

# Scottish Independence Referendum Bill

## Stage 3 Briefing

The Electoral Commission has provided guidance and technical advice to Scottish Government officials during the drafting of the legislation drawing on our experience of overseeing two referendums in short succession in 2011. We have also provided the Referendum (Scotland) Bill Committee with detailed briefings on the bill at Stage 1 and on amendments proposed at Stage 2. Previous briefings are available [on our website](#).

This note sets out our views on the amended bill and the amendments proposed at Stage 3.

## The Bill

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A well-run referendum which has 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. Our overall view is that the Bill as amended currently meets this standard and reflects many of the recommendations that we made following our experience of running two referendums in 2011.

Following the May 2011 referendum, we recommended that for future referendums the detailed rules should be in force at least 28 weeks in advance of polling day (or by 6 March 2014 in the case of the Scottish referendum). If the bill is enacted by the end of 2013 as anticipated this will provide for the rules to be in force nearly nine months ahead of the poll, as opposed to the three months as was the case for both 2011 referendums. We welcome the additional time this will provide for campaigners, Counting Officers and the Electoral Commission to prepare for their respective roles at the referendum. It will, however, be important to ensure that the Fees and Charges Order setting out the arrangements for the reimbursement of Counting Officers is also in place by 6 March 2014.

## **Administration of the referendum process**

We are satisfied that the Bill establishes clear roles and responsibilities for those tasked with delivering the referendum as well as the detailed rules for the conduct of the poll. This legislation will enable the Chief Counting Officer (CCO), Counting Officers (COs) and the Commission to plan effectively for our respective functions at the referendum.

Where relevant the Bill reflects our 2011 recommendations for the administration of future referendums including by 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 are pleased that this provision was strengthened by a Stage 2 amendment to give an explicit duty to Counting Officers to promote 'participation' and awareness around the referendum. We also welcomed a further amendment at Stage 2 to provide for the Commission to publish a statutory code of conduct for observers at the referendum, bringing it into line with other major referendums and elections.

## **Clear rules for campaigners and transparency on campaign funding and spending**

The Bill sets out the rules for campaigning at the referendum, including spending limits and reporting requirements for campaigners. The Scottish Government's timetable for bringing forward legislation for next year's independence referendum has allowed campaigner feedback and constructive engagement in the process. It has enabled the Commission to develop and prepare for the publication of guidance in time for campaigners to understand the rules before they come into force.

The regulatory controls in the Bill give us no significant concerns. 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 by providing for pre-poll reporting by campaigners. We also welcome the earlier designation of lead campaigners as provided for by amendment at Stage 2. This will provide for more certainty amongst campaigners and voters ahead of the regulated campaign period.

## Stage 3 amendments

We set out below our views on amendments tabled at Stage 3.

We have not commented on all amendments tabled, and the absence of comment on an amendment does not imply that we support it.

### Schedule 2, Amendments 2 - 4 (Postal voting)

These are technical drafting amendments to ensure that Counting Officers are able to issue postal ballot papers in advance of the deadline for new postal votes and amendments to existing postal votes, which is 5pm on the 11<sup>th</sup> working day before the poll. This will provide more time for postal ballot packs to be issued and returned by voters ahead of the poll and would bring arrangements in line with other elections. **We welcome these amendments.**

### Schedule 2, Amendments 7- 9 (Emergency proxy attestation)

These amendments remove the requirement to provide an attestation (a declaration of support for the application from a relevant person) when making an application for an emergency proxy vote between 11 and 6 days before the poll. The Bill currently provides that the deadline for making ordinary proxy applications is 11 working days before the poll, as opposed to 6 working days as is the case at other polls. The bill then widens the categories of voters who may apply for an emergency proxy between the deadline for normal proxy votes and 5pm on polling day and introduces the requirement for all emergency proxy applications to be supported by an attestation.

At Stage 2 of the bill we welcomed the increased range of circumstance in which voters could apply for an emergency proxy vote but noted our concerns that voters applying for an emergency proxy between the 11<sup>th</sup> working day before the poll and the 6<sup>th</sup> working day would be subject to the burden of providing an attestation, which would not be the case at other polls as they would be able to apply for a normal proxy vote in this period. In light of this we recommended that the deadline for normal proxy votes be moved back to the 6<sup>th</sup> day before the poll in line with other polls

**We have considered amendments 7-9 carefully and we welcome the fact that they would remove the requirement to provide an attestation for applications made between the 11<sup>th</sup> and 6<sup>th</sup> working days before the poll.** However, the changes will create a new category of application and we would expect the Chief Counting Officer to give further guidance to ERO/COs on processes for dealing with such applications.

## Schedule 2, Amendments 10-21, 24, 25 (Cancellation of postal ballots)

These amendments address concerns which we raised during Stage 2 about the provisions for cancelling postal ballot papers in the event that a voter changes their method of voting after postal ballot papers have already been issued for them. The Bill as currently drafted only provides for the cancellation of issued postal ballots in the event that the voter subsequently applies successfully for an emergency proxy vote and we recommended that this be widened to provide for the full range of circumstances whereby a person could change their manner of voting once a postal ballot pack has been issued. **We are satisfied that the new amendments provide for these and we also welcome the requirement they introduce for Electoral Registration Officers to notify Counting Officers that a person's application to change their manner of voting has been granted.** Again we would expect the Chief Counting Officer to issue guidance on how this should work in practice as part of her guidance package to ERO/COs.

## Schedule 4, Amendments 32-34 (Common plan)

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These amendments seek to:

- reduce the regulatory burdens on non-designated campaigners that work together by removing the potential for duplicate reporting
- reduce the regulatory burdens on campaigners that only engage in low level campaigning on behalf of the lead (designated) campaigner. These are likely to be smaller-scale campaigners.
- ensure that where campaigners work with a lead campaigner any spending incurred as a result of that work only counts against the lead campaigners limit thus allowing non-designated campaigners to use their limits on their own campaign.

**We support these amendments as an effective way of clarifying the common plan provisions in the Bill and addressing concerns set out at Stage 2.**

## Electoral Commission guidance for campaigners at the referendum

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The legislative timetable has allowed us to develop guidance for campaigners in time for campaigners to understand the rules before they come into force. We will open the register of permitted participants (campaigners) upon Royal Assent to the Referendum Bill and the guidance will be published shortly after, well ahead of the referendum regulated period commencing on 30 May 2014.

We have engaged Yes Scotland and Better Together in discussions on our guidance plans and will continue to do so. In addition, we have developed an engagement strategy to identify and establish contact with other potential permitted participants to make them aware of the regulatory environment of the referendum and meetings with potential campaigners have been underway for some time. We have also begun to publish [regular updates](#) for existing and potential campaigners.

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