

The  
Electoral  
Commission

# The May 2016 Scottish Parliament election

Report on the administration of the 5 May  
2016 Scottish Parliament election

**September 2016**

## Translations and other formats

For information on obtaining this publication in another language or in a large-print or Braille version, please contact the Electoral Commission:

Tel: 020 7271 0500

Email: [publications@electoralcommission.org.uk](mailto:publications@electoralcommission.org.uk)

The Electoral Commission is an independent body established in 2000. We regulate party and election finance and set standards for well-run elections and referendums. We work to support a healthy democracy, where elections and referendums are based on our principles of trust, participation and no undue influence.

# Contents

Foreword.....	1
Executive summary.....	3
1 Introduction.....	12
About our role and this report.....	12
Facts and figures.....	14
Roles and responsibilities for managing and delivering the Scottish Parliament election.....	15
2 Was the Scottish Parliament election well-run? The voter experience ...	19
Who could register and vote?.....	19
Experience of registering to vote.....	19
Voting in the Scottish Parliament election.....	20
Knowledge and awareness about the election.....	22
People’s experience of voting.....	24
Completing the ballot papers.....	26
Rejected ballot papers.....	27
Confidence that the election was well-run.....	28
Electoral integrity.....	28
3 What happened before, during and after polling day?.....	31
Public awareness activity: registration and how to vote.....	31
Administration of the poll.....	34
Legislation: complexity and timing.....	34
Electoral Management Board for Scotland.....	37
Support for Returning Officers and our performance standards framework	38
Postal voting.....	40
Proxy Voting.....	41
4 Candidates, parties and campaigners.....	42
Standing at the election.....	42
Campaigning.....	47
Counts.....	56
5 Looking ahead.....	60
Appendix A: Research methodology.....	61

# Foreword

More than 2.2 million votes were cast on 5 May 2016 – the highest number ever recorded at a general election to the Scottish Parliament. The priority at any election is to ensure that people find it easy to participate and have confidence in the process. I'm pleased to report that our research with the public found that nearly all voters [97%] found it easy to complete the ballot papers and more than nine in ten [92%] told us that they were confident the election was well-run.

This was, of course, the first national election at which 16 and 17 year olds were entitled to vote. Approximately 80,000 of them registered to vote at the election and this age group had high levels of awareness and knowledge about the registration process. This is encouraging, but it remains the case that young people are much less likely to report having voted than older voters. As we move towards the Scottish council elections in 2017 the Commission, electoral administrators, political parties and civil society will all need to play their part in ensuring that young people are registered to vote and are encouraged to be active participants in the democratic process.

The fact that the election was well-run and commanded high levels of voter confidence is testament to the experience and hard work of Returning Officers and Electoral Registration Officers and their staff. The Electoral Management Board (EMB) also played a key role in providing support, direction and challenge for those delivering the elections. Since it was established in 2009 the EMB has had to rely on the good will and support of local authorities subsidising it through the provision of staff resources. This cannot continue. The EMB should be provided with a statutory role at all elections and be adequately resourced on a permanent (as opposed to ad-hoc) basis to fulfil its full range of responsibilities. This would provide stability and enable it to plan ahead with confidence. As responsibility for the administration of Scottish Parliament elections is devolved to the Scottish Parliament we urge the Scottish Government to use that opportunity to legislate to set the EMB in statute in respect of Scottish Parliament elections giving the Convener a power of direction over other Returning Officers, as it has already done in respect of local government elections in Scotland. We continue to call on the UK Government to legislate to set the EMB in statute for those elections in Scotland for which it retains legislative responsibility.

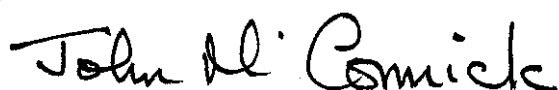
## Looking ahead

While the election was well-run we cannot afford to be complacent and there will be significant work ahead if we want to ensure we have a modern electoral process which keeps pace with the changing needs, and demands, of society. Progress is hampered by current electoral law which is complex and fragmented and in many places out of date. A consolidated, simplified, updated and improved set of laws (made in Scotland for the administration of devolved elections) would enable elections to be run much more efficiently and cost-effectively than at present and make it easier to introduce any necessary changes. It will also ensure that the law is fit for purpose and more accessible to those who need to use it, including candidates and voters. We continue to support the Law Commissions' review of electoral law and urge the Scottish and UK Governments to support the work of the Law Commissions to enable the project to

move on to the next stage, allowing the drafting of new law in time for it to be implemented before the Scottish Parliament elections in 2021.

The Scotland Act 2016 gives the Scottish Parliament, for the first time, responsibility for its own elections as it already has in respect to local government elections in Scotland. This includes having legislative competence over some of the functions of the Electoral Commission in respect to our role at Scottish Parliament elections. We welcome these developments and believe it is important for the Commission to be accountable to, and scrutinised by, the Scottish Parliament for its activities and spending in relation to these elections. We look forward to working with the Scottish Parliament to achieve this in the most effective and transparent way.

As I approach the end of my term as Electoral Commissioner for Scotland, it provides me with an opportunity to reflect on the significant level of work over the past nine years which has gone into developing the delivery of truly voter - focussed electoral registration services and elections. During this time the electoral community in Scotland has delivered seven major sets of elections and three important referendums as well as countless by-elections. And with the introduction of individual electoral registration they have also delivered the most significant change in electoral administration since the introduction of universal suffrage in 1928. All of this has been delivered against a backdrop of significant reductions in local authority budgets and staff resource. The fact that voters reported high levels of satisfaction at all these electoral events is a tribute to the commitment and professionalism of our Returning Officers, Electoral Registration Officers and their staff. It is important that we do not become complacent or take their efforts for granted. They deserve our thanks.

A handwritten signature in black ink that reads "John McCormick". The signature is written in a cursive, slightly slanted style.

John McCormick  
Electoral Commissioner, Scotland

# Executive summary

## About the elections

This report is about the administration of the Scottish Parliament election held on 5 May 2016. Overall, our assessment is that the 2016 election was well run. People were satisfied with the process of both registering to vote and with the process of voting, whether they cast their vote in person at a polling station, post or by proxy.

## Registration and turnout

A total of 4,098,462 people were registered to vote in the Scottish Parliament election on 5 May 2016.

Turnout was 55.8% of the registered electorate in the constituency vote and 55.9% in the regional vote. This is the highest turnout recorded since the first Scottish Parliament election in 1999 where 58.8% of the eligible electorate voted in the constituency ballot and 58.7% in the regional ballot. Turnout across constituencies varied with the highest turnout in Eastwood (68.5%) and the lowest in Glasgow Provan (43.2%).

Across Scotland 726,555 postal votes were issued amounting to 17.7% of the total electorate. This compares to 14.1% in 2011, 11.2% in 2007 and 3.6% in 2003. Nearly 77% of postal votes issued were returned by electors (76.6% in the constituency vote and 76.7% in the regional vote) and postal votes accounted for 23.7% of all votes included in the count for the constituency contests and 23.8% of all votes included in the count for the regional contests.

## The voter experience

Our public opinion research found that most voters believed the election to be well-run and were satisfied with the experience of registering and voting. The help and support available inside polling places was highly regarded by voters.

The vast majority (93%) of respondents to our public opinion research said that they had found it easy to access information on how to cast their vote and nearly all (97%) said they had found it easy to complete the ballot papers. This confidence is evidenced by the low rate of rejected ballot papers with just 0.41% of constituency ballots and 0.17% of regional ballots rejected at the count.

There were very few allegations of electoral fraud at this election and the majority of respondents (86%) believe that voting in general is safe from fraud. However, nearly a third thought that some fraud may have taken place at this election with nearly one half of these citing concerns about identity fraud and the lack of a requirement for ID in polling stations. The Commission has previously recommended the introduction of a requirement for voters to provide ID in polling stations and we will continue to make this case to governments.

## 16 and 17 year olds

This was the first Scottish Parliament election at which 16 and 17 year olds were entitled to vote. Approximately 80,000 of them registered to vote in the election accounting for two per cent of the electorate. Awareness of the ability to register to vote online was highest amongst this age group with 90% aware of the online registration facility compared with only 66% of all survey respondents.

However, 16 and 17 year olds were less likely to say that they knew about the election at 69% compared with 85% of all respondents. The majority (89%) said that it was very or fairly easy to access information on how to cast their vote and almost all of them (99%) said that they found it easy to complete the ballot paper.

## The administration of the poll

Overall, the Scottish Parliament election was administered efficiently and professionally with all Returning Officers meeting the Commission's performance standards.

The Electoral Management Board for Scotland (EMB) played a key role in co-ordinating the delivery of the poll and promoting best practice for improving the voter experience at the election. The EMB continues to rely on consensus and good will to promote consistency of practice at Scottish Parliament elections as the EMB and its Convener have yet to be established on a statutory basis in relation to this election. The provisions of the Scotland Act 2012 and the forthcoming commencement of sections of the Scotland Act 2016 will devolve responsibility for the administration of the Scottish Parliament elections to the Scottish Parliament and this will provide an opportunity for the Parliament to underpin the EMB's role at Scottish Parliament elections on a statutory footing as it already has done in respect to local government elections.

Electoral Registration Officers continue to raise concerns about duplicate registration applications from electors which cause an unnecessary activity for electors and create an administrative burden on electoral registration staff in the busy period before an election. This burden could be eased by the provision of an online facility for individuals to check their registration status before applying to register.

## Candidates and parties

A total of 313 candidates contested constituency seats at the election, an average of 4.3 candidates per constituency. This is the smallest number of candidates to date at any Scottish Parliament election.

Ten parties stood candidates in constituency contests, down from twelve in 2011. The number of independent candidates standing in constituency contests declined from 14 in 2011 to eight in 2016.

A total of 15 parties and three independent candidates contested the regional elections. This is down from the 21 parties and 15 independent candidates who stood in the regional elections in 2011.

Our survey of candidates suggested that, on the whole, the nomination process went smoothly: 95% of candidates said that the nomination process was well-run and 93% found the process to be straightforward. However, access to information about candidate spending and donations could be improved by making candidates' election returns available for viewing online.

Concerns continue to be raised by some voters about the descriptions used on ballot papers. While at Scottish Parliament elections the party name must always appear on the ballot paper before any description the party chooses to use, this is not the case at other elections including local government elections in Scotland. We continue to be concerned that the legal provisions for the registration of party descriptions present risks that voters are misled when a description appears without any reference to the party identity and we will encourage governments to work with the Commission to reform the provisions on party descriptions.

## Recommendations

### Voter experience

#### **Recommendation 1: Postal voting**

The requirement to check postal voting identifiers is a critical safeguard for protecting the postal voting system from theft and misuse. However, it is also vital that voters find it as easy as possible to complete the postal voting statement in order to verify their identity. The Commission will continue to work with the EMB to identify opportunities to increase awareness of the postal voting rules and to promote the use of waivers where appropriate. The Scottish Government should continue to keep the postal voting statement under review to ensure it is as user friendly as possible for voters and that the design and instructions minimise the opportunity for voters to make inadvertent errors which lead to their postal votes being rejected.

#### **Recommendation 2: Voter information**

The Commission will review our public awareness activities aimed at all voters and specifically 16 and 17 year olds to ensure robust voter information plans are in place ahead of the 2017 council elections so that voters understand how to complete their ballot papers so they can be counted in the way they intended.



### **Recommendation 3: Polling station ID**

The Commission reiterates our recommendation that there should be a requirement for electors across Great Britain to present an acceptable form of identification prior to being issued with a ballot paper and voting at the polling station. Similar requirements are already in place in Northern Ireland and several other comparable democracies. This measure would almost entirely remove the opportunity for personation at polling stations.

## **Administration of the poll**

### **Recommendation 4: Checking registration status**

Providing a way for electors to check their registration status at the beginning of the online registration application process would reduce the action required by voters to keep their register entry up to date, and would also reduce the impact on EROs of processing duplicate applications.

The UK Government should develop an online service to allow people to check whether they are already correctly registered to vote before they complete a new application to register. Given the registration digital service is reserved we would urge UK Government to discuss these matters with Scottish Government where it affects devolved registration issues

Any such service would need to carefully manage and protect voters' personal information.

### **Recommendation 5: Law Commissions' review of electoral law**

The Law Commissions of Scotland, England and Wales and Northern Ireland are currently reviewing electoral law with the aim of consolidating, simplifying and modernising the many existing sources of electoral law. The Law Commissions require the approval of the Scottish and UK Governments before they can move onto the next and final stage of the project, which will consist of drafting new electoral legislation.

We continue to urge the Scottish and UK Governments to support the work of the Law Commissions to enable the project to move on to the next stage. This will allow the Law Commissions to start drafting new law in time for it to be implemented before the Scottish Parliament election in 2021.

### **Recommendation 6: Ensuring legislation is clear in good time before elections**

We continue to recommend that Governments with legislative competence over elections within the UK should manage the development and approval of legislation so that it is clear (either by Royal Assent to primary legislation, or by laying secondary legislation for approval by Parliament) at least six months before it is required to be implemented or complied with by campaigners or electoral administrators.

All governments should normally be able to plan to ensure that legislation for elections is clear at least six months before it is required to be implemented or complied with. If a government has not been able to ensure that legislation is clear by this point, it should table a formal statement in the relevant legislature explaining why it has not, and set out its assessment of the likely impact of the late confirmation of legislation for voters, campaigners and electoral administrators.

### **Recommendation 7: Electoral Management Board for Scotland**

We continue to urge both the Scottish and UK Government to establish the EMB in statute for all elections.

With the provisions of the Scotland Act 2012 and the forthcoming commencement of the sections of the Scotland Act 2016 which relate to Scottish Parliament elections the Scottish Government will become responsible for electoral administrative matters relating to Scottish Parliament elections.

We recommend that the Scottish Government use this opportunity to establish the EMB's statutory remit for the Scottish Parliament elections and provide the Convener with a power of direction at these elections. The long-term funding and legal status of the EMB must also be secured and clarified so that it can undertake long-term strategic planning to develop its role and work programme. As the role of the EMB develops we would wish to discuss with Scottish Government any implications this may have for the Commission's current roles and responsibilities in relation to Scottish Parliament and local government elections.

### **Recommendation 8: Timeliness of Commission guidance resources**

The Commission recognises that some of its guidance materials were delivered late to electoral administrators and will take this into account when planning activities for future electoral events.

### **Recommendation 9: EMB Convener - Power to prescribe forms**

We believe that giving a power of direction to the Convener of the EMB to prescribe the forms would allow the Forms Working group to develop forms that are consistently used across Scotland and allow them to react quickly to the need of developing further forms. The EMB will need to be adequately resourced in the future to ensure that its Forms Working Group is resourced to carry out this task ahead of future elections.

### **Recommendation 10: Co-ordination of postal vote dispatch**

We welcome the EMBs approach to co-ordinating the dispatch of postal voting packs as it enables voters who will be away from their address at the time of the election to make informed choices about the most appropriate method of voting for their circumstances. We recommend that the EMB continues to co-ordinate postal vote dispatch dates in this way.

### **Recommendation 11: Additional dispatches of postal votes**

We recommend that the EMB consults with ROs and EROs and parties with regard to the EMB recommending or directing an additional or second date of dispatch for postal votes in the period between the first dispatch and the postal voting deadline. As part of this consultation the EMB will need to have regard for the additional resource burden on ROs as well as the potential benefits for voters. The EMB should also consult with ROs and their suppliers to ensure that any future directions on the dispatch of postal votes can be planned into the negotiations for new contracts with suppliers.

### **Recommendation 12: Deadlines for replacement of postal votes**

We recommend that the Scottish Government considers the impact of having two different deadlines for replacing postal votes ahead of future elections. The Government needs to consider the interest of postal voters and the issues raised by ROs.

### **Recommendation 13: Awareness of implications of different voting methods**

The Commission will continue to work with EROs, ROs and other partners to promote awareness amongst voters of the practical implications of different voting methods (such as postal voting or appointing a proxy) particularly if they are making an application during the last month before polling day.

## **Candidates, parties and campaigners**

### **Recommendation 14: Home address details of candidates and agents**

We recommend that Scottish Government reviews the rules relating to access to candidates and agents home address details, seeking the views of parties, candidates and electoral administrators, including the Commission, with the aim of maintaining transparency, while seeking to increase the safety of candidates.

#### **Recommendation 15: Withdrawal of a party list candidate**

We would recommend that when it comes to review the rules for the 2021 election, the Scottish Government reviews the rules relating to withdrawal of a party list candidate from the ballot paper and seeks the views of other stakeholders in the electoral community.

#### **Recommendation 16: Party descriptions on the ballot paper**

We continue to recommend that where a candidate represents a political party on a ballot paper, it should be clear to voters which party the candidate represents. While legislation for Scottish Parliament elections already ensures that it is clear which party a candidate represents, this is not the case for other elections in Scotland.

The legal provisions for the registration and use of party descriptions on ballot papers present risks of confusion for voters and restrict the participation of political parties. The Scottish Government and other Governments of the UK should work with the Electoral Commission to reform the provisions on party descriptions.

#### **Recommendation 17: Candidate and agent briefings**

We would recommend that ROs consult with candidates and agents prior to setting dates for briefings. We will also ensure that this recommendation is highlighted in our guidance for Returning Officers.

#### **Recommendations 18: Costs relating to an individual's disability**

Scottish Government should review the rules relating to personal expenses and disability exemptions with a view to amending the definitions of political party and candidate spending, so that reasonable expenses that can be attributed to an individual's disability are exempt, (as was recently set out in the revised PPERA rules for non-party campaigners).

#### **Recommendation 19: Reporting requirements for spending and donations**

The discrepancy in the reporting requirement between spending and donations during the long campaign at the Scottish Parliament election should be carefully considered by the Scottish Government ahead of the next Scottish Parliament election due to be held in May 2021.

### **Recommendation 20: Candidate spending returns**

To improve transparency and accessibility of candidate spending returns, we have previously recommended that Returning Officers should be required to publish spending returns online as well as through the existing methods of public inspection. We support recommendation 12-5 of the Law Commissions' review 12 of Electoral Law which proposes a method for implementing this change through legislation.

### **Recommendation 21: Legibility of imprints**

The purpose of an imprint is to show who is responsible for the production of campaign material. If the imprint is difficult for the voter to read it could lead to a loss of this transparency for the voter, and we recommend that all imprints must be legible.

### **Recommendation 22: Regulating candidate spending and donations**

We continue to recommend extending our investigative and sanctioning powers at major elections for offences relating to candidate spending and donations, including at Scottish Parliament elections. It will be important for the Scottish Parliament and Scottish Government to work with Governments and Parliaments across the UK on introducing the Commission's new powers for different sets of elections.

### **Recommendation 23: Reporting campaign spending on social media**

We will give further consideration to how campaigners should report spend on social media at future elections. As spend in this area grows, there is the potential for less transparency if expenditure on social media is not easily identifiable within the spending returns because social media is not a specific reporting category. This will need to be considered as part of reviewing all of the expenditure reporting categories to ensure that they remain proportionate and relevant to future trends in campaigning. In case any of these changes would need to be implemented through legislation, we recommend that the Scottish Government and Parliament should consider the timing needed for implementing changes before the UK Parliamentary General Election in 2020 and the Scottish Parliamentary election in 2021.

### **Recommendation 24: Appointment of Counting Agents**

To ensure consistency in approach across Scotland in determining how many counting agents are permitted at counts for future Scottish Parliament elections, Scottish Government should consult relevant stakeholders ahead of the next election to find an appropriate solution. This would ensure certainty on how counting agents are appointed across Scotland, and the approach could be implemented either through legislative change or through direction from the Convener of the EMB.

**Recommendation 25: Guidance on count declarations**

For future elections we will work with the EMB to develop a guidance note for ROs to streamline the declarations. This would include general guidance on the template script for the declaration, backdrops for declarations and other pertinent issues ROs may wish to consider before the declarations are made.

**Recommendation 26: Collation of election results data**

We recommend that the EMB continues to publish collated Scottish results data in order to provide transparency for voters. In taking this forward the EMB should consult with stakeholders, including parties and academics, in order to identify the most useful content and format for the publication of results data.

**Recommendation 27: Reporting on the costs of the election**

We recommend that Scottish Government, when in a position to be able to do so, publicly report on the administration of the fees and charges order for this election in order to ensure transparency of process and make any recommendations necessary for improvements in the way the process is administered.

**Recommendation 28: Resourcing the election**

We recommend that the issue of local government staff resource for elections be addressed by the Scottish Government, the EMB and individual ROs, set in the context of the future role of the EMB and with consideration of how that can assist through any economies of scale that are available. We would be happy to assist in any such undertaking.

# 1 Introduction

## About our role and this report

### Our role

1.1 The Electoral Commission is an independent body. 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.

- **Trust:** people should be able to trust the way our elections and referendums and our political finance system work
- **Participation:** it should be straightforward for people to participate in our elections and referendums and our political finance system, whether voting or campaigning; and people should be confident that their vote counts
- **No undue influence:** there should be no undue influence in the way our elections and referendums and our political finance system work

1.2 We want people across Scotland to be confident that electoral registration and electoral events are well-run, and that they will receive a consistently high quality service, wherever they live and whichever elections or referendums are being held.

1.3 It should be easy for people who want to stand for election to find out how to get involved, what the rules are, and what they have to do to comply with these rules. We provide comprehensive guidance for anyone who wants to stand as a candidate or be an agent, including the main steps in standing as a candidate, the campaign and election periods, the declaration of the result, and election spending. We also register parties and non-party campaigners and provide comprehensive guidance for political parties and non-party campaigners, including practical advice and assistance.

### This report

1.4 This report provides our assessment of how well the general election to the Scottish Parliament on 5 May 2016 was conducted and the experiences of the voters, candidates, parties and administrators who took part in it. The report also identifies the key issues which emerged during the course of the election in relation to the effective delivery of the poll.

1.5 Our analysis reflects the experience of voters, based on public opinion research as well as the experience of those campaigning at the election, which includes evidence from candidates, agents and political parties. Our report also draws on feedback provided by those who are involved in the administration of the poll including the Electoral Management Board for Scotland, Returning Officers, Electoral Registration Officers, electoral administrators and other participants; including data provided by Police Scotland and the Crown Office on electoral integrity matters.

1.6 The 2016 Scottish Parliament general election was the first not to be combined with another electoral event across Scotland (although a single vacancy local government by-election did take place in Glasgow on the same day which was



combined with the poll). In 2011 the Scottish Parliament election was combined with a UK-wide referendum on the UK Parliamentary voting system, and in 1999, 2003 and 2007 the election to the Scottish Parliament was combined with elections for all councils in Scotland.

1.7 Elsewhere across the UK on 5 May the following elections were also held:

- National Assembly for Wales
- Northern Ireland Assembly
- London Assembly and Mayor of London
- Police and Crime Commissioner (England and Wales) – excluding London and Greater Manchester.
- Local government across parts of England and Mayoral elections (Bristol, Liverpool and Salford)
- UK Parliamentary by elections in Ogmore, Wales and Hillsborough and Brightside, England

1.8 Our reports on the other elections taking place on the same day can be found on our website at <http://www.electoralcommission.org.uk/our-work/publications/election-and-referendum-reports>

1.9 Sources used to inform this report and the research methodologies we used are set out in Appendix 1.

## About the election

1.10 The Scotland Act 1998 provided for general elections to the Scottish Parliament to take place on a fixed term basis every four years. The first general election to the Parliament was held in May 1999, with subsequent elections in 2003, 2007 and 2011. The Fixed Term Parliaments Act 2011 provided for the fourth session of the Scottish Parliament, elected in May 2011, to be extended from four to five years. This meant that the date of the next general election to the Scottish Parliament was set as 5 May 2016, thereby avoiding a clash with the UK Parliament general election scheduled for May 2015.

1.11 The Scottish Elections (Dates) Act 2016 provides for a change to the date of the Scottish Parliament general election - that would otherwise be held on 7 May 2020 - to 6 May 2021 so that it does not coincide with the UK Parliament general election scheduled for 7 May 2020. It also provides for a change to the date of the Scottish local government elections due to be held on 6 May 2021 to 5 May 2022, so that they do not coincide with the new date of the Scottish Parliament general election. The members of the Scottish Parliament who were elected on 5 May 2016 will therefore serve for a 5 year term.

1.12 At the election on 5 May 2016 voters had the opportunity to elect 129 Members of the Scottish Parliament (MSPs). MSPs are elected using the Additional Member System (AMS). Each voter has two votes: a constituency vote for a candidate and a



regional vote for a political party or candidate standing as an independent<sup>1</sup>. Voters were issued with two separate ballot papers on which to cast their votes: a lilac ballot paper for the constituency vote and a peach ballot paper for the regional vote.

1.13 There are 73 constituency MSPs who are elected using the first-past-the-post system. A further 56 regional MSPs across eight Scottish Parliament regions are elected using a closed party list system<sup>2</sup>. Regional seats are allocated according to a mathematical formula, which involves the total number of votes for a party in a region being divided by the number of constituency seats won by the party in that region, plus one.

## Facts and figures

### Registration and turnout

1.14 A total of 4,098,462 people were registered to vote in the Scottish Parliament election on 5 May 2016. There were 2,288,433 votes cast in the constituency contests and 2,289,673 cast in the regional, representing an overall turnout of 55.8% in the constituencies and 55.9% in the regions. This was an increase from the 2011 Scottish parliament election where turnout was at 50.5% in the constituency and 50.6% in the regional contests.

1.15 Turnout varied across constituencies ranging from 43.2% in Glasgow Provan to 68.5% in Eastwood. These two constituencies also recorded the lowest and highest turnout in the 2011 election with 35% and 63.4% respectively.

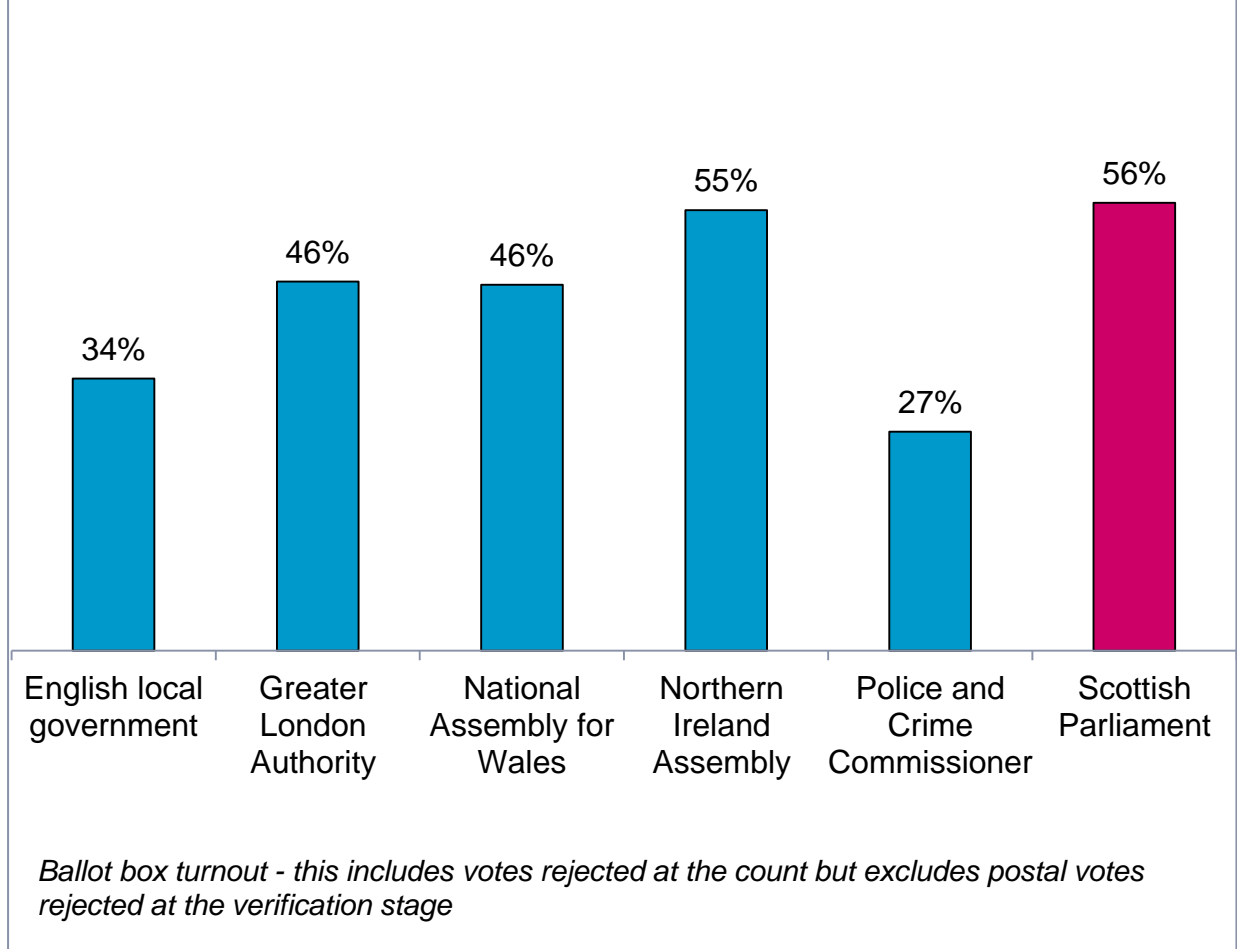
**Table 1: Turnout at Scottish Parliament elections**

	2016	2011	2007	2003	1999
Registered electorate	4,098,462	3,950,751	3,898,510	3,877,460	3,986,731
Turnout, constituency votes	55.8%	50.5%	53.9%	49.7%	58.8%
Turnout, regional votes	55.9%	50.6%	53.9%	49.7%	58.7%

<sup>1</sup> Under S5 (3) of the Scotland Act 1998 candidates who stand on the regional list are known as 'individual candidates'. We use the term 'independent candidates' throughout this report as this is the term commonly understood by the public.

<sup>2</sup> In closed list systems, a political party orders its list of candidates in a given order before an election. Rather than voting for any particular list candidate, votes are cast for a party (or independent candidate). When all the ballots are counted and seats are being allocated to parties in accordance with the allocation formula, then the first seat won by a party is taken by the candidate they have placed highest on their list. Subsequent seats gained are allocated to the next highest placed candidate on the party's list.

**Figure 1.1: Turnout at the polls held on 5 May 2016**



## Roles and responsibilities for managing and delivering the Scottish Parliament election

### Returning Officers

**1.16 Constituency Returning Officers (CROs)** are responsible for administering the nominations of candidates at the constituency contest; the conduct of the poll for the constituency and regional contest in their area and the counting of votes for both the constituency election and that part of the regional contest that is included within the constituency. CROs are usually the Chief Executive, or another Senior Officer, of the local council.

**1.17 Regional Returning Officers (RROs)** are responsible for the publication of the notice of election for the regional contest; the administration of the nomination process for the regional contest; the collation and calculation of the number of votes given for each individual candidate and political party standing in the regional contest; and the declaration of the regional result. The roles of the eight RROs are undertaken by eight of the 32 CROs across Scotland.

### **Electoral Registration Officers**

1.18 The Electoral Registration Officer (ERO) is responsible for maintaining the register of electors and absent voters' lists for their area. The ERO is normally a senior officer of the council, who in some instances is employed directly by the council and in others, the majority, appointed by a joint committee of councils or appointed due to their substantive role as the assessor for that council area. There are 15 EROs in Scotland appointed by the 32 councils.

### **Electoral Management Board for Scotland**

1.19 The Electoral Management Board (EMB) was set up to provide coordination, leadership and support for the delivery of elections in Scotland. The EMB undertakes this by assisting ROs and EROs in relation to local government elections through the promotion of best practice by providing information, advice or training. The EMB Convener has the power to issue directions to ROs and to EROs in respect of local government elections. The Convener's directions are issued following consultation with all ROs and EROs and with the Electoral Commission.

1.20 For the Scottish Parliamentary election the EMB acts without statutory power but undertakes a similar role as at local government elections to deliver a well-planned and administered election undertaken in the interests of the voter. The EMB Convener may, following discussion with ROs and EROs, make recommendations and may provide additional guidance to assist ROs and EROs.

### **Other key partners**

1.21 **Political parties, candidates and campaigners** are essential elements of a healthy democracy as they put their arguments to voters and encourage people to participate in elections. **The Scottish Parliament Political Parties Panel (SP PPP)** is a body which draws membership from senior party officials of those parties represented in the Scottish Parliament. Convened by the Commission it provides the opportunity for campaigners to meet with electoral administrators and others involved in the administrative process such as Royal Mail to aid the smooth administration of the electoral process.

1.22 **Professional associations** such as the Society of Local Authority Chief Executives in Scotland (SOLACE), the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR), the Scottish Assessors Association (SAA) and the Association of Electoral Administrators (AEA) provide fora in which local government officials consider issues relating to electoral administration collectively which contributes to the effective delivery of elections.

1.23 **The Scottish Government** provides, via the Scottish Parliament, the legislation under which the Scottish Parliament election takes place and funds the costs of the election.

1.24 The **Royal Mail** delivers millions of candidate and party leaflets and poll cards and postal vote packs to electors across Scotland during the course of a Scottish Parliament election. Each constituency candidate is entitled to free postage on an election communication sent to electors in the constituency, and each party standing regional candidates or independent regional candidates is entitled to free postage on an election communication sent to electors in the region.

1.25 **Police Scotland** is responsible for investigating any allegations of electoral fraud. They have a Single Point of Contact Officer (or SPOC) for electoral fraud at the national and divisional level who provides specialist support and advice to investigators. The police do not work alone and the advice and cooperation of ROs, EROs, local authorities and the Commission is vital in detecting and preventing electoral fraud.

1.26 The **Crown Office and Procurator Fiscal Service (COPFS)** is responsible for taking cases of alleged electoral fraud to court. They work closely with Police Scotland to examine evidence of alleged electoral fraud before deciding whether or not to bring a prosecution.

### **Electoral integrity**

1.27 It is essential for the democratic process that integrity is maintained and that voters have trust in the process. Electoral administrators, parties, candidates, legislators, the police, prosecuting authorities and members of the public all play a role in ensuring that the integrity of an election is upheld.

1.28 The Commission and electoral administrators work closely with Police Scotland and COPFS to prevent electoral fraud. Each police force across the UK has a “Single Point of Contact” (SPOC) who is responsible for dealing with allegations of electoral fraud. Police Scotland operates through a lead SPOC who provides information and advice and receives information from 13 Divisional SPOCs based in each Divisional Coordination Unit throughout Scotland.

1.29 This system retains the benefit of having officers with localised knowledge who liaise with EROs and ROs in their area, whilst ensuring that information relating to event planning and resourcing can be disseminated effectively.

1.30 The Commission and the EMB encourage individual ROs and EROs to continue to develop strong links with their local SPOC. This ensures local police are aware of the potential nature of electoral fraud and electoral administrators understand what to do if such an instance is suspected.

1.31 While incidents of electoral fraud have historically been low in Scotland, certain preventative measures were put in place in advance of the poll to prevent fraud occurring. These measures included:

- In conjunction with the EMB and Police Scotland a briefing seminar was held attended by Divisional SPOCs and key members of their local teams.
- Police Scotland, with the assistance of the Commission and the EMB, produced guidance on the prevention and detection of electoral fraud, and updated this guidance document ahead of the 2016 Scottish Parliament election. In addition, the Commission produced a police pocket guide for the SPOCs and police officers involved in the election, which outlines key electoral offences.
- Through the lead SPOC, the relationship between Police Scotland, the EMB, COPFS and the Commission was maintained through regular meetings and frequent conversations in the run-up to the election, on polling day, and afterwards.

1.32 In advance of the various elections across the UK, we also worked in partnership with Crimestoppers, the Great Britain wide anonymous crime reporting charity, to support and promote the option for people to report evidence or concerns about electoral fraud without giving details which could identify them.

### **Public awareness**

1.33 The Commission's role includes running public awareness activities. In fulfilling this role we ran a campaign to increase people's awareness of the Scottish Parliament election and how to take part, including ensuring people knew they had to register to vote by the 18 April deadline and how to cast their vote.

1.34 Our campaign included: advertising across website, social media, TV and radio; sending a voting guide to every household; and partnership and PR activities. The campaign aimed to reach all eligible voters, with a focus on groups that our research had identified as being less likely to be registered to vote.

1.35 Electoral Registration Officers and Returning Officers also promoted participation in the electoral process in their area and used a range of methods to reach their local residents.

## 2 Was the Scottish Parliament election well-run? The voter experience

2.1 The Scottish Parliament election on 5 May 2016 was well-run and evidence from our research with voters shows that they had a positive view of the electoral process.

2.2 This chapter sets out the key findings from our research, alongside data about the election. It examines participation by the public at the poll, including why people did and did not vote in the election and whether people felt that they had received enough information about the election, candidates and parties to be able to make an informed choice.

### Who could register and vote?

2.3 To register and vote in this election a person had to be resident in Scotland and aged 16 years or over on polling day. They also had to be a British or Irish citizen, or a Commonwealth citizen who has leave to remain in the UK or does not require leave to remain, or a citizen of another European Union member state. The statutory deadline to register to vote was 18 April.

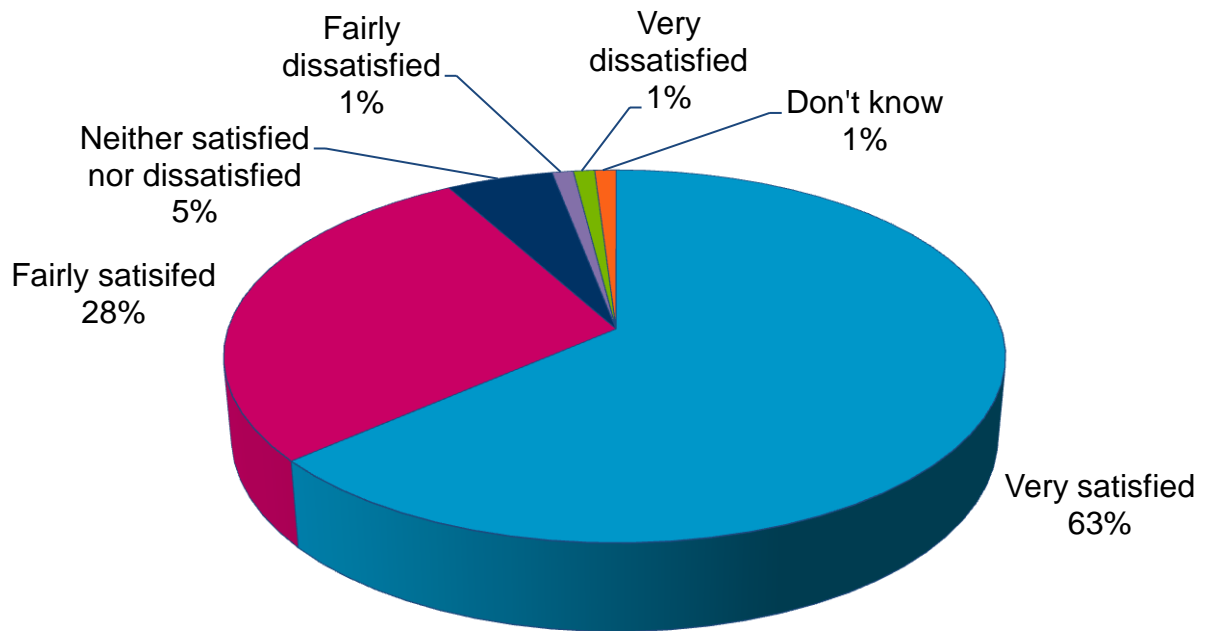
2.4 This was the first Scottish Parliament election at which 16 and 17 year olds could vote, the franchise having been reduced from 18 years by the Scottish Elections (Reduction of Voting Age) Act 2015. It was also the first Scottish Parliament election at which Individual Electoral Registration (IER) was in place and people were able to apply to register to vote online at [www.gov.uk/register-to-vote](http://www.gov.uk/register-to-vote). People could also still fill in paper registration forms if they preferred by contacting their local electoral registration office for forms or downloading a form from our [www.aboutmyvote.co.uk](http://www.aboutmyvote.co.uk) website.

### Experience of registering to vote

2.5 Overall, people were satisfied with the process for registering to vote with 91% of respondents to our public opinion survey saying that they were satisfied with the procedure for getting their name on the electoral register (63% very satisfied and 28% fairly satisfied).

2.6 Satisfaction with the process for electoral registration was higher among those aged over 55 with 95% reporting that they were satisfied with the procedure (71% very satisfied and 24% fairly satisfied) compared with 86% of 16 and 17 year olds (44% very satisfied and 42% fairly satisfied).

**Figure 2.1: How satisfied are you with process for registering to vote?**



**May 2016 elections - Post-polls survey. Source: BMG/The Electoral Commission. Base: 962 (unweighted).**  
**Q: How satisfied or dissatisfied are you with the procedure for getting your name on the electoral register?**

### Knowledge of the registration process

2.7 Two thirds of survey respondents (66%) knew that you could register to vote online: awareness was higher among younger age groups with 90% of 16 and 17 year olds and 76% of 18-34s stating that this was true.

2.8 Just over half of all respondents (53%) believed that one household member is eligible to register all other members of that household. However, this is not the case as household registration ceased with the introduction of IER in September 2014 immediately after the Scottish Independence referendum.

2.9 Further information on electoral registration since the transition to IER can be found in our report on the accuracy and completeness of the December 2015 registers in Great Britain which can be found on our [website](#).

## Voting in the Scottish Parliament election

### Voters

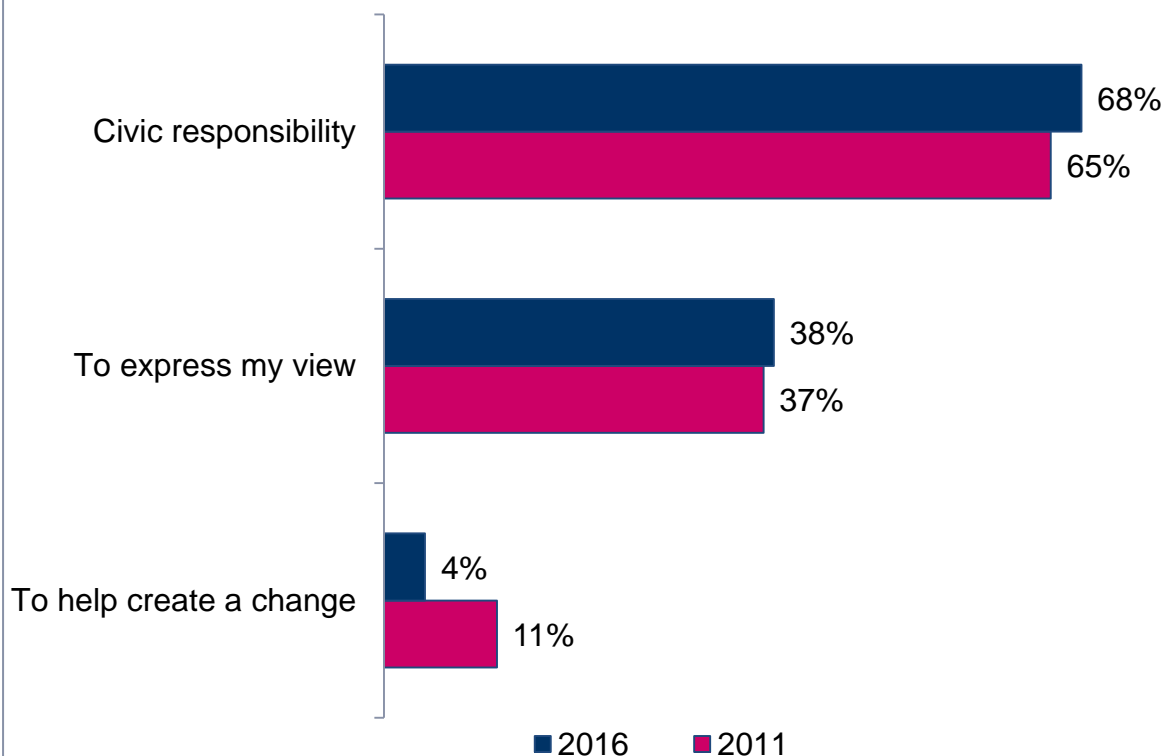
2.10 Among voters, the most commonly cited reason for voting was civic responsibility at 68% and the second most cited reason was 'expressing a view' with 38% saying this is why they voted on 5 May.

2.11 Overall 83% of respondents said that they 'always vote at general elections' while 10% said they sometimes vote; 92% of over 55s said that they always vote compared with 75% of 18-34s.

2.12 In line with the trend generally observed, younger people were less likely to say they had voted than older people. Claimed turnout among our respondents was 91% among those aged 55+, significantly higher than among 18-34s at 80% and 78% of 16 and 17 year olds who claimed to have voted.

2.13 Among 16 and 17 year olds 98% of those that say they voted said that someone else in their household voted as well. The vast majority of 16 and 17 year olds that voted say that their friends and family also voted.

**Figure 2.2: Why did you vote?**



**May 2016 elections - Post-polls survey (Scotland). Source: BMG/The Electoral Commission. Base: 819 (unweighted).**

**May 2011 elections - Post-polls survey (Scotland). Source: ICM/The Electoral Commission. Base: 594 (unweighted).**

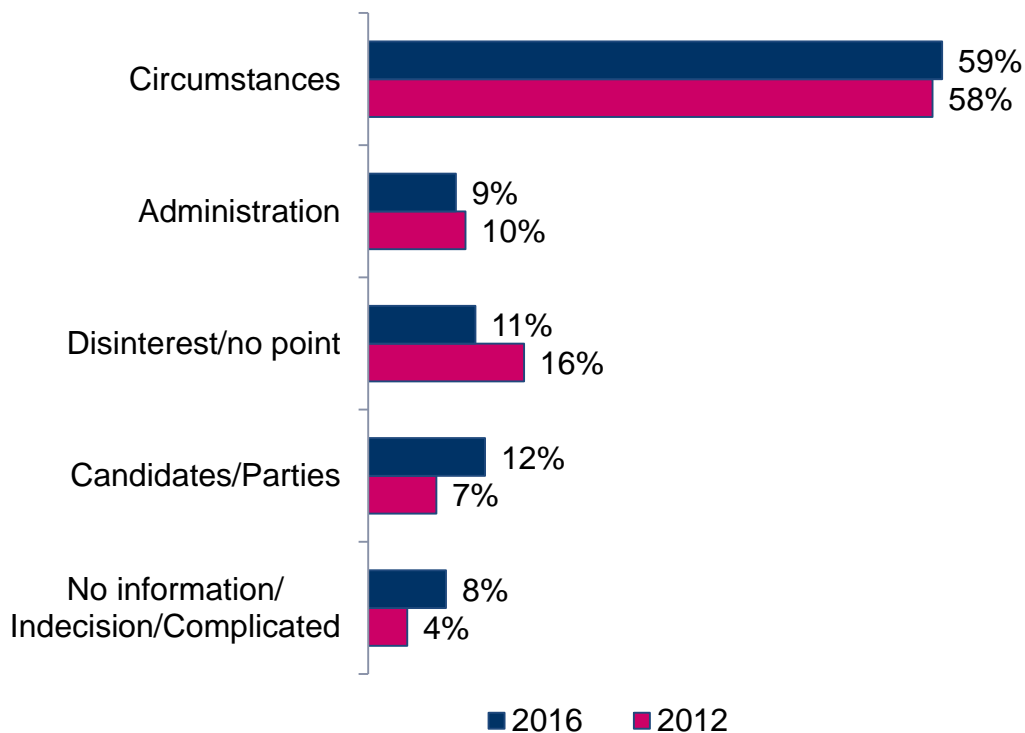
**Q: People have many reasons for voting in elections and referendums. Why did you vote in the on Thursday 5th May?**

### Non-voters

2.14 In line with 2011, the most common reasons given for not voting are related to general circumstances (59%), this includes being ‘too busy’, ‘a lack of time’ and being away on polling day. This is also true for 16 and 17 year olds, among who 48% said that circumstances prevented them from voting. Administrative issues, which include not receiving a poll card and receiving their postal vote late, were given as a reason by less than 10% of those that did not vote. 12% said that they did not vote because of the parties or candidates that stood.



**Figure 2.3: Why did you not vote?**



**May 2016 elections - Post-polls survey (Scotland). Source: BMG/The Electoral Commission. Base: 143 (unweighted).**

**May 2011 elections - Post-polls survey. Source: ICM/The Electoral Commission. Base: 407 (unweighted).**

**Q: People had many reasons for not voting in the elections. Why did you not vote in the elections on Thursday 5th May?**

## Knowledge and awareness about the election

### Did people feel informed about the election?

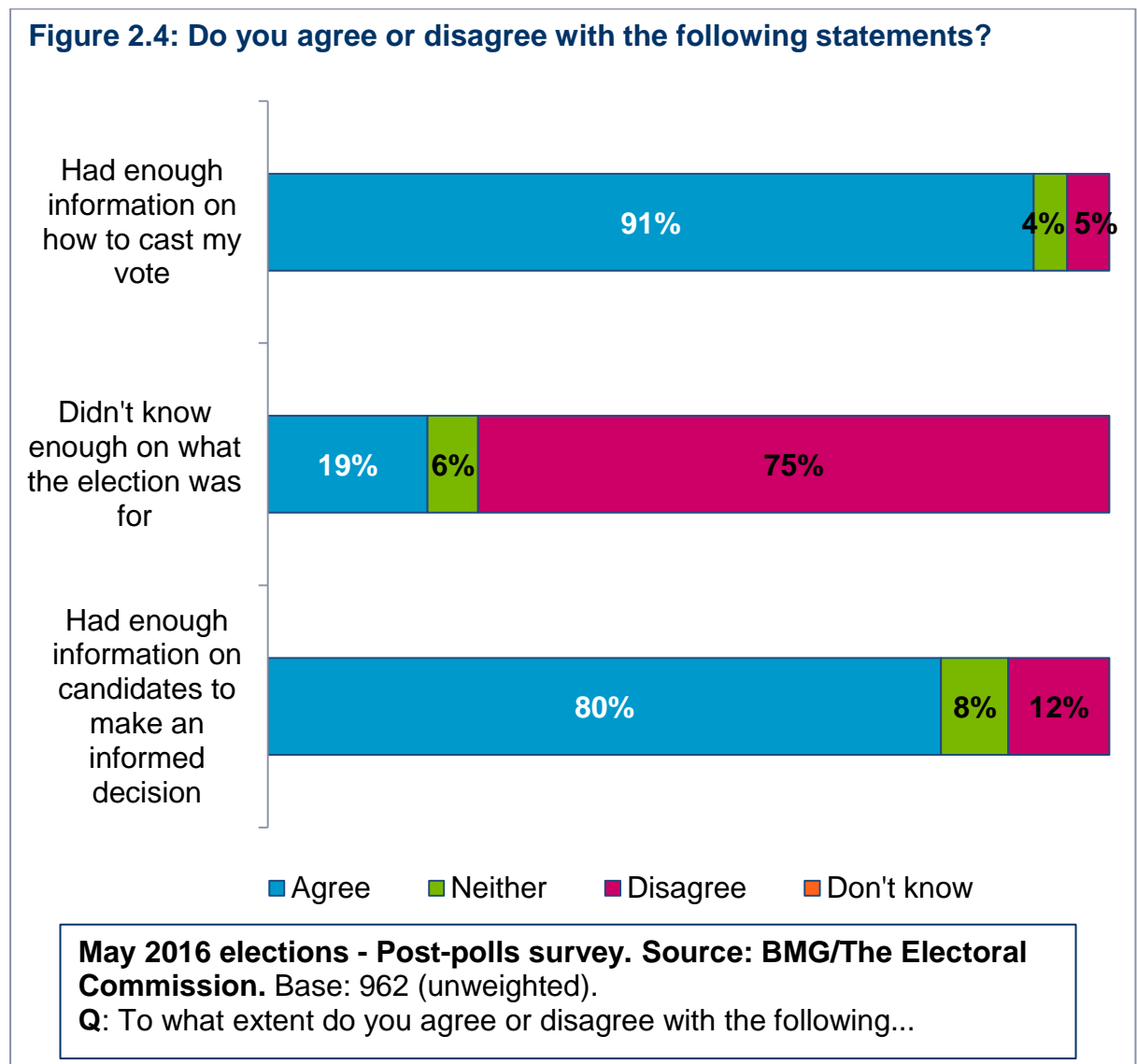
2.15 Our public opinion research asked people how much they felt they knew about the election on 5 May 2016.

2.16 Overall, 85% said that they felt they knew about the election (29% felt they knew a great deal while 56% felt they knew a fair amount) while 15% said they knew 'not very much/nothing at all'. Reported knowledge of the election was lower among 16 and 17 year olds with 69% stating they knew about the election (17% felt they knew a great deal while 52% felt they knew a fair amount).

2.17 Nine in ten respondents (91%) agreed they had enough information on how to cast their vote; this is higher than in 2011 (79%).

2.18 Our public opinion survey also explored whether voters felt that they had enough information about the candidates standing at the Scottish Parliament election to make an informed decision and 80% of respondents agreed that they had.

2.19 We also asked if enough information was available on what the election was about. Among all respondents, 19% said that they didn't know enough on what the election was about; 75% said that they did. This is lower than in 2011 when 30% said that they didn't know enough.



2.20 Overall 75% of respondents agreed that there was a lot of media coverage of the election – 40% agree strongly and 35% tend to agree. This is broadly in line with the proportion that believed this to be the case in 2011 when 72% agreed that there was a lot of media coverage. Approximately one third of respondents (37%) believed that the election was overshadowed by coverage of the EU referendum.

### Access to information

2.21 Our public opinion research also asked people how easy they had found it to access information on how to cast their vote at the election: 93% of respondents said that information on how to cast their vote was very or fairly easy to access.

2.22 Most respondents surveyed (81%) said that it was easy to access information on the candidates standing in the election (31% very easy, 50% fairly easy).

2.23 Of those surveyed, 62% said that their preferred means of receiving information about candidates and parties in elections is leaflets or booklets through the door. This was the top choice among the majority of age groups except 18-24s who preferred email messages (53%) and online adverts (33%). 16 and 17 year olds also had different preferences with social media and leaflets or booklets being the options most cited by respondents (36% in both cases). We will draw this finding to the attention of parties, candidates and agents so that they can consider if it has implications for the way in which they provide information to electors.

## People's experience of voting

2.24 Voters continue to be very positive about their experience of voting, whether in person at a polling place or by post.

- Of all those surveyed, 89% were satisfied with the procedure for voting (45% very satisfied, 44% fairly satisfied) with satisfaction among voters slightly higher (91%) and at 77% among those who did not vote).
- Overall, 86% believed that voting at a polling place was convenient (54% very convenient and 32% fairly convenient); 96% of polling station voters found it convenient and were satisfied with that experience. Access to polling places was generally found to be easy – overall 99% said it was easy to get inside and vote with no difference between people with and without disability.
- The help and support available from polling places staff on how to vote was also highly regarded: 70% said that it was useful (56% useful, 14% fairly useful) while 29% said that they didn't use or need it
- There were also high levels of satisfaction among postal voters, 99% were satisfied with the postal voting process.
- The majority of postal voters (98%) felt that it was easy to understand what they had to do to complete and return their postal vote (81% very easy, 17% fairly easy). This is an increase since 2011 when 95% found it easy to understand what to do to complete and return their postal vote (69% very, 26% fairly easy).

### Rejected postal votes

2.25 When a postal ballot pack is returned to the Returning Officer, the signature and date of birth (personal identifiers) provided on the postal vote statement (PVS) are checked against those previously provided by the elector. Where either or both the signature and date of birth are missing or do not match, the postal vote is rejected and is not included in the count. This is a vital stage in the process and these checks are in place to ensure that the ballot paper has indeed been returned by the registered elector and aids in the prevention of electoral fraud.

2.26 Data provided by Returning Officers shows that 18,682 (3.3%) of constituency postal votes and 17,699 (3.2%) of regional postal votes returned by electors were not included in the count after the required checks on voters' personal identifiers had been carried out. This figure is lower than the 2011 Scottish Parliament election where 25,334 (5.9%) of constituency and 25,058 (5.8%) of regional list postal votes were rejected as invalid.

**Table 2: Reasons for postal votes not included in the count.**

	2016	
	Constituency (%)	Region (%)
<b>Rejected for</b>		
Missing signature	5.1	5.4
Missing date of birth	1.5	1.6
Missing both signature and date of birth	10.9	11.4
Mismatched signature	17.6	18.5
Mismatched date of birth	20.6	21.7
Both signature and date of birth mismatched	4.1	4.3
Statement or ballot paper not returned	40.4	37.2

2.27 As shown in table 2 it continues to be the case that the most common reasons why returned postal votes are not included in the count are because the signature or date of birth provided by the voter do not match the records held by the ERO.

2.28 Since 2014 EROs have been required to provide electors with feedback if their postal vote statement has been rejected at an election and have been able to request a refreshed identifying signature. This appears to have contributed to the fall in the number of postal votes not making it into the count.

2.29 There is also provision in the law for an ERO to grant a waiver for the signature if they are satisfied that the elector is unable to supply a consistent signature. Across Scotland 9,093 waivers were granted amounting to 1.3% of registered postal voters (up from 1.06% in 2011).

2.30 While the percentage of postal votes not included in the count continues to fall it remains a matter of concern to the Commission, the EMB, ROs and EROs in Scotland that some postal votes do not get included in the count because voters do not complete the PVS correctly.

## Recommendation 1: Postal voting

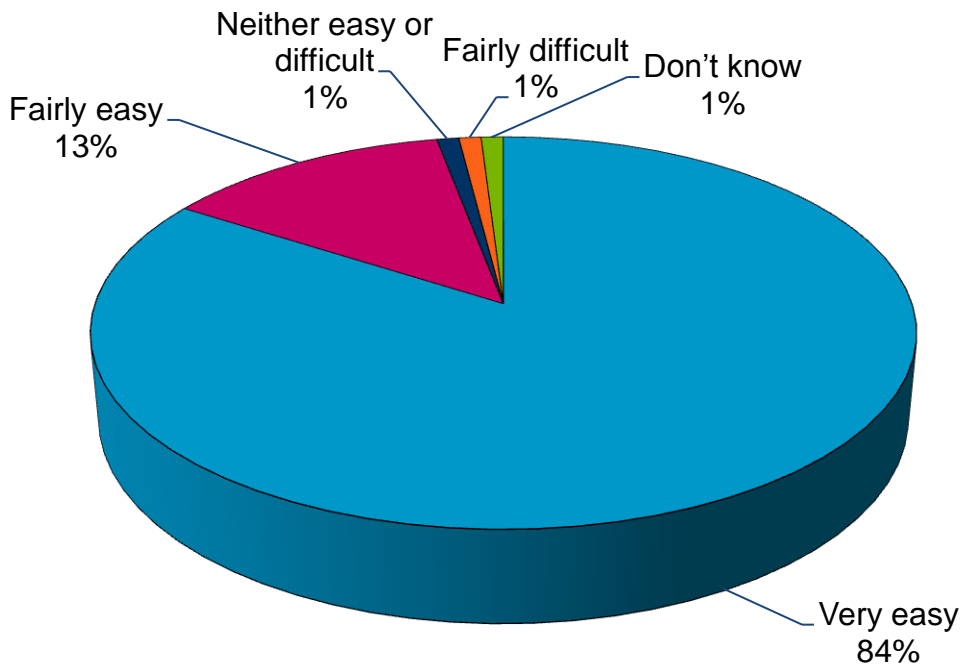
The requirement to check postal voting identifiers is a critical safeguard for protecting the postal voting system from theft and misuse. However, it is also vital that voters find it as easy as possible to complete the postal voting statement in order to verify their identity. The Commission will continue to work with the EMB to identify opportunities to increase awareness of the postal voting rules and to promote the use of waivers where appropriate. The Scottish Government should continue to keep the postal voting statement under review to ensure it is as user friendly as possible for voters and that the design and instructions minimise the opportunity for voters to make inadvertent errors which lead to their postal votes being rejected.

## Completing the ballot papers

2.31 At the 2016 election voters were issued with two separate ballot papers for their constituency and regional vote.

2.32 Our public opinion survey asked people how easy they thought it was to fill in their ballot papers. 97% (the same as in 2011) of those who voted in the election said that they found it very or fairly easy, with 84% (up from 75% in 2011) saying it was very easy. Only 1%, as in 2011, reported they had difficulties filling in the ballots.

**Figure 2.5: How easy or difficult did you find it to fill the ballot paper?**



**May 2016 elections - Post-polls survey. Source: BMG/The Electoral Commission.** Base: Voters, 819 (unweighted).

**Q: How easy or difficult did you find it to fill in the ballot paper for this election?**

2.33 16 and 17 year olds also said that they found it easy to fill in the ballot papers; 99% said that they found it very or fairly easy, with 77% saying it was very easy.

2.34 While we are pleased that voters found it easy to complete their ballot papers at the Scottish Parliament election, the 2017 council elections use a different voting system, Single Transferable Vote (STV) which voters have less experience of using. There remain challenges to ensure that the voter understands how to fully express their voting preferences under this system which we aim to address along with others in our public awareness activities in the run up to the 2017 Scottish Council elections.

### **Recommendation 2: Voter information**

The Commission will review our public awareness activities aimed at all voters and specifically 16 and 17 year olds to ensure robust voter information plans are in place ahead of the 2017 council elections so that voters understand how to complete their ballot papers so they can be counted in the way they intended.

## **Rejected ballot papers**

2.35 Before being counted, ballot papers go through a sorting process. There will be valid ballot papers which have been marked following - or closely following - the instructions. These will be included in the count and allocated to the relevant candidate or party. There will also be ballot papers on which the voter has not followed the instructions for marking it. These 'doubtful ballot papers' are adjudicated on by Returning Officers.

2.36 Those ballot papers that are not adjudicated as valid are rejected by the Returning Officer. The reasons and categories for rejected ballots are shown in the table below.

2.37 A total of 9,279 constituency and 3,923 regional list ballot papers were rejected, representing 0.41% and 0.17% of all votes cast. This is in line with previous Scottish Parliament elections apart from in 2007 when a different design of ballot paper was used.

**Table 3: Rejected ballots at Scottish Parliament elections.**

	<b>Constituency (%)</b>	<b>Region (%)</b>
2016	0.41	0.17
2011	0.42	0.34
2007	4.08	2.88
2003	0.82	0.8
1999	0.39	0.37

2.38 The reasons for rejection of ballots in 2011 and 2016 are detailed in the table below. As in previous elections a paper being unmarked or void for uncertainty as to the voter's intention is by far the most common reason for rejection, followed by the elector voting for too many candidates.

**Table 4: Reasons for ballots being rejected 2016 and 2011 (as % of total ballots rejected at count).**

Reasons for rejection	2016		2011	
	Constituency %	Region %	Constituency %	Region %
Unmarked or void for uncertainty	87.7	76.3	85.8	62.2
Voting for more than one candidate	11.2	22.1	13.7	36.3
Writing/mark identifying voter	0.3	0.6	0.5	1.4
Want of official mark	0.2	0.8	0.0	0.03

## Confidence that the election was well-run

2.39 The vast majority of voters, 93%, were confident that the election was well run (41% very confident, 51% fairly confident). This confidence is even higher among voters: 90% compared with 80% of non-voters.

2.40 16 and 17 year olds were also confident that the election was well run, in total 94% claimed that they were (28% very confident). Again voters had higher levels of confidence with 97% of 16 and 17 year olds who voted saying they were confident compared with 84% of non-voters.

## Electoral integrity

2.41 Evidence from cases of alleged electoral fraud reported by Police Scotland shows that there were a very small number of allegations of electoral fraud<sup>3</sup> relating to the election. As in previous years our survey shows concern exists amongst the electorate that fraud takes place which is not borne out by the number of reported cases.

### Concern that fraud took place at the May 2016 Scottish Parliament election

2.42 The vast majority of respondents to our public opinion research (86%) believed that voting in general is safe from fraud and abuse with only six per cent of respondents saying that they thought voting is very or fairly unsafe. However, when asked specifically about the 2016 Scottish Parliament election almost a third of

---

<sup>3</sup> Throughout this report, the term 'electoral fraud' refers to breaches of the Scottish Parliament (Elections etc.) Order 2015

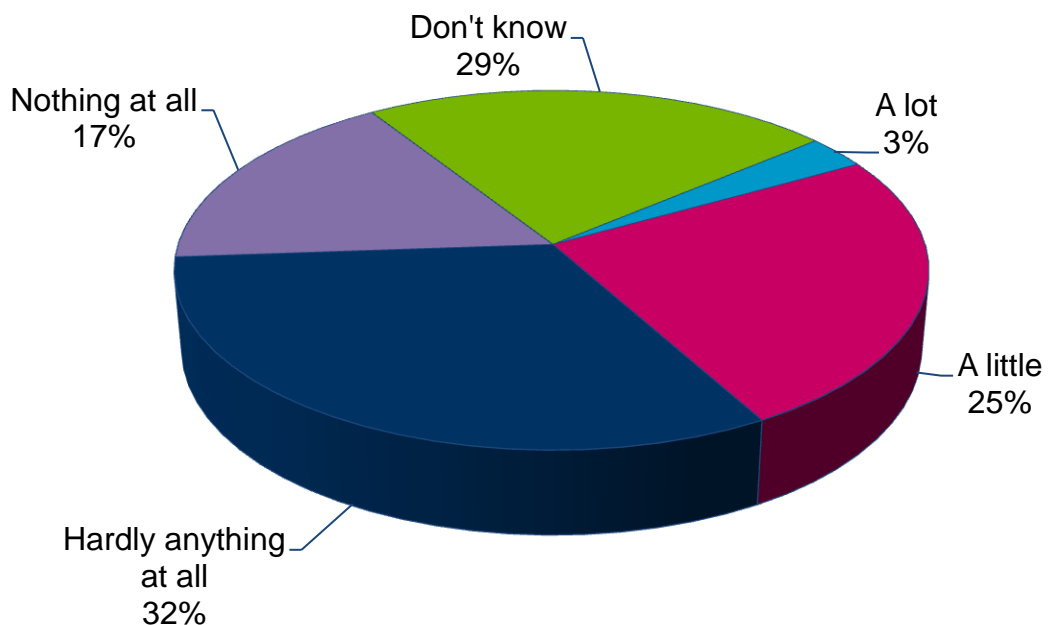
respondents to our public opinion research said they thought that some fraud had taken place with 3% saying there was a lot.

2.43 Those respondents who said that they thought electoral fraud had taken place at the Scottish Parliament election were asked which, from a list of options, best described why they thought this. The main reasons why people thought fraud had taken place related to:

- a general increase in identity fraud (48%)
- not having to provide identification to vote (46%)
- postal voting is not secure (43%)
- people registering other voters at the same address (43%)

2.44 Voting in person was perceived to be safer than voting by post; 94% said that voting at a polling place is safe (42% very safe, 52% fairly safe) compared with 65% who believed that voting by post is safe (22% very safe 43% fairly safe). However, 96% of postal voters regard their method of voting as safe.

**Figure 2.6: How much fraud do you think took place at the 2016 Scottish Parliament elections?**



**May 2016 elections - Post-polls survey. Source: BMG/The Electoral Commission.** Base: 962 (unweighted).

**Q:** How much, if at all, do you think that electoral fraud took place at the May 5 elections? Would you say that it happened?



### **Allegations of electoral fraud**

2.45 Police Scotland and other police forces across the UK, report cases of alleged electoral fraud to the Electoral Commission on a monthly basis. We plan to publish full data for cases of alleged electoral fraud reported during 2016 across the UK, including outcomes where available, by March 2017.

2.46 Two cases of alleged electoral fraud were reported for the Scottish Parliament election. Although there could be other matters reported to the police relating to the election, we will only receive information about allegations of breaches of the Scottish Parliament (elections etc.) Order 2015. Both cases are allegations that personation took place at a polling place and both cases remain under investigation at the time of the publication of this report.

2.47 Our review of electoral fraud in the UK published in 2014 concluded that polling station voting in Great Britain remains vulnerable to personation fraud. There are currently few checks available at polling stations to prevent someone claiming to be an elector and voting in their name. We are concerned that polling station voting could become more vulnerable to fraud as other processes, including absent voting and electoral registration, have become more secure following recent legislative changes.

2.48 Those intent on committing fraud may now shift their focus to remaining weaknesses within the system, notably polling station voting. This is underpinned by the result of our survey, which showed that 48% of the respondents who believed fraud occurs thought identity fraud had increased, and that the only two cases of alleged fraud at the election relates to personation.

### **Recommendation 3: Polling station ID**

The Commission reiterates our recommendation that there should be a requirement for electors across Great Britain to present an acceptable form of identification prior to being issued with a ballot paper and voting at the polling station. Similar requirements are already in place in Northern Ireland and several other comparable democracies. This measure would almost entirely remove the opportunity for personation at polling stations.

## 3 What happened before, during and after polling day?

3.1 Overall the Scottish Parliament election on 5 May 2016 was well-run and voters had a positive experience of the electoral process. This chapter seeks to consider what happened during the preparations for the election, in the election period itself, on polling day, at the count and thereafter.

### Public awareness activity: registration and how to vote

3.2 Returning Officers and Electoral Registration Officers have a duty to promote participation in the electoral process in their area. Maximising the number of people registered relies on an effective local public engagement strategy with robust processes behind it. Similarly, it is important voters are provided with sufficient information to enable them to complete the ballot papers and have their vote counted in the way they intended.

3.3 EROs used a range of methods to reach their local residents. They sent letters directly to households encouraging people to register to vote and many also developed partnerships with local schools and colleges to encourage young people to register. We provided EROs with resources including posters, template press releases and sample social media posts to be customised and used locally to raise awareness. We provided similar resources to ROs who also ran activities, often working with EROs. We have continued to work with the 32 Councils' communications network.

#### Our public awareness campaign

3.4 We ran a campaign to increase people's awareness of the Scottish Parliament election and how to take part, including ensuring people knew they had to register to vote by the 18 April deadline and how to cast their vote. Our campaign included: advertising; sending an information guide to each household; and partnership and PR activities.

3.5 The campaign aimed to reach all eligible voters, with a focus on groups that our research had identified as being less likely to be registered to vote, such as students, young people, those who had recently moved home and people who rent their home. It also included specific activities targeting 16 and 17 year olds.<sup>4</sup>

3.6 We ran advertising across website and social media channels from February and TV and radio channels from 14 March. We also distributed a voting guide to every household in Scotland from 4-7 April. This included social media and website banner

---

<sup>4</sup> For more information, see our report: [the Completeness and accuracy of the 2014 electoral registers in Great Britain](#)

ads with specific messages aimed at young people (16 and 17 year olds in particular), students and home movers.

3.7 The voting guide contained information on how to register, who was eligible to vote, how to vote and what people would be voting for. The guide can be viewed [on our website](#). It was also available in other languages and accessible formats.

3.8 We also formed a radio partnership which enabled us to broadcast specially created ads across a range of stations and to provide information on station websites.

3.9 Young people and home movers were identified as those who would be most affected by the transition to IER and when the UK Government brought forward the end of the transition to IER to December 2015, we expanded our campaign to include: a partnership with Channel 4 to produce an ad featuring some of the cast members from the TV show 'Hollyoaks', supported by PR and social media activities. A short animated video showing people how to complete their ballot papers was created which we promoted on social media.

3.10 From ERO feedback we know that some people apply to register to vote who are already registered to vote. Electoral registration data from this election suggests that up to eight per-cent of applications to register to vote made during our awareness campaign came from those already registered. This creates extra work for ERO staff and wastes resource so we highlighted in our voting guide that if a person had recently received a poll card then they are registered to vote. Anecdotal evidence from a number of EROs suggests that this approach may have reduced the number of duplicate applications at this election.

3.11 A further means of reducing duplicate applications, thereby saving resources and assisting the voter would be the ability to check on line by individual voters to see if they are already registered to vote. This facility could be integrated into the online registration portal, which is the responsibility of the UK Government, and would enable electors to check their current registration status at the beginning of the online registration process.

#### **Recommendation 4: Checking registration status**

Providing a way for electors to check their registration status at the beginning of the online registration application process would reduce the action required by voters to keep their register entry up to date, and would also reduce the impact on EROs of processing duplicate applications.

The UK Government should develop an online service to allow people to check whether they are already correctly registered to vote before they complete a new application to register. Given the registration digital service is reserved we would urge UK Government to discuss these matters with Scottish Government where it affects devolved registration issues

Any such service would need to carefully manage and protect voters' personal information.

## **Partnerships**

3.12 Alongside our work with EROs and ROs we worked with a range of partner organisations to reach under-registered voters. The aim of this activity was to support our advertising campaign by providing additional opportunities to drive registrations and to provide voters with the information they need to cast their vote with confidence.

3.13 Partnership activities continued up to, and beyond, the election and included activity targeted at young people, students, those from certain BME communities, disabled people and recent home movers and renters, all of whom we know are less likely to be registered. A list of partners can be found on our [website](#).

3.14 As part of our partnership work we provided all of our partners with a partnership pack containing information on how to get involved and how to encourage people to register to vote, along with providing partners with practical suggestions for running their own registration drives or other activities. The partnership pack and other resources for partners can be found on our [website](#).

3.15 Full details about the performance of our advertising, public relations and partnership activities, are available in our [campaign evaluation report](#).

## **Encouraging 16 and 17 year olds to register to vote**

3.16 This was the first Scottish Parliament election at which 16 and 17 year olds could vote and to encourage them to register we ran specific activities to reach this audience.

3.17 Our #ReadyToVote campaign ran throughout March and aimed to ensure all 16 and 17 year olds were registered and therefore 'ready to vote' in the Scottish Parliament election. It involved inviting schools, colleges and youth organisations to run registration sessions where they would encourage young 16 and 17 year olds to apply to register online.

3.18 We delivered the campaign with support from the Society of Local Authority Chief Executives, the Scottish Assessors Association, the Electoral Management Board, Education Scotland, School Leaders Scotland, Colleges Scotland, the Association of Directors of Education Scotland and the Scottish Government Learning Directorate.

3.19 To help participants run their registration sessions we produced a toolkit providing them with everything they needed to get involved. We also produced a political literacy briefing which provided guidance, and information sources to schools, colleges, universities and all other organisations who wished to develop political literacy amongst young people.

3.20 In total 282 high schools signed up to hold registration drives in March, which represented more than 78% of all high schools in Scotland.

3.21 In addition to our #ReadyToVote campaign we ran our #RegAFriend campaign. This was a Great Britain wide social media campaign run in partnership with the National Union of Students to inspire young people to register to vote ahead of the May 2016 polls. As part of this campaign we asked young people to encourage their friends to register by sharing photos of their 'voter cross' and using the hashtag #RegAFriend. We produced toolkits for partners so organisations had everything they needed to participate.

## Measuring the success of our public awareness campaign

3.22 We set targets for the number of online applications to register to vote during the campaign period that we wanted to see, as well as the number of additions to the register during the campaign period<sup>5</sup> and the level of campaign recognition amongst the general public.

3.23 Our target for online applications to register to vote from when our TV ads started on 14 March until the registration deadline was 120,000. The number of applications during this time was 94,487 meaning we did not achieve this target.

3.24 Our target for additions to the register was 82,000 and this was achieved with 90,200 additions to the register.

3.25 We set a campaign recognition target of 75% of people recognising at least one element of the campaign. We exceeded this target with a result of 86%. Older age groups, mainly those of 45 and over, were those most likely to have seen our main TV ad, whereas those in the 16-44 age group were the most likely to have seen our Hollyoaks ad, including 30% of 16- and 17-year-olds.

3.26 In Scotland people were more likely to mention registration as the main message of the advertising with 81% spontaneously mentioning this, compared with a UK-wide average of 77%. There was also the highest level of agreement in the UK that the advertising 'made it clear where to go for information about how to register' (87%), but the lowest level of agreement that the advertising was 'aimed at people like you' with just 38% agreeing. However this figure rises to 87% when just looking at 16 and 17 year olds.

3.27 Twenty-seven per cent of people surveyed in Scotland reported taking action as a result of the campaign, in line with the UK average, but this rose to 55% for home movers and 60% for 16 and 17 year olds, suggesting the ads were effective at driving action among key under-registered groups.

3.28 For more information on research methodology see Appendix 1 and for more information on our public awareness campaign view our [May 2016 and EU referendum public awareness evaluation report](#)

## Administration of the poll

### Legislation: complexity and timing

3.29 Elections cannot take place unless specific legislation is in place which sets out the detailed rules for how the poll should be conducted and by whom. These detailed

---

<sup>5</sup> Applications refers to applications to register. In any campaign a number of these will be duplicates or will be unverified so do not end up being added to the register. As a result we set a separate KPM for additions to the register. We can track applications during the campaign on the gov.uk dashboard. The number of additions to the register is only known following analysis of the registers after the poll has taken place. Additions to the register is the main aim of the campaign but tracking applications allows us to monitor the performance of a live campaign.

rules underpin the delivery of the election and provide a framework for those delivering the poll to ensure that the events are delivered to a consistent standard.

### **The Scottish Parliament Conduct Order**

3.30 Responsibility for the legal and funding framework for the administration of the election was, for the first time, devolved to the Scottish Parliament by the Scotland Act 2012. Elections in the UK are underpinned by a complex web formed of many strands of legislation. The Scotland Act 1998, as amended in 2012, provides the over-arching framework for the Scottish Parliament election including the voting system and the date of the poll. The Political Parties, Elections and Referendums Act 2000 (PPERA) sets the spending and donation rules for those campaigning in the election. The detailed rules governing the conduct of the election were set out in the Scottish Parliament (Elections etc.) Order 2015.

3.31 Current electoral law has grown so complex and fragmented, and in many places out of date, that it hampers the effective and efficient delivery of elections. A consolidated, simplified, updated and improved set of laws (made in Scotland for the administration of devolved elections) would enable elections to be run much more efficiently and cost-effectively than at present. It will also ensure that the law is fit for purpose and more accessible to those who need to use it, including candidates and voters.

### **Recommendation 5: Law Commissions' review of electoral law**

The Law Commissions of Scotland, England and Wales and Northern Ireland are currently reviewing electoral law with the aim of consolidating, simplifying and modernising the many existing sources of electoral law. The Law Commissions require the approval of the Scottish and UK Governments before they can move onto the next and final stage of the project, which will consist of drafting new electoral legislation.

We continue to urge the Scottish and UK Governments to support the work of the Law Commissions to enable the project to move on to the next stage. This will allow the Law Commissions to start drafting new law in time for it to be implemented before the Scottish Parliament elections in 2021.

3.32 As noted above, the detailed rules governing the conduct of the election are contained in the Scottish Parliament (Elections etc.) Order 2015. An efficient and voter focused poll requires a significant level of planning in the six months preceding the election. Until legislation is enacted there will always be a degree of uncertainty hanging over election planning. This uncertainty impacts on the timetable for making any significant financial commitments in respect of the election including signing contracts with suppliers. Scottish Government is committed to delivering election rules at least six months prior to the election which we welcome. In our view and that of many others in the electoral community this assists with the planning process for an election. Legislation needs to be clear (either by Royal Assent to primary legislation or by laying secondary legislation) at least six months before it is required to be implemented or complied with.

3.33 The Scottish Parliament (Elections etc.) Order 2015 was laid on 4th November 2015, withdrawn due to a typographical error and re-laid on 16 November 2015, and



made on 15th December 2015. Other legislation for the administration of the election was:

- The Scottish Parliament Elections (Regional Returning Officers and Constituency Returning Officers) Order 2016 which came in to force on 1st March 2016, laid on 11th January 2016.
- The Scottish Parliament (Disqualification) Order 2015 (made 8th October 2015, coming into force 9th October 2015)
- The Scottish Parliament Elections (Returning Officer Fees and Charges) Regulations 2016 made 11th January 2016.

3.34 Although these pieces of legislation were not made six months prior to the election, Scottish Government ensured that they were known to administrators and others in their final forms and this aided effective planning for the event given it was clear what was required to be done.

3.35 It is also important to note, however, that political parties, candidates and campaigners together with those who regulate and monitor campaign expenditure require certainty at an early stage about the rules for campaigning in any poll. The 2015 election order introduced new rules in relation to candidate spending at the 2016 election, for example, an increase in the spending limit for the long and the short campaigns, and a change in accounting for disability related expenses.

3.36 The Commission aims to publish guidance for campaigners, including candidates, at least three months before it is required to be complied with, in order to allow time for campaigners to familiarise themselves with the legislative requirements. The long campaign for candidates commenced on 5 January 2016, which meant that due to the timing of the legislation the rules for candidates were not clear 3 months before the long campaign commenced. This resulted in uncertainty for candidates and a delay in the publication of our guidance.

#### **Recommendation 6: Ensuring legislation is clear in good time before elections**

We continue to recommend that Governments with legislative competence over elections within the UK should manage the development and approval of legislation so that it is clear (either by Royal Assent to primary legislation, or by laying secondary legislation for approval by Parliament) at least six months before it is required to be implemented or complied with by campaigners or electoral administrators.

All governments should normally be able to plan to ensure that legislation for elections is clear at least six months before it is required to be implemented or complied with. If a government has not been able to ensure that legislation is clear by this point, it should table a formal statement in the relevant legislature explaining why it has not, and set out its assessment of the likely impact of the late confirmation of legislation for voters, campaigners and electoral administrators.

## Electoral Management Board for Scotland

3.37 The work of the EMB contributed positively to the delivery of the election. Following our proposal in 2008, an interim Electoral Management Board (EMB) was established to improve the delivery of electoral administration in Scotland, the concept of which was supported by the then UK and Scottish Governments. The Local Electoral Administration (Scotland) Act 2011 established the EMB in law for local government elections and provided it with a statutory function to co-ordinate the administration of those elections. For those elections the Convener of the EMB has a power of direction over all ROs and EROs although ROs remain ultimately responsible for the delivery of the elections on an individual basis. The EMB has no statutory role in UK, Scottish and European Parliamentary elections.

3.38 For Scottish Parliament elections the EMB Convener has no power of direction and coordinates the administration of the election consistently across Scotland by consensus. The EMB decided that it would be helpful to ROs, EROs and their respective teams to provide recommendations on how key elements of the delivery of the election should be planned for and managed. The focus was on ensuring that all elements of planning and delivery were undertaken with the interests of the voter at the heart of each decision, to build confidence in the result through a consistent national approach.

3.39 The provision of recommendations to ROs and EROs replicated the EMB's approach to the 2015 UK Parliamentary General Election, another instance where the Convener had no power of direction, which in turn built upon the approach taken by the EMB's Convener when she undertook the role of the Chief Counting Officer (CCO) for the Scottish Independence Referendum in 2014, which under Scottish Parliament legislation she was able to issue directions.

### **Recommendation 7: Electoral Management Board for Scotland**

We continue to urge both the Scottish and UK Government to establish the EMB in statute for all elections

With the provisions of the Scotland Act 2012 and the forthcoming commencement of the sections of the Scotland Act 2016 which relate to Scottish Parliament elections the Scottish Government will become responsible for electoral administrative matters relating to Scottish Parliament elections.

We recommend that the Scottish Government use this opportunity to establish the EMB's statutory remit for the Scottish Parliament elections and provide the Convener with a power of direction at these elections. The long-term funding and legal status of the EMB must also be secured and clarified so that it can undertake long-term strategic planning to develop its role and work programme. As the role of the EMB develops we would wish to discuss with Scottish Government any implications this may have for the Commission's current roles and responsibilities in relation to Scottish Parliament and local government elections.



## Support for Returning Officers and our performance standards framework

### Guidance for administrators

3.40 As for previous elections, we provided comprehensive written guidance, resources and templates to support ROs in planning for and delivering the polls on 5 May<sup>6</sup>. We received positive feedback from Returning Officers about the materials and resources and the direct support we provided to them. However, concerns were raised by ROs, EROs and their staff that some of the resources were late in being delivered.

3.41 While the publication of the guidance was prioritised to ensure that ROs had what they needed when they needed it, we were, regrettably, not able to make all of our products available in full as early as we would typically aim to for the Scottish Parliament election. The complex set of polls taking place across the UK in May 2016 and the complex and fragmented legislative framework created particular challenges for the development of our guidance and resources, with over 600 unique products published to support the various elections taking place on 5 May.

### Recommendation 8: Timeliness of Commission guidance resources

The Commission recognises that some of its guidance materials were delivered late to electoral administrators and will take this into account when planning activities for future electoral events.

3.42 A number of forms for the election, which were not prescribed in legislation, were developed by either the Commission or the EMB's Forms Working group.

### Recommendation 9: EMB Convener - Power to prescribe forms

We believe that giving a power of direction to the Convener of the EMB to prescribe the forms would allow the Forms Working group to develop forms that are consistently used across Scotland and allow them to react quickly to the need of developing further forms. The EMB will need to be adequately resourced in the future to ensure that its Forms Working Group is resourced to carry out this task ahead of future elections.

### Performance standards

3.43 The Commission sets, monitors and reports on performance standards for Returning Officers in Scotland as we do in England and Wales<sup>7</sup>. Our performance

---

<sup>6</sup> The Commission's guidance and resources for Returning Officers at the Scottish Parliament election are available here: <http://www.electoralcommission.org.uk/i-am-a/electoral-administrator/scottish-parliament-elections>

<sup>7</sup> The performance standards framework does not currently extend to Northern Ireland, although the Northern Ireland (Miscellaneous Provisions) Act 2014 includes a provision for it to be extended. We are currently working with the Chief Electoral Officer on the introduction of electoral registration and electoral event performance standards.

standards framework is designed to support ROs in delivering a consistent high-quality service for voters and those standing for election<sup>8</sup>.

3.44 The framework reflects what we and the Election Coordination Advisory Board (ECAB)<sup>9</sup> agree that ROs need to do to prepare for and deliver well-run elections. The Convener of the Electoral Management Board for Scotland is a member of ECAB. The standards focus on the key outcomes from the perspective of voters and those who want to stand for election and in particular, whether ROs are taking the necessary steps to deliver the following objectives:

- Voters are able to vote easily and know that their vote will be counted in the way they intended.
- It is easy for people who want to stand for election to find out how to get involved, what the rules are, and what they have to do to comply with these rules, and they can have confidence in the management of the process and the result.

3.45 The standards cover the range of activities carried out by ROs in preparing for and delivering well-run elections including, for example, setting up and staffing polling stations, and delivering timely and accurate verification and count processes. The RO performance standards framework does not relate to the work of EROs, which is covered by a separate framework.

3.46 A risk-based approach was taken to determining which ROs were selected for detailed monitoring, taking into account factors such as the experience of the RO, their team and any previous issues. A discussion was also undertaken with the Convener of the EMB prior to the final selection of those who were monitored in detail.

3.47 Those ROs who had been selected for detailed monitoring were asked to share their planning documentation with the Commission, and subsequent meetings were arranged to discuss their plans for delivering the election. We also collected information from all Returning Officers about how the election was managed in their area.

3.48 In a small number of instances, we recommended minor improvements to RO's plans. These recommendations were in relation to, for example, overall planning for the delivery of the polls and arrangements for the verification and counting of votes. No significant concerns were identified in the course of our monitoring and no Returning Officer has been assessed as not meeting our standards in relation to the delivery of the election.

---

<sup>8</sup> More information about our performance standards framework for ROs is published on our website. The Electoral Commission, *Performance standards*, [www.electoralcommission.org.uk/find-information-by-subject/performance-standards](http://www.electoralcommission.org.uk/find-information-by-subject/performance-standards).

<sup>9</sup> The Election Coordination Advisory Board (ECAB) is an advisory group convened by the Electoral Commission and the Cabinet Office and made up of senior Electoral Registration and Returning Officers, and also attended by representatives from the Society of Local Authority Chief Executives (SOLACE) and the Association of Electoral Administrators (AEA). ECAB gives the Commission and government strategic advice about elections, referendums and electoral registration.

## Postal voting

3.49 The effective management of postal voting is a major resource requirement for ROs with 17.7% of electors registered to vote by post at this election. Turnout amongst postal voters is generally higher than levels of turnout of polling place voters, accounting for 24% of all votes included in the counts.

3.50 To assist the voter, in recent years the EMB has, either by direction or recommendation, identified a period of time in which ROs should issue postal votes across Scotland. This allows all of Scotland's postal voters to know when their vote is being issued and a level of national awareness of these dates to be established. It also allows parties to co-ordinate their campaigning directed at postal voters. Parties and candidates are made aware of the time period for issue and nearer the date of issue, if possible, precise local delivery dates.

### **Recommendation 10: Co-ordination of postal vote dispatch**

We welcome the EMB's approach to co-ordinating the dispatch of postal voting packs as it enables voters who will be away from their address at the time of the election to make informed choices about the most appropriate method of voting for their circumstances. We recommend that the EMB continues to co-ordinate postal vote dispatch dates in this way.

3.51 An increase over time in the number of electors voting by post has also led to a demand from voters for a more flexible approach to issuing postal votes. ROs have in recent years issued two tranches of postal voting packs, however the data provided by SIENA (Second Interim Election Notice of Alteration) allowed ROs to issue a third set of postal votes in between the first and second issue at this election. 19 of the 32 ROs chose to make use of this possibility, which led to greater flexibility for the postal voters in those areas, but also an inconsistency across Scotland.

### **Recommendation 11: Additional dispatches of postal votes**

We recommend that the EMB consults with ROs and EROs and parties with regard to the EMB recommending or directing an additional or second date of dispatch for postal votes in the period between the first dispatch and the postal voting deadline. As part of this consultation the EMB will need to have regard for the additional resource burden on ROs as well as the potential benefits for voters. The EMB should also consult with ROs and their suppliers to ensure that any future directions on the dispatch of postal votes can be planned into the negotiations for new contracts with suppliers.

### **Replacement postal votes**

3.52 At the Scottish Parliament election there were two deadlines for replacing postal votes. The deadline for replacing a spoilt postal vote was 5pm on polling day, whereas the deadline for replacing a lost or not received postal vote was 10pm. This created a discrepancy in the rules for postal voters.

3.53 Data on postal votes that we have received from ROs shows that 57 postal voters were issued with a replacement ballot paper after 5pm on polling day because the original had been lost or not received, and one voter who had spoilt their postal vote

requested a replacement after 5pm. ROs, however, raised concerns about the logistical difficulties of replacing lost or not received postal votes up to 10pm instead of 5pm.

#### **Recommendation 12: Deadlines for replacement of postal votes**

We recommend that the Scottish Government considers the impact of having two different deadlines for replacing postal votes ahead of future elections. The Government needs to consider the interest of postal voters and the issues raised by ROs.

3.54 ROs also reported that they received 1,538 postal votes after the close of poll, which average 21 across the constituencies. It is regrettable that despite the use of the postal votes sweep service provided by Royal Mail by all of Scotland's ROs postal voters have returned votes too late or placed the postal vote pack in the post box after the sweep. We suggest the EMB discusses this matter with the Royal Mail and consideration is given to the potential public awareness opportunities.

### **Proxy Voting**

3.55 There has been an increase in the number of electors appointing a proxy to vote on their behalf compared with the last Scottish Parliament election. Proxies were appointed in 9,930 cases compared with 6,890 in 2011. The number of proxies averaged 136 across the constituencies. Proxy voters represented 0.2% of the total electorate.

3.56 The deadline for applying to vote by proxy was 5pm on 19 April 2016, however, electors who for medical or work related reasons were unable to cast their vote in person were able to appoint an emergency proxy after that deadline. 366 electors appointed an emergency proxy at the election. Although electors who know that they will not be able to vote in person on polling day have the option of either postal or proxy voting, a far greater number of absent voters choose to vote by post. A number of electors raised concerns with us that they were not included in the first issue of postal votes, and due to the timing of receiving their postal vote were not be able to return it as they had for instance left to go on holiday or business before the postal vote arrived.

#### **Recommendation 13: Awareness of implications of different voting methods**

The Commission will continue to work with EROs, ROs and other partners to promote awareness amongst voters of the practical implications of different voting methods (such as postal voting or appointing a proxy) particularly if they are making an application during the last month before polling day.

# 4 Candidates, parties and campaigners

4.1 In this chapter we consider the experiences of those who campaigned at the Scottish Parliament election.

## Standing at the election

4.2 A total of 313 candidates stood for election in the 73 Scottish Parliament constituencies, an average of 4.3 per seat. The number of constituency candidates represents a small reduction from the 321 candidates who stood in 2011. The majority of constituencies had 4 candidates on the ballot paper, and all constituencies had between 4 and 6 candidates.

**Table 5: Constituency candidates at Scottish Parliament elections**

Year	Candidates	Average per constituency
2016	313	4.3
2011	321	4.4
2007	334	4.6
2003	406	5.6
1999	338	4.6

4.3 The 2016 election also saw a decline in the number of parties and independent (non-party) candidates standing in constituencies. 10 parties stood candidates in the constituencies compared with 12 in 2011. Similarly the number of independent candidates standing in constituencies fell from 14 in 2011 to 7 in 2016.

4.4 The Conservative and Unionist Party, Labour Party, Liberal Democrats, and the Scottish National Party, stood candidates in every constituency. In 57 out of 73 constituencies only these four parties contested the election. All of the 73 constituency seats were won by candidates from these four parties.

4.5 A total of 16 parties and 3 independent candidates stood for the 56 seats across the eight electoral regions. The number of parties was down from the regional total of 21 in 2011. 8 parties stood candidates in all eight electoral regions. All of the 56 regional seats were won by parties.

**Table 6: Number of party lists and independent candidates contesting the regional elections**

	2016	2011	2007	2003	1999
Central Scotland	10	15	16	12	13
Glasgow	13	16	23	14	14
Highlands and Islands	10	14	16	14	13
Lothian	9	18	23	17	17
Mid Scotland and Fife	9	14	16	15	9
North East Scotland	12	17	15	12	10
South of Scotland	9	12	15	11	10
West of Scotland	10	15	18	12	12

### Nomination

4.6 The nomination process went smoothly for the vast majority of candidates and parties across Scotland. Feedback received from candidates showed that 95% agreed that the nomination process was well run, with 93% thinking the process was straightforward. A small number of issues were raised by parties and candidates which we consider below.

### Home address

4.7 All candidates, whether constituency, individual regional or party list candidates, must give their home address on their nomination papers. The only persons able to see the home address of a candidate are those entitled to make objections to the nomination at the time when the nomination papers are delivered<sup>10</sup>. Nomination papers cannot be inspected by anybody else at any time and are stored securely.

4.8 The home address of a candidate at a Scottish Parliament election will not appear on the ballot paper nor will it, generally, be published. It is only where the candidate becomes their own agent because no agent has been appointed by the appointment deadline that a candidate's home address will be disclosed.<sup>11</sup> This is because all election agents are required to have an office address to which all claims, notices, legal process and other documents may be sent. In the absence of an appointment, where a constituency or independent regional candidate is deemed to be their own agent, their home address will be deemed to be their office address and included on the notice of appointment of election agents that the RO must publish. Similarly, in the case of a party list, if the candidate who is first on the party's list becomes the election

---

<sup>10</sup> Only certain people are entitled to attend the delivery of nomination papers and to inspect the nomination form at the point in which they are delivered. For constituency candidates this includes other candidates, their agents, and the person who issued the certificate of authorisation for any constituency candidates standing on behalf of a party. If a constituency candidate is acting as their own agent they can nominate someone to attend on their behalf. For regional list candidates the election agent for the party list, party list candidates, and the party's nominating officer and independent candidates and their agents. If the election agent is also a party list candidate or an independent candidate is acting as their own agent, they will be able to appoint someone else to act on their behalf.

<sup>11</sup> Where a candidate appoints themselves as the election agent (rather than becoming one because of no-one else having been appointed), they have the option of not disclosing their home address. While they must supply an address and an office address, the address does not need to be their home address – it could be their office address, so long as it is their address.



agent for that party list as a result of no-one else having been appointed, the office address is deemed to be their address as given on the party list nomination papers.

4.9 Although the legislation currently includes measures to ensure that the home address of a candidate is not disclosed, it does not completely eliminate the possibility of the home address being viewed by others, either when nomination papers are delivered or if the candidate becomes their own agent by default. This issue of the personal safety of candidates and agents was raised during the nomination period by a few agents and parties with the Commission and staff of the ROs.

4.10 The rules for UK Parliament elections are different in relation to the publication of the home addresses of candidates, but their effect is the same. Unlike Scottish Parliament elections, candidates' addresses automatically appear on the UK Parliamentary ballot paper unless they sign a form requesting that their address be withheld from publication. However, even where they sign this form, if they become their own agent as a result of no-one else having been appointed, their home address would also be disclosed on the notice of appointment of election agents.

4.11 The safety of candidates and agents is of course important as is the desire to ensure transparency of information for voters, many of whom wish to know where their candidates lives, although this can be achieved by other means than addresses on ballot papers. The issue is a complicated one and very sensitive. While the Commission believes there is a case for full addresses not to be publicly available on ballot papers and nomination documents, we also believe that voters should have access to sufficient information to indicate a candidate's proximity or otherwise to the area in which they are standing.

#### **Recommendation 14: Home address details of candidates and agents**

We recommend that Scottish Government reviews the rules relating to access to candidates and agents home address details, seeking the views of parties, candidates and electoral administrators, including the Commission, with the aim of maintaining transparency, while seeking to increase the safety of candidates.

#### **Withdrawal of a party list candidate**

4.12 The parties represented on the SP PPP raised the issue of there being no mechanism for parties to withdraw a name from their regional party list without the particular person on that list agreeing to their withdrawal in writing. Currently, the person on the party list must sign the notice of withdrawal. Some parties argued that given the list was owned by the party and it may be logistically very difficult to obtain the individuals signature at short notice, the party should be able to require the RRO to remove the name of a candidate from its list.

4.13 The Commission understands why parties would wish such a change to the rules but is mindful that changes to rules can have unintended or unforeseen consequences elsewhere in the electoral administrative process.



## **Recommendation 15: Withdrawal of a party list candidate**

We would recommend that when it comes to review the rules for the 2021 elections, the Scottish Government reviews the rules relating to withdrawal of a party list candidate from the ballot paper and seeks the views of other stakeholders in the electoral community.

### **Party names and descriptions**

4.14 The election rules concerning use of party names and descriptions<sup>12</sup> on Scottish Parliament ballot papers were amended in 2009 following concerns raised after the 2007 Scottish Parliament election. This election is therefore the second Scottish Parliament election where these changes have applied, meaning that the party details appear as follow:

- Regional ballot paper: The party name must appear first and can be followed by a registered description
- Constituency ballot paper: The candidate name must appear first followed by the party name, and cannot contain a registered description.

4.15 On both constituency and regional ballot papers parties could have the word 'Scottish' inserted before their registered party name if they so wished .

4.16 Of the parties standing candidates at the election, who did not already have 'Scottish' in their party name (15 parties<sup>13</sup>), eight chose not to use the 'Scottish' prefix<sup>14</sup> whereas seven parties did. The parties that used it included the Labour Party, the Conservative and Unionist Party and the Liberal Democrats.

4.17 The majority of the parties standing candidates on the regional list used a description, with three of the parties only using the party name<sup>15</sup> and two parties only using a description in some of the regions where they stood. In the case of four of the parties using a description, the description either contained the name of the party leader or of the first candidate on the list.

4.18 The use of descriptions gave rise to some accusations via the media that 'sloganisation' and naming strategies could confuse the voter in similar ways to that which was said to have occurred at the 2007 election.

4.19 The Commission also received a small number of representations from voters complaining about the use of slogans on ballot papers. We believe that the complaints

---

<sup>12</sup> The Electoral Commission maintains the register of party names, registrations and emblems in accordance with the Political Parties, Elections and Referendums Act 2000

<sup>13</sup> The Scottish National Party, the Scottish Green Party and the Scottish Libertarian party were already registered with a 'Scottish' prefix

<sup>14</sup> Parties standing at the election, who did not have 'Scottish' in their name were: A Better Britain – Unionist Party, Animal Welfare Party, Clydesdale and South Scotland Independent, Communist Party of Britain, RISE – Respect, Independence, Socialism and Environmentalism, Solidarity – Scotland's Socialist Movement, Stronger Community Party and United Kingdom Independence Party.

<sup>15</sup> Parties that did not use a description in the regional contest were the Liberal Democrats, National Front and Clydesdale and South Scotland Independent

are evidence of continuing concerns about how parties' identities are portrayed on ballot papers and whether it is sufficiently clear. We have previously recommended that the law should be clarified so that a party's identity is always clear on the ballot paper<sup>16</sup>. While the party name is always required to be used on ballot papers at the Scottish Parliament election, it is not required to be used at other elections, such as Scottish local government elections and UK Parliamentary elections. Slogans which bear little relationship to the party name could currently be used as a description. We therefore continue to be concerned that the legal provisions for the registration and use of party descriptions present risks that voters can be misled when a description appears on a ballot paper without any reference to the party identity.

4.20 We are also concerned about the increasing size of the party registers and the growing complexity of applying the registration tests. Following a review of the registers that we conducted prior to the UK Parliamentary General Election in 2015, we commented that it is becoming more difficult to manage the risks of confusion for voters. Additionally, the participation of new parties is becoming ever more restricted by the choices of words and phrases used by other parties in their 12 descriptions<sup>17</sup>.

4.21 The legislation regarding the registration of party names, descriptions and emblems is set out in Part 2 of the Political Parties, Elections and Referendums Act 2000 and is a reserved matter. In contrast, the use of these party identity marks on ballot papers is determined by election orders, some of which are devolved. We believe that the legislation in this area needs to be reformed in a joined-up way and that there are some helpful lessons to be learned for other elections held in Scotland and across the UK from the approach adopted for Scottish Parliament ballot papers.

#### **Recommendation 16: Party descriptions on the ballot paper**

We continue to recommend that where a candidate represents a political party on a ballot paper, it should be clear to voters which party the candidate represents. While legislation for Scottish Parliament elections already ensures that it is clear which party a candidate represents, this is not the case for other elections in Scotland.

The legal provisions for the registration and use of party descriptions on ballot papers present risks of confusion for voters and restrict the participation of political parties. The Scottish Government and other Governments of the UK should work with the Electoral Commission to reform the provisions on party descriptions.

#### **Candidate and agent briefing**

4.22 ROs continue to provide advice and support for candidates during the nominations period which is valued by parties, candidates and agents. ROs held briefing sessions for parties, candidates and agents ahead of the deadline for nominations informing them about the nomination process. In addition some ROs held

---

<sup>16</sup> Electoral Commission (2015) *The May 2015 UK elections: Report on the administration of the 7 May 2015 elections, including the UK Parliamentary general election*, recommendation 10 [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/190959/UKPGE-report-May-2015-1.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/190959/UKPGE-report-May-2015-1.pdf)

<sup>17</sup> As above, paragraph 3.155

briefings after the close of nominations, where they informed parties, candidates and agents about polling day and count arrangements. Although the timing of such briefings varies across the country feedback from surveys suggests that in some areas more consultation with parties, candidates and agents would be beneficial before the dates for such events are established.

### **Recommendation 17: Candidate and agent briefings**

We would recommend that ROs consult with candidates and agents prior to setting dates for briefings. We will also ensure that this recommendation is highlighted in our guidance for Returning Officers.

## **Campaigning**

4.23 For the Scottish Parliament election there were three types of regulated entities: parties, candidates and non-party campaigners. The rules and spending limit for parties remained the same as in 2011, and there were a few changes to the rules for candidates. The regulatory framework for non-party campaigners, however, has changed significantly from 2011.

### **Parties**

4.24 Parties standing candidates at the Scottish Parliament election had a spending limit based on the number of constituencies and regions they contested. The spending limit per constituency contested was £12,000 and per region contested £80,000. Parties that stood candidates in all constituencies and regions would therefore have a spending limit of £1,516,000.

4.25 The regulated period for parties (meaning the time in which spending is regulated) started on 5 January and ended on polling day. Parties that incurred spending of £250,000 or under during this time had to report their spending to the Commission by 5 August 2016, whereas parties spending more than £250,000 must report their spending to the Commission by 5 November 2016.

4.26 There was no separate donations and loans reporting requirement for parties, which meant parties reported their donations and loans received for their election campaign as part of their quarterly donation and loans return to the Commission.

### **Candidates**

4.27 Constituency candidates and independent regional list candidates had to adhere to the rules on spending for two regulated periods; the long and the short campaign. The long campaign began on 5 January 2016 and ended on the day the candidate officially became a candidate<sup>18</sup>, and the short campaign began the day after the candidate officially became a candidate and ended on polling day.

---

<sup>18</sup> The earliest date a candidate could officially become a candidate was the day that the Scottish Parliament was dissolved. A candidate would become an official candidate on that date if they or others had already announced their intention to stand. If the candidate's intention to stand had not been announced by the day of the dissolution of Parliament, they would officially become a candidate on the

4.28 Each candidate had a separate spending limit for each period, which was calculated as follows:

**Table 7: Long campaign**

Type of candidate	Type of seat	Spending limit
Constituency candidate	Burgh constituency	£21,500 + 4.2p per elector
Constituency candidate	County constituency	£21,500 + 6.3p per elector
Independent regional candidate	Region	The total of the maximum limit for each constituency in the region for the long campaign

**Table 8: Short campaign**

Type of candidate	Type of seat	Spending limit
Constituency candidate	Burgh constituency	£8,700 + 6p per elector
Constituency candidate	County constituency	£8,700 + 9p per elector
Independent regional candidate	Region	The total of the maximum limit for each constituency in the region for the short campaign

4.29 Constituency candidates and independent regional list candidates were required to submit a separate spending return for each campaign period to the RO within 35 days of the election. The requirement to submit spending returns did not apply to candidates standing as party list candidates in a region as any expenditure on the campaign is reported by the party. Those candidates were however required to submit a statement of personal expenses to the RO within 35 days of the election.

### **Personal expenses and disability exemption**

4.30 Candidates also had to report their personal expenses for both the long and the short campaign. Personal expenses at most elections include reasonable travel and living expenses for the candidate. These expenses are reportable but do not count towards the spending limit. In our candidates and agents' survey overall 71% of the respondents said that they found the rules on personal expenses clear, including what constitutes a personal expense.

4.31 In addition to the rules on personal expenses at the 2016 Scottish Parliament election, reasonable costs attributed towards a candidate's disability were reportable as a personal expense, but did not count towards the personal expense limit. This was a welcome change, and we worked with ROs, parties and candidates to promote the message. Our survey for candidates and agents showed that 68% of the respondents understood that expenses relating to disability did not count towards the personal expense limit, with the awareness being higher amongst the respondents that had a

---

earlier of: the date they or another person declared their intention to stand or the date when they are nominated

disability. We are aware that the initial objective of the Scottish Government was to exempt expenses relating to a candidate's disability altogether, but this was not possible within the scope of the Scottish Parliament Elections Order. In terms of supporting accessibility and inclusion for disabled candidates at elections, the change was however, in our view, a good step forward.

#### **Recommendations 18: Costs relating to an individual's disability**

Scottish Government should review the rules relating to personal expenses and disability exemptions with a view to amending the definitions of political party and candidate spending, so that reasonable expenses that can be attributed to an individual's disability are exempt, (as was recently set out in the revised PPERA rules for non-party campaigners).

#### **Donations**

4.32 Candidates at the Scottish Parliament election had to report spending and personal expenses for the long and the short campaign, however they only had to report donations received for the short campaign. Due to a difference between the reporting requirement between the long and the short campaign, we emphasised as part of our guidance and explained to candidates, agents and ROs what is covered in the donation rules.

4.33 The absence of controls on donations to candidates in the long campaign created a lack of transparency, and is an anomaly compared to the controls on spending during that period. Candidates were able to accept money from any source, without the value and sources of the donations they accept being made public. This approach has the risk of undermining the transparency and confidence in relation to how candidates are funded.

4.34 A number of candidates and agents expected to be required to report donations received towards campaign spending in the long campaign and queried how they should report these donations. Feedback from candidates shows that just over half of all candidates who responded to the survey believed that donation controls should apply for the long campaign. This discrepancy in the reporting requirements for donations at the Scottish Parliament election should be carefully considered ahead of the 2021 Scottish Parliament elections.

#### **Recommendation 19: Reporting requirements for spending and donations**

The discrepancy in the reporting requirement between spending and donations during the long campaign at the Scottish Parliament election should be carefully considered by the Scottish Government ahead of the next Scottish Parliament election due to be held in May 2021.

#### **Candidate returns**

4.35 ROs are required to make candidate returns available for public inspection for 2 years and to forward copies of the returns and declarations to the Commission, alongside any other related documentation that we request. We have collected headline expenditure and donation information from these returns and will publish the summary data on our website. We do this to ensure that there is increased transparency in how the election was financed and contested. We also undertake risk-

based checks on donor permissibility and the accuracy of the returns submitted, concentrating our resources on where non-compliance would have the highest potential impact on confidence in the political process.

4.36 Currently ROs only make candidate returns available for public inspection in paper form, where anyone interested in inspecting a return can make an appointment to view it. With changes in technology we have previously recommended<sup>19</sup> that these returns in addition should also be made available online. Such a change would improve transparency locally and nationally by making information about spending and donations for election candidates more widely accessible.

#### **Recommendation 20: Candidate spending returns**

To improve transparency and accessibility of candidate spending returns, we have previously recommended that Returning Officers should be required to publish spending returns online as well as through the existing methods of public inspection. We support recommendation 12-5 of the Law Commissions' review 12 of Electoral Law which proposes a method for implementing this change through legislation<sup>20</sup>.

#### **Non-party campaigning**

4.37 Non-party campaigners are individuals or organisations that campaign in the run-up to elections, but are not standing as political parties or candidates in the election. At the Scottish Parliament election there were two types of non-party campaigns:

- Local campaigns: non-party campaigns for or against one or more candidates in a particular constituency or region.
- General campaigns: non-party campaigns for or against a political party, or particular categories of candidate, including campaigns on policies or issues closely associated with a particular party or category of candidates (for example, candidates in a certain age group).

4.38 Local campaigns and general campaigns have been regulated at previous Scottish Parliament elections, however the regulatory framework for general campaigns have changed significantly since 2011. Local campaign rules permit campaigners to spend up to £500 on promoting or demoting a candidate without the authorisation of the candidate's election agent, and these rules are regulated by the police. The Commission regulates the general campaign rules.

4.39 Legislative changes since 2014 mean that the rules for non-party campaigners conducting a general campaign where they are campaigning for or against a party or a category of candidates apply to spending on a wider range of campaigning activities

---

<sup>19</sup> A regulatory review of the UK's party and election finance laws, [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0008/157499/PEF-Regulatory-Review-2013.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/157499/PEF-Regulatory-Review-2013.pdf)

<sup>20</sup> Law Commissions' Review of Electoral Law, Recommendation 12-3, page 161 [http://www.lawcom.gov.uk/wp-content/uploads/2016/02/electoral\\_law\\_interim\\_report.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2016/02/electoral_law_interim_report.pdf) and recommendation 37 of the Electoral Commission's Regulatory Review of Party and Election Finance 2013 [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0008/157499/PEF-Regulatory-Review-2013.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/157499/PEF-Regulatory-Review-2013.pdf)



than for previous elections. Campaigners planning to spend more than £10,000 during the regulated period (5 January to polling day) had to register with the Electoral Commission. Registering meant that the campaigner had an increased spending limit of £75,800 and had to report their spending and donations by 5 August 2016.

4.40 This election was therefore the first Scottish Parliament election where the changes to the rules applied, which meant we needed to raise awareness with potential campaigners. We arranged a seminar in November 2015 and invited a range of different organisations that could be affected by the rules, and we also asked political parties to make their supporters aware of the rules.

4.41 There were 53 campaigners registered with the Commission during the regulated period for non-party campaigners. Registration of non-party campaigners are not country specific and the majority of these campaigners did not actively campaign at the Scottish Parliament election. All registered campaigners that spent more than £10,000 campaigning during the regulated period were required to submit a spending and donations return to the Commission on 5 August. These returns will be published on our website.

### **Regulatory approach and monitoring**

4.42 Voters need to be confident that the law on party and election finance is followed and that those who break the law are dealt with proportionately and effectively. This transparency enables high levels of scrutiny and debate about how political parties and non-party campaigners are funded and how they spend their money during elections. Political parties, candidates and non-party campaigners are expected to comply with all the rules and controls set out in the relevant legislation.

4.43 The Commission produced specific guidance for parties, candidates and non-party campaigners for the election, and we offered an advice service to answer questions that campaigners had about the rules. The results from our candidate and agent's survey shows that 33% did not use the guidance, just over half (52%) of the respondents found the Commission a useful source for advice and guidance and only 4% did not find it useful.

4.44 We took a proactive approach in raising awareness about the rules, including sending the guidance to parties and non-party campaigners, hosting sessions at party conferences in the autumn of 2015, hosting a seminar for non-party campaigners, sending a letter to the independent candidates outlining the rules, and cascading the candidates and agents' guidance to the candidates through their party. This approach supports the Commission's aim of ensuring compliance with the rules through support and guidance.

4.45 The Commission actively monitored campaign activity ahead of the Scottish Parliament election to ensure compliance<sup>21</sup>. Monitoring campaign spending and

---

<sup>21</sup> Campaign monitoring briefing for the May 2016 elections  
[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0011/194960/May-2016-Elections-Briefing-Note.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/194960/May-2016-Elections-Briefing-Note.pdf)



political donations helped us identify emerging issues and deal with them in real time through advice and guidance to those we regulate.

4.46 Under the Political Parties, Elections and Referendums Act 2000 (PPERA), the Commission regulates political parties and non-party campaigners at the Scottish Parliament election. Whilst we have responsibilities to monitor and take all reasonable steps relating to compliance of the candidate expenses and donations rules at the election under the Scottish Parliament (Elections etc.) Order 2015, investigations into alleged breaches by individual candidates and related prosecutions are the responsibility of respectively Police Scotland and the COPFS.

4.47 Where potential breaches or offences of PERA are identified, we consider whether to conduct an investigation. When appropriate, and in line with our Enforcement Policy<sup>22</sup>, we will sanction those who fail to comply with PERA.

## Campaign issues, trends and developments

4.48 During the run up to the Scottish Parliament election we identified a number of compliance issues which we intend to consider in further detail ahead of future elections. The issues are outlined in the following section.

### Imprints

4.49 An imprint should be added to all campaign material and, in the case of printed material, must be added by law, to show who is responsible for its production. It helps to ensure that the campaign is transparent. Although not specified in law we also hold the view that imprints should be added to all electronic campaign material, as a matter of good practice.

4.50 Through campaign monitoring we identified several non-party campaigners, who did not have a complete imprint on their campaign material. Even if a non-party campaigner is not spending enough to be required to register, its campaign material must still carry an imprint. We contacted the campaigners that we were able to identify to make them aware of the imprint requirements, and also asked the political parties to ensure that their supporters were aware of the requirement.

4.51 Some of the campaign material produced for the Scottish Parliament election contained imprints that were difficult to read, for example, the imprint being in small print or in a colour close to the colour of the campaign material on which it was written. Although the material technically complied with legislation it did not uphold the transparency which is the purpose of the imprint requirement.

### Recommendation 21: Legibility of imprints

The purpose of an imprint is to show who is responsible for the production of campaign material. If the imprint is difficult for the voter to read it could lead to a loss of this transparency for the voter, and we recommend that all imprints must be legible.

---

<sup>22</sup> Enforcement – allegations and casework <http://www.electoralcommission.org.uk/our-work/roles-and-responsibilities/our-role-as-regulator-of-political-party-finances/making-an-allegation>

### **Regulating candidates' spending and donations**

4.52 In our public opinion survey we asked to what extent people agree or disagree that 'if a political party or another campaigner is caught breaking the rules, the authorities will take appropriate action'; 63% agreed appropriate action should be taken with 23% disagreeing.

4.53 We received a number of queries about potential breaches of the rules relating to candidates' and agents' compliance, including some complaints asking the Commission to investigate alleged breaches of the candidate rules. Since we do not have these powers, we asked complainants to contact the police directly. The existence of two regulatory frameworks for similar offences can cause confusion amongst voters about who is responsible for breaches of the rules. The dual regulatory system also creates different approaches to enforcement between the police and the Commission in dealing with similar offences.

4.54 We have previously recommended extending our investigative and sanctioning powers at major elections for offences relating to candidate spending and donations. We continue to believe that this change would help ensure compliance with the rules and strengthen the voters' trust in the regulatory system. This change would also ensure that parties and candidates are subject to the same sanctions if they do not comply with the legislation. In the current system a party could be subject to a civil sanction, whereas a candidate could be subject to criminal prosecution for the same category of offence.

4.55 We recognise that there would be an ongoing cost to setting up and maintaining the appropriate structures, including within the Commission, to make an enhanced framework work effectively. As with any significant reform to the regulatory framework, these kinds of changes would require a lead-in time to allow the Scottish Government and Scottish Parliament to legislate to extend our investigative and sanctioning powers, and then allow sufficient time for campaigners, the Commission and law enforcement authorities to adjust prior to implementation. It will be important for Governments and Parliaments across the UK to work together on introducing the Commission's new powers for different sets of elections. This would support a smooth transition to a joined up system of regulation and enforcement for candidates and parties across the UK.

### **Recommendation 22: Regulating candidate spending and donations**

We continue to recommend extending our investigative and sanctioning powers at major elections for offences relating to candidate spending and donations, including at Scottish Parliament elections. It will be important for the Scottish Parliament and Scottish Government to work with Governments and Parliaments across the UK on introducing the Commission's new powers for different sets of elections.

### **Developments in campaigning and use of social media**

4.56 The use of social media in campaigning at the Scottish Parliament election has grown significantly since the 2011 election. Accordingly, there is an increasing interest and focus on campaigners' use of social media during the regulated period, as well as ensuring that the rules on campaigning are understood in an online context and compliance is upheld.

4.57 Online campaigning can vary from low cost informal activity through larger social media providers, or staff costs associated with updating these communication channels. The majority of campaigners at the Scottish Parliament election had websites and active social media profiles, with some of them advertising on social media, or placing election campaign adverts on websites. Several campaigners also raised funds through crowdfunding sites.

4.58 Raising funds through crowdfunding sites was popular with candidates, parties and non-party campaigners. Since this is a relatively new method of raising donations we aimed to ensure that those raising funds were transparent about who the money was going to and to add an imprint so that the donor would be clear about who was raising the money. The former is especially important as the threshold for checking permissibility is different depending on if the money is going directly to the candidate or to their party branch. The Commission incorporated these recommendations in our guidance and wrote to campaigners that we had identified through our monitoring process as not being transparent.

4.59 Although there are no specific controls in PPERA or the Scottish Parliament (Elections etc.) Order 2015 on the use of social media or digital campaign methods, any such spending would be subject to existing spending and reporting requirements. However, as the use of social media evolves, it will be important to monitor and understand changing campaigning techniques. Currently social media is not a separate reporting category, therefore we will only be able to conduct analysis of spending that is reported and categorised under the existing categories, such as 'advertising' or 'unsolicited material sent to voters'. From our experience of analysing returns from the 2015 UKPGE we were only able to identify spend on social media if the invoices enclosed in the spending returns identified the supplier as a social media provider. We anticipate that this will also be the case for the returns at this election, as the reporting categories are still the same.

### **Recommendation 23: Reporting campaign spending on social media**

We will give further consideration to how campaigners should report spend on social media at future elections. As spend in this area grows, there is the potential for less transparency if expenditure on social media is not easily identifiable within the spending returns because social media is not a specific reporting category. This will need to be considered as part of reviewing all of the expenditure reporting categories to ensure that they remain proportionate and relevant to future trends in campaigning. In case any of these changes would need to be implemented through legislation, we recommend that the Scottish Government and Parliament should consider the timing needed for implementing changes before the UK Parliamentary General Election in 2020 and the Scottish Parliamentary election in 2021<sup>23</sup>.

---

<sup>23</sup> We made the same recommendation in relation to the UK Parliamentary Election spending categories, and for National Assembly for Wales and Northern Ireland Assembly elections in our post-election reports in 2015 and 2016

## **Tactical voting**

4.60 Parties and candidates made use of tactical voting messages in their campaigning. There were a few examples of non-party campaigners asking voters to vote for one party on the constituency ballot paper and another party on the regional list. Although all parties, where they stood candidates in the constituency and the region, asked voters to vote for their party for both votes, the debate in the media and on social media was focussed on “split voting strategies”. By this we take it to mean discussion that if you were a particular voter and your chosen party was likely to win so many constituency seats that your vote in the regional list would be ‘wasted’ then who should you vote for as a second choice.

4.61 The answer to voting strategy questions under AMS is beyond the remit of the Commission and we leave that to academics. This type of campaigning, however, is covered by the PPERA rules for non-party campaigners, meaning they must stay within their spending limit and adhere to the imprint regulations when they are campaigning for or against a party or parties. It is however worth noting the trend that how the seats are allocated between the constituency and the region became a campaign tactic at the 2016 election.

## **Campaigner behaviour**

4.62 Campaigners are an essential element of a healthy democracy, and their right to put their arguments to voters should be supported and protected. It is equally important, however, to ensure that the activities of campaigners do not bring into question the integrity of the electoral process, or the candidates they are supporting.

4.63 The Commission has developed a Code of Conduct for campaigners at elections and referendums in consultation with political parties. The Code sets out what is, and is not, considered acceptable behaviour at polling places and in the community during the lead-up to polling day<sup>24</sup>. The Code covered everyone actively involved in campaigning at the Scottish Parliament election.

4.64 Candidates, parties and campaigners at the Scottish Parliament election were made aware of the Code through the Commission’s website and at ROs’ party, candidate and agent briefings. The Commission only received a few allegations about breaches of the code, and these were resolved promptly.

4.65 The code is currently a voluntary agreement, which is not set in legislation. We suggested to the Law Commissions’ review that they should consider making the Code of Conduct mandatory which they have supported so that the following activities (regardless of who carries them out) are offences under electoral law:

- It should be an offence to compel someone to apply to vote by post or appoint a proxy (or to prevent them from doing so) against their will.
- It should be an offence for anyone to alter an elector’s completed absent vote application form.

---

<sup>24</sup> Code of Conduct for Campaigners

[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0011/179741/Code-of-conduct-for-campaigners-2015.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/179741/Code-of-conduct-for-campaigners-2015.pdf)

- It should be an offence for anyone to take an elector’s uncompleted postal ballot pack from them.
- It should be an offence for anyone to open (except for a lawful purpose e.g. for the Royal Mail to direct the envelope to the correct returning officer) or alter the contents of a completed postal ballot pack, including either the ballot paper or the postal voting statement, before it has been received by the returning officer.

4.66 These offences would apply equally to campaigners and others (including family members, for example) and it would be for the courts to determine the appropriate type and level of punishment, taking into account the specific circumstances of each individual case. We expect that this would mean, for example, that campaigners, agents or candidates would receive more significant penalties including, if appropriate, being barred from standing for election for a period, reflecting the position of responsibility that campaigners hold.

## Counts

4.67 All counts across Scotland commenced immediately after the close of poll at 10pm.

### **Appointment of counting agents**

4.68 Each candidate standing in a constituency and each party or independent regional candidate standing on the regional list were allowed to appoint counting agents to attending the verification and count process. Counting agents are important to the process, as they ensure that there is transparency and integrity around the count.

4.69 Unlike at other elections there was no formula in the rules for the Scottish Parliament election for calculating the number of counting agents that could be appointed for candidate or party. Instead the RO had discretion to allocate numbers of counting agents taking into account that each candidate or party should be allowed to oversee the relevant proceedings, while taking health and safety considerations into account. The RO had to allow each candidate or party the same number of counting agents

4.70 While it is acceptable that the number of counting agents allowed at different count centres varied across Scotland, the logic by which they were determined, which varied, led to concerns from some candidates and parties being expressed who wished to appoint more counting agents than they were allocated.

### **Recommendation 24: Appointment of Counting Agents**

To ensure consistency in approach across Scotland in determining how many counting agents are permitted at counts for future Scottish Parliament elections, Scottish Government should consult relevant stakeholders ahead of the next election to find an appropriate solution. This would ensure certainty on how counting agents are appointed across Scotland, and the approach could be implemented either through legislative change or through direction from the Convener of the EMB.

### **Timing of the count**

4.71 The RO had to take reasonable steps to begin counting the votes as soon as practicable after the close of poll. A number of factors did influence the length of time taken to count the votes, for example, the geography of the area which impacts on how long it takes to get the ballot boxes in from the polling place to the count venue, the size of count venues available in the area and counting ballot papers for two separate contests. Feedback from ROs also indicates that a higher number than usual of postal voters delivered their postal votes to a polling station. Once received in the count centre the postal vote PVS needs to be checked.

4.72 These factors all impacted on the time taken to count the votes in the different constituencies and regions across Scotland. The majority of the results were declared in the early hours of Friday morning with the final result declared at 8:45am. Several respondents to our candidate and agents survey raised concerns about the duration of the count and highlighted 'delays' on the night. However, the factors set out above which influence the length of time it takes to complete the count inevitably means that when night time counts are used at Scottish Parliament elections some declarations will in run into the early morning.

### **Declaring the result**

4.73 The RO makes a declaration about the number of ballots cast and the turnout once the verification stage is complete, and then must make another declaration once the counting stage is complete announcing which candidates have been elected. For the Scottish Parliament election there was not a template for the declarations, which meant that the style and length of declarations varied across Scotland. We received a number of comments regarding the lack of consistency in the declarations.

### **Recommendation 25: Guidance on count declarations**

For future elections we will work with the EMB to develop a guidance note for ROs to streamline the declarations. This would include general guidance on the template script for the declaration, backdrops for declarations and other pertinent issues ROs may wish to consider before the declarations are made.

### **Information on results**

4.74 While ROs are responsible for declaring and publishing the local constituency and regional results, no single body is responsible for collating and publishing the complete election results for Scotland. However, following this election the EMB collated and published some analysis of the results on their Elections Scotland website<sup>25</sup>. We welcome this initiative.

---

<sup>25</sup> Elections Scotland <http://www.electionsscotland.info/>



### **Recommendation 26: Collation of election results data**

We recommend that the EMB continues to publish collated Scottish results data in order to provide transparency for voters. In taking this forward the EMB should consult with stakeholders, including parties and academics, in order to identify the most useful content and format for the publication of results data.

### **Funding the election**

4.75 The Scottish Parliament election was funded for the first time in 2016 by the Scottish Government via a fees and charges order. Previously, until changes enacted by the Scotland Act 2012, the costs incurred by ROs in administering the election were met by UK Government under a fees and charges order.

4.76 The Scottish Parliament Elections (Returning Officer Fees and Charges) Regulations 2016 allowed for the payment of a set fee to each Constituency Returning Officer and Regional Returning Officer for the areas they administer and a maximum recoverable amount was set for the administration of the election rather than ring-fenced amounts for particular activities. The total maximum recoverable amount in respect of the constituencies in Scotland was £11,244,017 and for the regions was £39,600, an overall total of £11,283,617. The actual cost that RO incurred in running the elections is not yet known. The Scottish Government provided guidance on how to account for the election and set the deadline of 7 November 2016 for the submission of ROs election accounts. The six month deadline for submitting RO accounts was in line with the recommendation made by the Commission in our December 2012 report on Costs of the May 2011 referendum on the UK Parliamentary voting system<sup>26</sup>. In our 2012 report we also recommended that all UK Governments should publish full cost details for all future polls that were centrally funded in a similar manner to our own 2012 report.

### **Recommendation 27: Reporting on the costs of the election**

We recommend that Scottish Government, when in a position to be able to do so, publicly report on the administration of the fees and charges order for this election in order to ensure transparency of process and make any recommendations necessary for improvements in the way the process is administered.

4.77 Scotland Government also met the costs of Royal Mail's delivery of the freepost election communications of candidates and political parties. Royal Mail delivered 13.2 million addressed items and 16.4 million unaddressed items – 29.6 million in all. The total cost of all postings was £6.8 million.

4.78 Related to the question of funding the election is the matter of councils being able to continue to deliver the administration of elections in the current financial environment where councils are reducing staff, which has an impact on the ability of

---

<sup>26</sup> [Cost of the UK PVS referendum](#) December 2012



ROs to use experienced staff to deliver the election and ensure succession planning for future electoral events.

4.79 During the election we received reports of concerns from the electoral community that resourcing the election in terms of experienced staff being available was becoming an increasing worry.

**Recommendation 28: Resourcing the election**

We recommend that the issue of local government staff resource for elections be addressed by the Scottish Government, the EMB and individual ROs, set in the context of the future role of the EMB and with consideration of how that can assist through any economies of scale that are available. We would be happy to assist in any such undertaking.

# 5 Looking ahead

## The Scotland Act 2016 and the Commission's role

5.1 As previously mentioned, the Scotland Acts 2012 and 2016 provide the Scottish Parliament with legislative competence for the administration and regulation of Scottish Parliament elections. Provisions in the 2016 Scotland Act also give legislative competence over some of the functions of the Electoral Commission with respect to elections to the Scottish Parliament. Many of the Commission's functions regarding local government elections are already devolved to the Scottish Parliament and the Electoral Commission will also become accountable to the Scottish Parliament in respect of its Scottish Parliament functions.

5.2 The Commission welcomes these developments and currently has a full programme of work in place for future elections in Scotland. It is important for the Commission to be accountable to and scrutinised by the Scottish Parliament for its relevant activities and spending in relation to elections for which the Scottish Parliament has legislative responsibility. We look forward to working with the Scottish Parliament to achieve this in the most effective and transparent way.

## Scottish Advisory Group

5.3 The Commission has decided to establish an advisory group to act as a forum to share information and act as a sounding board in which past, current and future work of the Commission can be discussed. It will also provide the Scottish Electoral Commissioner with a wide range of advice from Scottish civic society. It is anticipated that the group will meet two to three times a year. The advisory group will supplement the already existing Commission mechanisms by which we consult and gather advice and information.

# Appendix A: Research methodology

## Public opinion survey

Between 6 and 28 May 2016, BMG Research interviewed a sample of 962 adults aged 18+ across Scotland and 262 young people aged 16 or 17. Interviews were conducted by telephone: 80% landline and 20% mobile. Data are weighted to match the profile of Scotland.

Where results do not sum to 100, this is due to multiple responses, computer rounding or the exclusion of don't knows/not stated.

Comparisons made between these polls and previous post-elections surveys are indicative and should be treated with some caution.

[More information can be found on our website.](#)

## Electoral data

David Denver, Emeritus Professor, Lancaster University collected and collated data from Returning Officers in Scotland on the Commission's behalf in collaboration with Colin Rallings and Michael Thrasher, Elections Centre, University of Plymouth. This comprised form V and an Additional Data form, which included data relating to electoral registration, turnout, absent voting and rejected ballots.

## Regional/Local Returning Officer, Electoral Registration Officers and other stakeholder's feedback

The Commission issued a feedback form to Returning Officers to comment on their experience of administering the 5 May polls. The survey was conducted on Survey Monkey and was open between 6 May and 10 June 2016. A total of 13 responses were received from Scottish local authorities.

## Electoral integrity

We met with Police Scotland, COPFS and representatives from the EMB and the SAA after 5 May to discuss matters relating to electoral fraud and to receive feedback on the election.

The Commission collects data about cases of alleged electoral fraud from Police Scotland on a monthly basis.

## Political parties' feedback

We received feedback from individual political parties and collectively we received feedback via the Scottish Parliament Political Parties Panel.

## Candidates and agents survey

We issued a postal survey to all constituency agents in the week after polling day. Included in the pack was an additional survey for the candidate to fill out if they wished to. Surveys were also issued to the agents for all regional party lists, and to the agents for independent candidates who were standing on these lists. We issued 316 postal surveys and received 89 responses (a 28% response rate). Eighty-one per cent of respondents said they were agents, 4% were candidates, but 16% said they acted as both. The respondents came from across the political spectrum (with 94% standing on behalf of a political party and 4% being independent candidates), and varied in whether they (or their candidate) had stood for election or held office before. Findings are not representative of the views of all candidates and agents.

## Public information campaign tracking research methodology

We appointed research agency TNS to carry out the research on our behalf. We conducted two waves of tracking research, one before the campaign (the 'pre-wave') and one after the campaign (the 'post-wave'), to assess recognition levels. We conducted interviews from samples of adults aged 16 and over Scotland (18 and over in the rest of the UK).

The pre-wave took place from 25 February to 9 March prior to the main campaign launch on 14 March. The post-wave took place immediately after the campaign ended, from 19 April to 3 May – concluding before polling day.

All interviews took place online and data was collected using TNS online omnibus survey. Questions were included at the start of the survey to check nationality, and thereby eligibility to vote. Interviewees were selected with quotas based on gender, age and social grade, and the final sample was weighted to be representative of the population as a whole.

We developed the questionnaire in conjunction with TNS. The majority of the questionnaire was standardised across the research waves and countries to enable comparisons to be made. Sample sizes across the UK:

	<b>Pre-wave</b>	<b>Post- wave</b>
<b>UK</b>	1238	1260
<b>England</b>	1030	1037
<b>Wales</b>	521	610
<b>Scotland</b>	587	754
<b>Northern Ireland</b>	374	600