

House of Commons Scottish Affairs Committee: Supplemental note on voluntary disclosure

This note provides additional information requested by the Committee to supplement the Commission's oral evidence on 4 July 2012. It deals with the subject of possible arrangements for voluntary disclosure in respect of the funding of and spending by campaigners at a Scottish referendum in the period before the regulated referendum period.

The Commission has made clear that we would welcome a statutory regulatory role at a Scottish referendum, and that the statutory regulation period should begin at least 16 weeks before polling day. However, we do not believe it would be appropriate for us to have an oversight role for any voluntary disclosure arrangements in the period before statutory regulation begins. Without legal powers to monitor and regulate, we would not be able to take steps to check the accuracy of any returns made to us under such arrangements, which would in turn mean we were unable to vouch for the accuracy of any data we were to publish. We would not want to risk the high levels of public confidence in the data we currently publish on a statutory basis being undermined by our publishing potentially less reliable data in this context. In addition, a voluntary agreement overseen by the Commission would also create the inaccurate and undesirable perception that should it be breached, we would have the power to act.

Background

1.0 For referendums held under the Political Parties, Elections and Referendums Act 2000 (PPERA), campaigners are subject to controls on the sources of funding they can accept for campaigning during the regulated referendum period and on the amount of campaign spending they can incur during that period. The length of the referendum period for each referendum is set in the enabling legislation.

1.1 Prior to the start of the regulatory controls for each referendum, donations to political parties and other regulated organisations and individuals continue to be regulated as normal under PERA.

1.2 At referendums where the PERA rules apply, during the referendum period:

- campaigners that want to spend more than £10,000 must register with us
- registered campaigners can only accept donations of more than £500 towards spending during the referendum period from sources with specified connections to the UK.
- registered campaigners are subject to spending limits set depending on the type of organisation – PPERA sets the limits for UK-wide referendums whilst the relevant Secretary of State sets the limits for referendums in parts of the UK.
- after the poll registered campaigners must report donations and spending to us for publication. The report must include details of spending, information about permissible donations over £7,500, and all impermissible donations. We have recommended that at future PPERA referendums the rules should be amended to provide for some donation reporting before polling day.

1.3 The enabling legislation for a Scottish referendum will set out the applicable rules for the referendum, including the length of the referendum period, the spending limits, the controls on the sources of donations and the reporting requirements in respect of donations and campaign spending. We have said the regulated referendum period should be at least 16 weeks long.

Possible voluntary arrangements

1.4 The Committee has invited our views on the issues that campaigners would need to consider if they wish to set up voluntary arrangements for disclosing information about funding and/or spending before the start of the referendum period.

1.5 The remainder of this note summarises our view of (i) the general scope of any voluntary arrangement, in terms of the range of requirements that could be included in the arrangement, (ii) the detailed information and/or controls that would need to be reported or applied in respect of each requirement, and (iii) the supporting processes that would be need to be put in place to enable any voluntary arrangement.

Overall scope

- 1.6 The requirements that might be included in a voluntary arrangement are:
- reporting on funding (donations and potentially also loans) accepted by campaigners
 - restrictions on the sources of funding accepted by campaigners
 - reporting on spending by campaigners
 - restrictions on the level of spending by campaigners

1.7 It would in principle be possible for a voluntary arrangement to include some or all of these requirements. Campaigners would need to agree both the set of requirements to be included in the voluntary arrangement and the detailed rules that would apply in respect of each requirement that is included.

1.8 As discussed in our oral evidence to the Committee on 4 July 2012, for any arrangement to be effective it would be important for reporting by different campaigners to be in a consistent format. We have set out below our initial thoughts on how this might be achieved.

Reporting on funding

1.9 The issues that would need to be agreed include:

- Whether loans as well as donations should be covered. Loans are not covered by the generic PPERA referendum rules, but they were regulated at the UK Parliamentary voting system referendum in 2011 and we have recommended that they should be regulated at future PPERA referendums.
- Which campaigners should report on funding. We would not anticipate a need for registered political parties to report since they already report donations and loans to the Commission on a regular basis.
- The threshold above which funding should be reported. PPERA applies a £7,500 threshold for donations to parties, third party campaigners at elections and referendum campaigners.
- The information to be published in respect of each donation, loan etc. PPERA requires us to publish the names of individual donors, but not their addresses (which are reported to us for permissibility checking purposes). We publish the names, addresses and where relevant registration numbers of non-individual donors such as companies.
- How frequently campaigners should report funding received. PPERA requires registered parties to report donations and loans every three months; other regulated individuals and members associations must report donations and loans as they accept them. Referendum campaigners and third party campaigners at elections are required to report donations after the poll, but as noted above we have recommended that an element of pre-poll reporting should apply at future PPERA referendums.

Restrictions on sources of funding

1.10 The issues that would need to be agreed include:

- The threshold above which funding should be restricted. PPERA applies a £500 threshold above which donations and loans can only be accepted by parties and regulated campaigners if they come from a permissible source.

- Which sources should be regarded as permissible. PPERA sets a standard framework for this, and we publish guidance on the requirements and how to check whether donations and loans are permissible. Our guidance on this for regulated referendum campaigners is published on our website:

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0018/105615/sp-permissibility-pvs-rc.pdf

- Associated process issues, including how long campaigners should have to check, and decide, whether to accept a donation, and whether donations that campaigners have rejected because they have identified that they are impermissible should be reported.

Reporting on spending

1.11 It would be necessary to agree what spending should be reportable, and at what frequency. PPERA sets a framework for what spending by regulated referendum campaigners is controlled and reportable, and our guidance on this is published on our website:

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/105607/to-spending-pvs-rc.pdf

Restrictions on level of spending

1.12 It would be necessary to agree what voluntary limits, if any, should apply to spending before the regulated referendum period begins. We have described our views on the spending limits during the referendum period for a Scottish referendum in our response to the UK Government and Scottish Government consultations which is available at:

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/146927/The-Scottish-referendum-Response-to-consultations.pdf

Supporting arrangements

1.13 Issues for consideration include:

- whether an external facilitator should be invited to enable discussions between campaigners
- which campaigners and prospective campaigners should be invited to agree the arrangement

- whether there should be a process for new campaigners to join the arrangement over time, and how that could happen
- where and how the information should be published and updated
- what should happen if a party to the arrangement does not comply with it. For example:
 - Whether there should be a process for correcting mistakes in information provided.
 - what should happen in the event of a disagreement about the nature of the requirements or an allegation that a requirement has not been complied with.

**Electoral Commission
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