

# Referendum on independence for Scotland

## Progress report on preparations

### Introduction

1. In January 2013, the Commission published its advice to the Scottish Government on the proposed referendum question and committed to review the state of preparations for the delivery of the referendum. We said we would make a public statement, in autumn 2013, to inform the Scottish Parliament.
2. This report contains the Commission's assessment of preparations for the referendum, which will be held in just under a year's time on 18 September 2014.

### Summary

3. The Commission's overall assessment is that preparations are currently on track for delivering a well-run referendum delivered in the interests of the voter. In reaching our view on the current state of progress we have considered the evidence in the context of our established principles for a well-run referendum; the recommendations from our report on the 2011 referendums; our March 2012 response to the Scottish and UK Governments' consultations on the referendum; our January 2013 report on the referendum question and our advice on spending limits. We have also reviewed any risks which have been identified since setting out our recommendations and assessed the effectiveness of plans to mitigate the risks.

### Background

4. On 15 October 2012, the Scottish and UK Governments reached an Agreement<sup>1</sup> to work together to ensure that a referendum on independence for Scotland could take place. An example of that joint working has been the UK Government's decision to delay the commencement in Scotland of the transition to Individual Electoral Registration (IER) until after the referendum.
5. Part of the joint government agreement provides for the Electoral Commission having responsibility for:

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<sup>1</sup> UK Government and the Scottish Government *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland* (Edinburgh, 15 October 2012)

- advising on the wording and intelligibility of the referendum question;
- registering campaigners who want to spend significant amounts in the referendum;
- guidance for campaigners on registration, designation, campaign spending and donations;
- where appropriate, appointing lead campaign organisations for each outcome;
- regulating campaign spending and donations;
- promoting public awareness of the referendum; and
- reporting on the referendum process.

6. We will report to the Scottish Parliament on this work. Our assessment of preparations for the referendum is part of our reporting on the referendum. Our aim is to highlight any significant issues that might affect the delivery of the referendum while there is still time to address them.

7. Although not appointed as the Chief Counting Officer (CCO) until the Referendum Bill is enacted, Mary Pitcaithly, Convener of the Electoral Management Board for Scotland and therefore CCO Designate, has commenced planning for her anticipated duties and the manner in which she will conduct the referendum as follows:

- ensuring the proper and effective conduct of the referendum;
- the conduct of the poll;
- the verification and counting of the votes and the certification of the outcome;
- appointing a Counting Officer (CO) for each local government area;
- providing guidance and direction to COs and Electoral Registration Officers (EROs) on the exercise of their functions in relation to the referendum<sup>2</sup>;
- undertaking public awareness activity; and
- setting performance measures for COs and monitoring performance on an on-going basis.

## Legislation

8. A well-run referendum which engenders the confidence of voters and campaigners is underpinned by a clear and certain legal framework. Good legislation provides absolute clarity on the roles and responsibilities of those administering the referendum and sets out fair rules governing campaign spending and fundraising.

9. To enable those aged 16 or over to participate as voters in the referendum, the Scottish Government introduced a Franchise Bill in addition to the main Referendum Bill. We have considered the progress of both pieces of legislation in reaching our assessment on the state of the legislative framework for the referendum.

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<sup>2</sup> Currently the Scottish Independence Referendum Bill does not include provision for the CCO to provide guidance to COs or EROs although it does provide for the CCO to give directions. Both the CCO and the Commission are working on the assumption that, as indicated by Scottish Government, an amendment will be tabled to the Bill at stage 2 providing for such a responsibility.

## **Scottish Independence Referendum (Franchise) Act 2013**

10. The Franchise Bill was introduced into the Scottish Parliament on 11 March 2013 and received Royal Assent on 7 August. The Franchise Act establishes voting eligibility for the referendum and sets out the arrangements to enable those who will be aged 16 or above on the date of the poll - but who will not be old enough to join the local government register - to register and vote in the referendum. It provides for Electoral Registration Officers (EROs) to conduct a canvass of young voters alongside the usual autumn canvass from 1 October 2013.

11. While the franchise is a matter for Parliaments to decide, we welcome the clarity that an established franchise brings for the referendum administrative process in general and for our public awareness planning. However, we note that discussions are continuing in regard to the 16 and 17 year old dependents of eligible service voters stationed outside of Scotland. Should the Scottish Parliament decide to include them in the franchise then the mechanisms by which they will be able to register and receive voter and campaign information will need to be in place in sufficient time to enable their participation on the same basis as other voters. We will ensure such information is included in our public awareness work.

12. In our view the current arrangements for both the registration of young voters during the 2013 canvass and through rolling registration are practicable and achievable within the timescales. There is sufficient certainty on the final rules to allow EROs and the Commission to plan our respective local and national engagement strategies for young voters. We will continue to work with EROs and monitor their preparations for the canvass to help ensure that plans remain on track.

## **The Scottish Independence Referendum Bill**

13. The Referendum Bill, introduced to the Scottish Parliament on 21 March 2013, includes the question to be asked on 18 September 2014. We welcome the fact that the question included in the Bill is based on our advice to the Scottish Government following our question assessment process. The Bill establishes the roles and responsibilities of those tasked with delivering the referendum as well as the detailed rules for the conduct of the poll. The Bill also sets out the rules for campaigning at the referendum, including spending limits (which we welcome as being in line with our advice to Scottish Government published earlier this year) and reporting requirements for campaigners.

14. In reaching our view on the progress of the legislation we have considered whether the detailed rules for the delivery, conduct and regulation of the referendum are likely to be clear, practicable and in force at least 28 weeks in advance of polling day (or by 6 March 2014). After the May 2011 referendum on the voting system for the UK Parliament we recommended that in future the legislative basis for a referendum should be in place 28 weeks in advance of the proposed polling day. We have also considered the extent to which the Referendum Bill addresses the other key recommendations we made following the two referendums in 2011.

15. We note that the Bill is likely to be subject to amendment once it reaches Stage 2 in October this year. If any amendments lead us to reassess our view on the progress and effectiveness of the legislation we will brief Parliament accordingly.

**Will the referendum legislation enable a well-planned poll which is consistently delivered?**

16. We believe that the Bill provides clarity on roles and responsibilities at the referendum and sufficient detail on the rules for the conduct of the poll to enable the Chief Counting Officer (CCO), Counting Officers (COs) and the Commission to plan effectively for our respective functions at the referendum. Currently the Bill does not include provision for the CCO to provide guidance to COs or EROs although it does provide for the CCO to give directions. The guidance function currently rests with the Commission. Both the CCO and the Commission are working on the assumption that, as indicated by Scottish Government, an amendment will be tabled to the Bill at stage 2 providing for such a responsibility to be placed on the CCO and not us.

17. The Scottish Government will also need to ensure that any secondary legislation, including the Fees and Charges Order for Counting Officers, is also in force 28 weeks ahead of the poll. If the legislation is enacted by December 2013, as currently anticipated, then the legislative framework will be settled nearly nine months ahead of the poll as opposed to three months ahead as was the case for the 2011 referendums and will provide the CCO with more time to develop and consult on any directions and associated guidance for Counting Officers.

18. Where relevant to the Scottish Referendum, the Bill also reflects our 2011 referendum recommendations. This includes exempting Counting Officers from the restrictions on public bodies providing referendum information to the public in the 28 days ahead of the poll to enable them to carry out voter information activity. We have minor concerns about the practical effect of some conduct provisions in the Bill, for example in relation to regulating access to polling stations and the count, and the procedure for requesting local recounts. We have raised these concerns with Scottish Government officials and the Referendum Bill Committee; we understand that the Scottish Government is considering whether some of our concerns could be addressed via minor amendments to the Bill at Stage 2.

19. While the Bill we believe will enable the delivery of good administrative process, we also continue to support the inclusion in the Bill, as does the CCO, of a provision which would place an explicit duty on Counting Officers to promote 'participation' and awareness around the referendum.

**Will the referendum legislation enable clear rules for all campaigners, including on the process for designating campaigners and provide for transparency on campaign funding and spending?**

20. The Scottish Government has set out a suitable timetable for bringing forward legislation for next year's independence referendum under which the regulation of the referendum can take place. The timetable has allowed campaigner feedback and constructive engagement in the process. It has also enabled the Commission to

develop and publish guidance in time for campaigners to understand the rules before they come into force.

21. At the time of making this statement, the regulatory controls in the Bill provide us with no significant concerns, although there are some outstanding issues that the Bill Committee has identified in its Stage 1 Report. The Bill is not yet in its final form and there are issues which the Scottish Parliament will need to consider further at Stage 2. At that time, we will provide briefings to MSPs on any remaining areas of concern to us.

22. One outstanding issue identified by the Bill Committee is that permitted participants will only be entitled to the Scottish local government register and only Scottish EROs will be under a duty to provide the register. This could affect campaigners' ability to comply with the permissibility controls set out in the Bill. We appreciate that the Scottish Parliament cannot change the law in the other parts of the UK but, given our concerns, we have previously recommended to the Bill Committee that the Scottish and UK Governments arrange for campaigners at the referendum to be given access to all the registers which include permissible donors.

23. We are pleased that the Scottish Government has accepted many of the recommendations we made in our report following the referendums in 2011. These are intended to improve the regulation of campaigners at the independence referendum. We are particularly pleased that steps are being taken to address the need for increased transparency of campaigner finance before voters go to the poll. We also continue to support the earlier designation of lead campaigners than currently provided for in the Bill.

24. In July 2013 the UK Government introduced the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill into the UK Parliament. Part 2 of the Bill amends the rules on non-party campaigning in the run-up to certain elections, including the 2015 UK Parliamentary General Election. If agreed, the new rules would come into force on 23 May 2014 and would therefore be in place throughout the period during which campaigning at the referendum is regulated. In our briefings on the Bill for the UK Parliament we have noted that the broad scope of the Bill's new definition of regulated campaigning activity at elections could potentially affect campaigning at the referendum. This is because it might be argued that some campaigning relating to the referendum is also election campaigning covered by the Bill. It is important that the new Bill does not cause uncertainty for campaigners at the referendum. Under the Edinburgh Agreement the Scottish and UK Governments have agreed to work together to ensure that the referendum is well run, and we have asked the UK Government to clarify the position under the Bill and to take any steps necessary to ensure that the referendum is not affected. The UK Government has worked to ensure the transition to IER has no adverse impact on the referendum and we would hope a similar result can be achieved in relation to this matter.

## Information from Scottish and UK Governments

25. In the Commission's report on the assessment of the independence referendum question, published in January 2013, we said that our research showed voters wanted factual information ahead of the referendum. Although we would not expect the terms of independence to be agreed before the vote, clarity about how the terms of independence will be decided would help voters understand how competing claims made by campaigners before the referendum would be resolved. We believe this is important for voters. We therefore recommended that the Scottish and UK Governments clarify what process would follow the referendum in sufficient detail so as to inform people what would happen if most voters voted 'Yes' or if most voters voted 'No'. To avoid confusion we asked the Governments to agree a joint statement if possible. If a joint position could be agreed we undertook to consider its inclusion in our information booklet to be circulated to households as part of our public awareness campaign in the run up to the referendum.

26. We are aware that discussions between both Governments are taking place on this matter and there are signs that progress towards the development of a joint position is being made. We welcome this progress and have asked that the joint position is agreed by 20<sup>th</sup> December. This coincides with the expected Royal Assent to the Referendum Bill and the subsequent opening of the register of permitted participants for campaigners at the referendum.

## Preparations by Chief Counting Officer

27. The Chief Counting Officer designate, Mary Pitcaithly, is not appointed CCO until the Referendum Bill receives Royal Assent, expected in December 2013. The CCO designate, who is also the Elections Convener of the Electoral Management Board (EMB) for Scotland, has however secured Scottish Government funding to ensure her planning can develop and is using the existing EMB structures to ensure the delivery of robust referendum procedures.

28. The Commission and others have worked with the CCO to assist her thinking in developing plans for the delivery of the referendum. These plans have been discussed and agreed by the EMB and cover such areas as:

- the governance arrangements for the referendum, including the principles and objectives which underpin them;
- the approach to delivering the referendum with the COs employing a mixture of seeking consensus of approach, the provision of guidance and some direction by the CCO to COs in some specific areas which are specifically 'voter facing', and the count processes and the general arrangements for the count; and
- the development of a performance management framework to assist her in the delivery of the referendum.

29. Currently, the CCO is working with the Scottish Government in developing the Fees and Charges Order to fund the administration of the referendum by the CCO and her Counting Officers to be introduced when the Referendum Bill receives assent. The

Commission has also contributed its views to the Scottish Government's development of the Fees and Charges order.

30. The Commission welcomes the planning and actions undertaken by the CCO to date. We note the appointment of her core team to assist her in the role and the plans to appoint the Depute CCO and COs once she is able to do so. In addition to the progress made in planning for the delivery of the referendum, the CCO and the Commission have agreed a Memorandum of Understanding (MoU). The purpose of the MoU is to establish clarity of roles and responsibilities between the CCO and the Electoral Commission before, during and after the Referendum given our various statutory responsibilities provided for under the Bill.

31. The MoU outlines how we and the CCO will deal with areas where our responsibilities meet, to ensure that the conduct and regulation of the referendum is carried out efficiently and effectively and in the best interests of the voters and campaigners. The MoU will be placed on our website and that of the Electoral Management Board for Scotland.

## Public awareness

32. The Commission will run a public awareness campaign ahead of the referendum to provide voters with clear, neutral and accessible information to enable them to cast their vote confidently. This will include ensuring all eligible electors understand that they need to be registered in order to vote, understand how to register and the deadline for doing so.

33. The activity will take place in two phases:

- specific activity aimed at 15 – 17 year olds to coincide with the annual canvass (autumn 2013); and
- mass awareness campaign aimed at all eligible voters in the lead up to the referendum (summer 2014).

34. The specific activity aimed at 15 – 17 year olds is designed to support the work EROs will be undertaking locally to register young people during the annual canvass. We will be running radio and online advertising targeted directly at young people during the annual canvass. The aim of the advertising will be to increase awareness amongst the target audience that they are eligible to vote in the referendum but that they need to be registered in order to do so. The advertising will encourage young people to look out for the registration form being delivered to their door and will direct them to our website for further information.

35. The Commission wants as many people as possible who work with young people to make sure they are registered. We will therefore be providing resources to support other organisations to build young people's awareness of how to register and vote in the referendum. These will include downloadable posters and fact sheets in plain and accessible language. The Commission has also been working with educational bodies including the Association of Directors in Education Scotland

(ADES), Education Scotland and School Leaders Scotland to co-ordinate activity in schools.

36. In relation to service voters we work with the Ministry of Defence (MOD) every year via an information campaign to encourage Service personnel to register to vote, to keep their registration details up to date and generally to improve awareness of the need to register and the options which are available. Discussions have already begun with the MOD to put plans in place to ensure all eligible service personnel have access to the information they need in order to register to vote in the referendum. We are working with the MOD to agree the most efficient means of supplying these details and based on discussions to date, the activity will be carried out in two phases. The first phase will be as part of the main service voter campaign in February 2014 where guidance on eligibility for the Scottish independence referendum will be included in the campaign information packs. Messaging on the referendum will be reinforced in the second phase in summer 2014 where we will utilise the forces media and internal forces communications channels to disseminate guidance for personnel on how to identify whether they are eligible and how to register and vote.

37. In the immediate lead up to the referendum, the Commission will be running a Scotland wide public awareness campaign aimed at all eligible voters. The campaign will start in summer 2014 and will include TV, radio and online advertising. We are also planning to send an information booklet to every household in Scotland. The booklet will be available in alternative formats and we will be discussing our approach to making the information available in Gaelic with Bòrd na Gàidhlig.

38. The Chief Counting Officer (CCO) and Counting Officers (COs) – who will be responsible for running the referendum - will also have an important role to play in their local areas in promoting public awareness of the referendum and how to participate in it. The Commission will work with the CCO to provide COs with guidance and resources to support their local public awareness activities and to ensure consistency of information for voters across Scotland.

39. The Commission is on course to deliver the public awareness plans as outlined above.

## Campaigner guidance and regulation

40. The legislative timetable allows us to develop and publish Campaigners' Guidance in time for campaigners to understand the rules before they come into force. We will open the register of permitted participants (campaigners) upon assent of the referendum Bill and the guidance documents related to advise on this matter will be published in December 2013.

41. The remaining guidance to campaigners will be published in early January 2014, well ahead of the referendum regulated period commencing on 30 May 2014. We have engaged Yes Scotland and Better Together in discussions to ensure they are aware of our guidance plans and to provide an opportunity to influence these activities and will continue to do so. In addition, we have identified other potential permitted participants and developed an engagement strategy, which we have commenced, to make them aware of the regulatory environment of the referendum.

**25 September 2013**