union Referendum Bill. The briefing aims to help Parliamentarians and others with an interest in the EU referendum to understand how it will be conducted. In doing so, specific aspects of the EU referendum are highlighted.

The Commission is separately providing briefings as the Bill progresses through Parliament that explain our views on amendments tabled and any changes to the Bill that we would like to be made. All briefings will be available on our website [here](#).

This builds on the [briefing](#) we sent out ahead of Second Reading of the Bill, and covers the following:

- Key roles in referendums held under the Political Parties, Elections and Referendums Act 2000 (PPERA)
- Timing of legislation
- Referendum question assessment
- Franchise
- The regulatory framework
 - Campaigning rules and spending limits
 - Campaigner categories
 - Designation of campaigners
 - Public grants for campaigners
- Promotional activities by central and local government
- Broadcasting rules
- Public awareness
- Polling day
- Reporting on the administration of the referendum and referendum campaign spending.

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

Key roles in referendums

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

Our responsibilities under PPERA include:

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

Chief Counting Officer

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

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

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

Counting Officers

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

Regional Counting Officers

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

Electoral Registration Officers

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

Registered campaigners

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

Designated lead campaigners

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

Timing of legislation

In our report on the 2014 Scottish Independence Referendum, we highlighted the benefits for voters, campaigners and electoral administrators of early confirmation of the legislative framework for the referendum, which in that case was clear almost 10 months before the referendum date.

We continue to recommend that best practice for future referendums is that all legislation should be clear (whether by Royal Assent to a Bill, or the introduction of regulations to Parliament for approval) **at least six months** before it is required to be implemented or complied with by campaigners, the CCO, Counting Officers or Electoral Registration Officers.

The European Union Referendum Bill currently states that the Secretary of State must set a date for the referendum, which must be no later than 31 December 2017 by laying an Order in Parliament.

Referendum question assessment

Under PPERA the Electoral Commission is required to assess and comment on the intelligibility of any question included in a Bill for a UK-wide referendum. The Commission is required to publish a statement of our views as to the intelligibility of that question, as soon as reasonably practicable after the Bill is introduced and in such manner as we may determine.

The Commission aims to put voters first and it is our priority that referendum questions are written in a way that voters can understand, so that they know what they are voting on. We have produced [referendum question guidelines](#) that we use

to assess whether a proposed question is clear, simple and neutral. We apply these guidelines when we assess referendum questions.

Following the introduction of the European Union Referendum Bill in the House of Commons we have begun to assess the proposed wording of the referendum question (including the Welsh language version of the question wording) included in the Bill:

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

“A ddylai'r Deyrnas Unedig ddal i fod yn aelod o'r Undeb Ewropeaidd?”

As well as looking at the wording of the question ourselves, we are gathering evidence by:

- Carrying out research with voters from different backgrounds and across different areas, through focus groups and one to one interviews.
- Asking for advice from experts on accessibility and plain language.
- Talking to potential campaign groups, other interested groups and individuals, including political parties.

The Commission has previously assessed the wording of a question for a referendum on the United Kingdom's membership of the European Union, which was included in a Private Members' Bill introduced in 2013. We recommended in October 2013 that the proposed question wording should be amended to reduce the risk of misunderstanding or ambiguity about the current membership status of the United Kingdom within the European Union. We provided two alternative question wordings for Parliament to consider, the first of which is now included in the Bill:

- **“Should the United Kingdom remain a member of the European Union?”**

The response options would be **“Yes”** and **“No”**

“A ddylai'r Deyrnas Unedig ddal i fod yn aelod o'r Undeb Ewropeaidd?”

The response options would be **“Dylai YES”** and **Na Ddylai NO”**

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

The response options would be **“Remain a member of the European Union”** and **“Leave the European Union”**.

“A ddylai'r Deyrnas Unedig bara i fod yn aelod o'r Undeb Ewropeaidd neu adael yr Undeb Ewropeaidd?”

The response options would be **“Para i fod yn aelod o'r Undeb Ewropeaidd Remain a member of the European Union”** and **“Gadael yr Undeb Ewropeaidd Leave the European Union”**.

However, we also highlighted in October 2013 that we had not been able to fully test the second of these two alternative question wordings in the time available to us

before we reported. We therefore made clear that, if Parliament amended the question in the Bill to include this wording, the Commission would undertake further work to check whether this wording raised any new issues of intelligibility.

After the question wording included in the Private Members' Bill had been amended in Parliament to "Should the United Kingdom remain a member of the European Union or leave the European Union?", we carried out further research in early 2014. Taking into account the results of that research, we were satisfied that the amended question wording (using "Remain a member of the European Union" and "Leave the European Union" as response options) was not only clear and straightforward for voters but was, at that time, also the most neutral wording from the range of wording options we had considered and tested.

More information about our previous referendum question assessments and recommendations can be found on our website.¹

We are now undertaking further research with members of the public and consulting with interested individuals and organisations. This is due to the time which has passed since our previous research and assessment, and to ensure we have a clear understanding from campaigners about the impact of the question wording and response options on their ability to campaign in support of, or against, either outcome. We also think it is important to reconsider any updated evidence about levels of understanding among some people about the United Kingdom's current membership of the European Union, which was a significant factor in our previous research and assessment.

We will report our views on the question to the UK Parliament and will make our findings public at the same time. Based on the timetable for completing our assessment, which is the same timetable used for assessing the questions for the referendums in 2011 and 2014, it is unlikely that we would be able to publish our assessment after the UK Parliament has risen for summer recess, although we will have published before it returns in September.

Franchise

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

¹ <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/eu-referendum/eu-referendum-question-assessment>

The Electoral Commission's view is that the franchise for elections or referendums, including the appropriate voting age, is a matter for the relevant Government and Parliament to decide. We will, however, advise on the practical implications of implementing any change.

The regulatory framework

Registration of campaigners

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

Only certain categories of individuals and organisations are allowed to register. These are set out in PPERA² – in the main, to be able to register as a campaigner you must be connected with the UK. The European Union Referendum Bill proposes to extend the categories of organisations that can register to campaign from previous PPERA referendums³.

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

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

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

Designation of lead campaigners

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

PPERA provides that the Commission must designate lead campaigners that represent those campaigning for the outcome they support. If there is more than one

² S.105 PPERA - individuals registered in an electoral register, companies registered under the Companies Act 2006 incorporated within the UK or another member State, which carry on business in the UK, registered political parties, trade unions, building societies, limited liability partnerships which carry on business in the UK, friendly societies, any unincorporated association of two or more people which does not fall within any of the other categories but which carries on business or other activities wholly or mainly in the UK and whose main office is here.

³ Schedule 1, paragraph 2 EU Referendum Bill - individuals resident in the UK or Gibraltar, bodies incorporated by Royal Charter, charitable incorporated organisations, Scottish charitable incorporated organisations, partnerships constituted under the law of Scotland which carry on business in the UK, bodies and organisations in Gibraltar.

suitable applicant for an outcome, the Commission must designate the one that represents the campaigners to the greatest extent⁴.

In addition to the benefits of being a registered campaigner, lead campaigners are also entitled under PPERA to:

- The maximum spending limit of £5m
- Campaign broadcasts
- A free mailing (to each voter or household)
- Access to public meeting rooms, and
- A publicly funded grant of up to £600,000 each (the amount and conditions are set by the Commission. We will be considering these issues in the coming months)

Campaigning rules and spending limits

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

Referendum period

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

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

Spending limits

PPERA sets out the spending limits that apply during the referendum period at UK-wide referendums. The limits for political parties are allocated according to the party's share of the vote at the last UK Parliamentary General Election⁵.

Based on the provisional data available at this time⁶, the PPERA calculation following the 2015 UK Parliamentary General Election would likely result in the spending limits set out in the table below.

The Government proposes to increase the limits set out in PPERA to take account of inflation (amendment 14). The proposed limits are also set out in the table.

⁴ s.109 PPERA

⁵ Schedule 14 PPERA

⁶ The final data necessary to undertake the necessary vote share calculations should be available in July 2015

| | PPERA limits | Proposed amended limits | 2015 UK general election vote share |
|------------------------------|---------------------|--------------------------------|---|
| Designated lead campaigners | £5,000,000 | £7,000,000 | - |
| >30% share of the vote | £5,000,000 | £7,000,000 | Conservative (36.9%) |
| >20 - 30% share of the vote | £4,000,000 | £5,500,000 | Labour (29.03% ⁷) |
| >10 - 20% share of the vote | £3,000,000 | £4,000,000 | UKIP (12.6%) |
| > 5 - 10% share of the vote | £2,000,000 | £3,000,000 | Liberal Democrat (7.9%) |
| < 5% share of the vote | £500,000 | £700,000 | SNP (4.7%) Green (3.8%) DUP (0.6%) Plaid Cymru (0.6%) Sinn Fein (0.6%) SDLP (0.3%) UUP (0.4%) Plus all other parties that stood at least one candidate at 2015 UKPGE |
| Other registered campaigners | £500,000 | £700,000 | - |

Sources of funding

Referendum campaigners are only able to accept donations over £500 from certain 'permissible' sources. These are set out in PPERA – as with the rules around eligibility to register as a campaigner, in the main, to be able to donate you must be connected with the UK⁸.

The European Union Referendum Bill proposes to extend the categories of organisations that can donate to referendum campaigners from previous PPERA referendums⁹.

⁷ Labour Party share of the vote is adjusted because votes cast for joint candidates are divided by the number of parties the candidate is standing for i.e. Labour / Co-op candidates (PPERA Sch14, para 1(4))

⁸ Schedule 15, paragraph 6 PPERA - Permissible sources in PPERA are the same as those that can register as a campaigner – see footnote 2

⁹ Schedule 1, paragraph 2 EU Referendum Bill - Gibraltar electors, bodies and organisations in Gibraltar, bodies incorporated by Royal Charter, charitable incorporated organisations, Scottish charitable incorporated organisations, partnerships constituted under the law of Scotland which carry on business in the UK.

Political parties are only regarded as ‘permissible’ donors when donating to designated lead campaigners. This means that other registered campaigners cannot accept donations from political parties¹⁰.

Campaigners that work together

The European Union Referendum Bill contains rules regulating campaigners that work together on a coordinated campaign¹¹. This is a significant addition to the PPERA controls to prevent campaigners setting up multiple campaign groups to circumvent spending controls whilst giving campaigners the freedom to work together to get a unified message to voters.

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

Generally, the working together rules provide that if campaigners work together, all the spending they incur counts against the limit of each of the campaigners involved¹². There is an exception to this where a campaigner works together with one of the lead campaigners. This allows the lead campaigner to engage with other campaigners for the same outcome to put forward a unified message for voters as the costs will only count towards the lead campaigner’s spending limit.

Reporting requirements

The European Union Referendum Bill provides for registered campaigners to submit a number of ‘pre-poll reports’ detailing the donations they receive and loans they enter into that are over £7,500¹³. These rules are based on those that applied at the Scottish Independence Referendum. This is an important addition to the PPERA controls that will ensure that voters have access to information about the sources of significant amounts of funding given to the campaigners before they cast their vote. The Bill provides for the reporting periods and submission dates to be set in Regulations.

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

Although campaigners that are registered political parties will be required to submit details of the spending they incurred campaigning at the referendum, they will not be required to separately report donations or loans towards that spending during or after

¹⁰ Schedule 15, paragraph 1(6) PPERA

¹¹ Schedule 1, paragraph 14 EU Referendum Bill

¹² 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.

¹³ Schedule 1, paragraph 22 EU Referendum Bill

the referendum (unless they are minor parties). Information on the donations or loans made to political parties will be available in their usual quarterly reports.

Broadcasting

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

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

Promotional activities by central and local government

PPERA bars the publication of promotional material about referendums by Ministers, government departments, local authorities and certain other public bodies during the period of 28 days immediately before polling day¹⁴.

The European Union Referendum Bill proposes to remove this restriction¹⁵. Although we are still working through the detailed implications of these provisions, it could mean that governments and others will be free to spend unlimited amounts of public funds promoting an outcome at the referendum right up until polling day.

Public awareness

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

¹⁴ S.125 PPERA

¹⁵ Schedule 1, paragraph 25 EU Referendum Bill

Polling day and the count

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

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

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

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

The count

A referendum has one single result, with local totals tallied to provide the overall outcome. COs will count the votes cast in their local area and transmit these totals to their RCO. Each RCO will collate the local totals for the areas within their electoral region and provide these figures to the CCO. The CCO is responsible for collating these totals and calculating and certifying the result of the referendum.

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

Observing

Observers accredited by the Electoral Commission will be entitled to attend the following proceedings at the referendum:

- The issue and opening of postal votes
- The poll
- The count

It is our view that observers accredited by the Commission should also be able to attend proceedings carried out by RCOs and be entitled to access the tallying of local totals by the CCO.

Additionally, Electoral Commission representatives will be permitted to attend the above proceedings and also the working practices of local COs and RCOs.

Reporting on the administration of the referendum and referendum campaign spending

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

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