

Electoral Commission advice on spending limits for the referendum on independence for Scotland

1 Recommended spending limits for the referendum on independence for Scotland

1.1 The Scottish Government set out its proposed spending limits for the independence referendum in its [January 2012 consultation](#). We commented on those proposed limits in [our March 2012 consultation response](#).

1.2 On 15 October 2012, the UK and Scottish Governments published the [Edinburgh Agreement](#), which set out both governments' view of key aspects of the referendum legislation. The Agreement gives us a role in advising on the spending limits that will cover campaigning in the last 16 weeks before the referendum, as we do for spending limits at PPERA¹ referendums in a part of the UK. It provides that the Scottish Government will have regard to our views on the level of the spending limits and the Policy Memorandum accompanying the Referendum Bill will include a statement of reasons if there is any departure from our advice.

1.3 The Electoral Commission considered advice on spending limits at meetings of the Commission Board on 16 and 24 January 2013. All the relevant Board papers and minutes are available on our [website](#).

1.4 For the reasons set out in this report, we recommend that the spending limits for the 16 week period before the independence referendum should be:

Designated lead campaigners ²	£1,500,000
Political parties represented in the Scottish Parliament:	
Scottish National Party	£1,344,000
Scottish Labour	£834,000
Scottish Conservative & Unionist Party	£396,000
Scottish Liberal Democrats	£201,000
Scottish Green Party	£150,000
Other registered campaigners	£150,000
Threshold for registration	£10,000

¹ Political Parties, Elections and Referendums Act 2000

² This limit is available to the organisations the Electoral Commission may designate, after the referendum period starts in 2014, to lead the campaigns for each outcome.

Summary of recommendations

Limit for designated lead campaigners

1.5 We are recommending a limit of £1.5m for the designated lead campaigners. This will allow the lead campaigners to put their arguments to voters during the last 16 weeks of campaigning at a referendum on independence for Scotland on a similar scale to political parties campaigning at a Scottish Parliament election.

Limit for political parties represented in the Scottish Parliament

1.6 We are recommending limits for political parties represented in the Scottish Parliament based on their actual share of the vote at the 2011 Scottish Parliament election. This will allow each of the parties to campaign on a similar scale as they did at the 2011 election in putting across their party messages. The total cumulative value of the limits for the parties that have expressed support for each outcome at the referendum will be similar.

Limit for other registered campaigners

1.7 We are recommending a limit of £150,000 for other registered campaigners. We have applied the principles for well-run referendums that we published in 2010 to set a limit which is 10% of the limit for designated lead campaigners. This will give registered campaigners sufficient scope to put their message to voters.

Threshold for registration as a campaigner

1.8 We are recommending a spending threshold for registration as a campaigner of £10,000. The key consideration in setting the level for registration is the point at which campaigners become subject to regulatory burdens. Based on the evidence and our recommended spending limits, we can see no reason to depart from the PPERA registration threshold.

2 Application of our principles to the circumstances of the independence referendum

2.1 In 2010 we published our [principles for well-run referendums](#), which are that:

- the referendum should be administered efficiently and produce results that are accepted
- there should be no barriers to voters taking part
- there should be no barriers to campaigners putting forward arguments for any of the possible outcomes.

2.2 At the same time we also set out [principles for formulating advice on spending limits for PPERA referendums](#) in particular parts of the UK. These are that limits should be set at a level which:

- allows effective campaigning for all outcomes at a referendum
- deters excessive spending, and

- is not so low as to distort reasonable campaigning behaviour and affect transparency, for instance by giving campaigners an artificial incentive to split their spending between multiple campaigning bodies.

2.3 The principles we set out in 2010 for formulating advice on spending limits are still valid and we have applied them in the context of the independence referendum, taking into account the information we now have about the likely shape and scale of campaigning, the Edinburgh Agreement and, where relevant, lessons learnt from the 2011 PPERA referendums.

2.4 In formulating our advice we have drawn from sources including [party spending returns at the 2011 Scottish Parliament election](#), [spending returns at the 2011 referendum on the UK Parliamentary voting system](#), and information in the written submissions provided by the prospective lead campaigns at the independence referendum and the views of each of the political parties represented in the Scottish Parliament:

- [Submission from Better Together](#)
- [Submission from Yes Scotland](#)
- [Written evidence from the Scottish National Party](#)
- [Written evidence from the Scottish Conservative & Unionist Party](#)
- The other parties provided their views during meetings (see paragraphs 4.7-4.12)

2.5 A specific consideration at the independence referendum is that the Edinburgh Agreement points to the need for “fairness and a level playing field” in campaign finance rules, as well as stating that the rules and standards in PPERA provide the basis for setting the limits. However, the concepts of fairness and a level playing field are capable of different interpretations in this context and the Governments did not seek to define these terms beyond what is in the Agreement.

2.6 For instance, Yes Scotland has argued that it means in effect that “the combined limits of .. the parties campaigning for a “Yes” vote must equal the combined limits of the .. parties campaigning for a “No” vote ... it will also be necessary to take a closer look at the limits and rules surrounding other campaigners”³. Better Together has not suggested a definition of ‘level playing field’ but has argued that “the way in which this referendum is run must not only be fair, but crucially must be seen to be fair” and that “a referendum based on the proposals put forward by the Scottish Government would pass neither of those tests”⁴.

2.7 It is clearly important that the campaign rules should not encourage perceptions of unfairness that could damage voters’ trust in the referendum process or result.

³ Yes Scotland written evidence: paragraphs 12

⁴ Better Together written evidence: page 1

However, the PPERA referendum rules cannot be adapted in a way that will promote all the campaigners' varying interpretations of those concepts.

2.8 For instance, there is an inherent tension between the concept of equal total spending limits for campaigners on each side of the debate (which points to a 'top down' approach to controlling the total spending on each side), and our interpretation of the PPERA model which allows all registered campaigners to participate in campaigning on a reasonable scale (which points to a 'bottom up' approach based on the amount that any campaigner would need for an effective campaign, reflecting our principle that there should be no barriers to campaigners putting forward arguments).

2.9 In practice it is not possible for spending limits to create a completely level playing field between campaigners at elections or referendums, because:

- there can be no certainty that there will be equal resources on each side, whatever the limits that apply (the purpose of spending limits in PPERA is essentially to impose a 'level ceiling' and deter excessive spending, rather than to ensure equal spending power), and
- the number of participants on each side should not be artificially limited by the rules – all those that have arguments to make and who are eligible to register should be able to make them⁵.

2.10 We have therefore considered how best to apply our principles to all the circumstances of this referendum, including campaigners' competing interpretations of the concepts set out in the Edinburgh Agreement.

2.11 In line with our principles, our advice is based on a 'bottom up' approach which takes as its starting point the amount that campaigners would need to put their views to voters in an effective way, while recognising that the limits at this referendum also need to be set in the context of the Edinburgh Agreement.

2.12 We have therefore applied the principles we set out in 2010 (paragraph 2.2) in a similar way to our advice for the 2011 referendum on the powers of the National Assembly for Wales, in that:

- the maximum spending limit should be set by reference to the spending limits applying to party campaigning at elections to the Scottish Parliament
- where we designate lead campaigners, the maximum spending limit should apply to them
- the limit applying to registered campaigners, other than lead campaigners and political parties, should be a minimum of £100,000 or 10% of the limit for lead campaign organisations, whichever is higher

⁵ PPERA restricts registration to individuals resident in the UK or on an electoral register, and to organisations that meet the PPERA permissible donor requirements.

- the limit applying to political parties that register to campaign should reflect the general approach underlying the PPERA provisions for UK-wide referendums, which give higher spending limits to parties with a track record of electoral support than to other registered campaigners
- the track record of electoral support for political parties should be assessed on the basis of the most recent relevant election (Scottish Parliament election 2011)

2.13 To reflect the specific circumstances of the independence referendum, including the terms of the Edinburgh Agreement, we have applied our principles in a way that reflects:

- (i) the need to take into account the available evidence on the likely cost of campaigning effectively at this referendum, and
- (ii) the need to apply the PPERA model in a way which maintains public confidence in the rules.

3 Limit for designated lead campaigners

3.1 In drawing up our advice we have considered the nature of party and candidate spending at Scottish Parliament elections, and campaigners' views on appropriate limits at this referendum.

Scottish Parliament elections: national and regional party spending

3.2 The Scottish Government based its January 2012 proposal on the spending limits for a Scottish Parliament election which are calculated on a combination of constituency and regional limits (see paragraph 3.5). However, it suggested that although a referendum can be compared with the national element of an election campaign, there will not be local constituency campaigns in respect of any candidates. It therefore proposed a limit that is half the maximum party spending limit for Scottish Parliament elections.

3.3 Our March 2012 consultation response commented that the Scottish Government's proposed limits for lead campaigners should be set at a level closer to the £1.5m total spending limit for those parties contesting all seats at a Scottish Parliament election. We suggested that the lead campaigners at a referendum on independence for Scotland should be able to put their arguments to voters by campaigning on a similar scale to political parties campaigning at a Scottish Parliament election.

3.4 The limits we are now proposing for lead campaigners at the referendum on independence for Scotland are based solely on the party spending limits at Scottish Parliament elections. Those limits cover spending to promote the party as a whole and its regional closed lists (see paragraph 3.5). The party limits do not reflect spending that is aimed at promoting individual candidates at those elections, which totalled £1.8m at the 2011 election. We do not therefore think it is necessary to reduce the proposed limits to allow for the absence of constituency campaigning by candidates at a referendum. Appendix A shows the parties' total spending at the

2007 and 2011 Scottish Parliament elections, including candidate spending, and the limits that applied.

3.5 The limit on campaign spending by political parties at Scottish Parliament elections is calculated as the total of:

- £12,000 for each constituency contested by the party, plus
- £80,000 for each region contested by the party.

3.6 The overall limit for each party is calculated on the basis of the constituencies and regions where they are standing candidates. Since there are 73 constituencies and 8 regions in total, the maximum limit which is available to a party contesting every constituency and region is £1,516,000 (made up of £876,000 for constituencies and £640,000 for regions). However, there are no restrictions on how parties spend money on campaigning within their total limit.

3.7 Party spending limits cover both the promotion of the party as a whole, and spending to promote parties' regional candidate lists (other than candidates' personal expenses). The regional lists are "closed" lists, so voters have to decide which party to support rather than which of a party's candidates they wish to vote for. The regional ballot paper lists the names of political parties and individual (non-party) candidates, but not the names of candidates on party lists. Regional party material may include information about the candidates on the closed list, and will often focus on certain issues (such as planned roads or windfarms) in particular areas. However, this form of campaigning essentially forms part of a party's overall effort to encourage voters to support the party, rather than the efforts of particular candidates to promote themselves.

3.8 We do not therefore see a strong case to adjust the proposed limit for lead campaigners downward to reflect different patterns of regional campaigning at a referendum on independence for Scotland, as opposed to a Scottish Parliament election.

Campaigner views

3.9 Better Together and Yes Scotland set out varying views of the likely scope and nature of campaigning at the referendum. Better Together argue that "a vote for independence would impact on almost every aspect of Scottish life" and that "for all intents and purposes Scotland becomes one enormous marginal constituency with every vote being contested". Yes Scotland argue that "the general focus of a referendum campaign is necessarily narrower than an election", and that at a referendum "there is no need for political parties to spend money to get their voters to vote in a particular way – as happens with Scottish Parliament and Scottish local authority elections".

3.10 Both campaigners propose alternative methods for setting the limit for designated lead campaigners. The Better Together submission argues that the "PPER framework for spending limits" is "grossly inadequate for a referendum of

this importance". They argue that limits for this referendum based on PPERA limits⁶ are inadequate because of inflation, and cite Mr [Nigel Smith's argument](#) that spending on the 'Yes' side at the 1997 referendum (which Mr Smith defines as the combined total of the Scotland Forward campaign and a proportion of UK Government spending on voter information) of £625,000 would equate to spending of just over £1m in 2014 terms⁷. Yes Scotland propose that the appropriate limit for lead campaigners should be calculated using the starting point of a population-adjusted proportion of the PPERA limit for lead campaigners at UK-wide referendums⁸. The Yes Scotland submission notes that the resulting figure of £419,000 would then have to be adjusted upwards to account for the fact that many of the costs of referendum campaigning are fixed, rather than linked to the size of the electorate⁹. This results in a proposed limit of £750,000.

3.11 In advising on spending limits on the referendum on independence for Scotland, we recommend that it is more appropriate to refer to the level of regulated campaign spending that campaigners are likely to engage in, based on evidence of spending at recent PPERA-regulated elections and referendums, than to seek to design new limits based either on the PPERA limit for UK-wide referendums (as the Yes Scotland submission suggests) or on campaigning, including Government spending, at a pre-PPERA referendum (as the Better Together submission suggests).

3.12 In formulating our advice on the limit for designated lead campaigners we have reviewed the levels of party and candidate spending at previous Scottish Parliament elections. The tables in appendix B provide the total spend by party at the 2011 and 2007 Scottish Parliament elections, broken down by category. Appendix B shows that the SNP spent 75% (£1.1m) of their maximum national campaign spending limit at the 2011 Scottish Parliament election and 91% (£1.3m) in 2007. Appendix B also shows the levels of spending that parties incurred on particular items of regulated election spending. Of particular note are the amounts spent on advertising and unsolicited material to electors, some £600,000 and £800,000 by the SNP and £660,000 and £600,000 by Labour in 2011 and 2007 respectively.

3.13 This data provides an indication of the amounts that larger parties incur to get their message to voters across Scotland over four months. Although regulated spending by parties at elections is not directly comparable to spending at a referendum, many of the categories of regulated spending are similar¹⁰.

⁶ In the context we take this to mean the Commission's approach for setting limits for sub-UK PPERA referendums, as discussed in our March 2012 consultation response to the Scottish Government.

⁷ Better Together written evidence: page 5

⁸ Yes Scotland written evidence: paragraphs 41-42

⁹ Yes Scotland written evidence: paragraphs 43-45

¹⁰ The activities included in referendum spending are:

- advertising of any kind (including websites, social media etc.)
- unsolicited material sent to voters
- other documents setting out your campaign's arguments
- market research or other methods of finding out how people intend to vote.
- press conferences or other dealings with the media
- rallies and events, including the cost of people's attendance, and any goods, services or facilities provided

3.14 Based on this evidence, we continue to take the view that the lead campaigners at a referendum on independence for Scotland should be able to put their arguments to voters by campaigning on a similar scale to political parties campaigning at a Scottish Parliament election, with a maximum limit of £1.5m.

4 Limit for political parties represented at the Scottish Parliament

Scottish Government proposal and our response

4.1 In their January 2012 consultation, the Scottish Government proposed a flat spending limit for political parties represented in the Scottish Parliament of £250,000. The Scottish Government said that “in practice it is likely that the main political parties will be part of” the designated lead campaign groups. Therefore the Scottish Government suggested that although political parties should not be prevented from campaigning outside the designated lead campaigner, there is a case for more restrictive limits on them than the PPERA approach would provide. They suggested that this would ensure that no one group dominates the public debate by both being the main part of a designated lead campaigner, whilst also having a large spending limit by virtue of being one of the political parties.

4.2 Our March 2012 consultation response commented that the Scottish Government’s proposal would give those political parties that are represented in the Scottish Parliament, but that had a relatively low share of the vote in 2011, a significant advantage over non-party campaigners in terms of the amount they can spend. We suggested that the PPERA approach could be adopted for the independence referendum, with the limit applying based on a party’s share of the vote at the 2011 Scottish Parliament election. However, we recognised that there may be good arguments for an alternative approach in the context of a referendum which is not held under the PPERA framework.

The Edinburgh Agreement and campaigner’s views

4.3 As discussed above (paragraph 2.5-2.9), a specific consideration at the independence referendum is that the Edinburgh Agreement points to the need for “fairness and a level playing field” in campaign finance rules, as well as stating that the rules and standards in PPERA provide the basis for setting the limits. However, the concepts of fairness and a level playing field are capable of different interpretations in this context and the Governments did not seek to define these terms beyond what is in the Agreement.

4.4 The Yes Scotland proposal is for an aggregate limit for the lead campaigner and the parties that support the same outcome, potentially including scope for campaigners to ‘vire’ spending capacity to each other¹¹. This relies on the

• transport in connection with publicising your campaign
Overheads relating to these categories are also covered, but as the costs of staff employed by the campaigner are not covered.

¹¹ Yes Scotland written evidence: paragraphs 54-56

assumption of close co-ordination between all the relevant campaigners throughout the campaign. The ‘virement’ approach proposed by Yes Scotland recognises that the supporters of the two outcomes are “operating on different models”, but relies on close co-ordination between campaigners to decide how limits should be shared between them. The submission proposes that the limits for parties should be set not on the basis of the same limit for each party, as proposed by the Scottish Government in January 2012, but via an amended version of the PPERA formula for UK-wide referendums, which relates limits to share of the vote at the most recent election¹².

4.5 In our discussions with campaigners in late 2012 it was clear that the view of the likely shape of campaigning at the referendum set out in the Yes Scotland submission is not shared by campaigners for the other outcome. In particular, the Scottish Labour party, Scottish Liberal Democrats and Scottish Conservatives have all told us that in view of the differing arguments that they expect to put to voters, and the timing of the referendum midway between the 2014 European Parliament election and the 2015 UK Parliamentary general election, they expect to want to run distinctive party campaigns during the referendum period as well as lending support to the Better Together campaign.

4.6 The Better Together submission argues that the January 2012 Scottish Government proposal of a £250,000 limit for all parties represented in the Scottish Parliament would not reflect “their level of support in Scottish society .. would seriously undermine the principle of free speech and would give small parties with a low share the vote a louder voice than more significant groups from civil society”¹³. Better Together therefore appear to support a PPERA-type approach that relates parties’ spending limits to their share of the vote, but do not suggest what those limits should be.

Views of political parties¹⁴

4.7 The Scottish Conservative and Unionist Party argue in their submission that the party spending limits should be based on their level of electoral support to ensure limits are not biased towards smaller parties. They suggest that each political party will want to run activities with an umbrella group, and each party will have their own roles to play in the referendum separate from the umbrella group.

4.8 The Scottish National Party in their submission “concur with the thrust of the spending limits suggested” by the Scottish Government in their January 2012 consultation.

4.9 We met officers of the other political parties represented in the Scottish Parliament in November 2012.

4.10 The Scottish Labour party indicated that the party generally supported our view of spending limits as set out in our March 2012 consultation response. They said that

¹² Yes Scotland written evidence: paragraphs 34-49

¹³ Better Together written evidence: page 6

¹⁴ See paragraph 2.4

the party will want to run a party political campaign which is distinctly different from the messages of other parties opposed to Scottish independence, and suggested that the Scottish Government’s proposed limit of £250,000 for political parties would impose a “prohibitive” limit on the party’s activity.

4.11 The Scottish Liberal Democrats also indicated support for our March 2012 position on spending limits, rather than the Scottish Government’s proposals of January 2012. They expressed some concern that the PPERA model used at the referendum on the powers of the National Assembly for Wales, if applied to the most recent Scottish Parliament election, would provide them with a relatively low spending limit.

4.12 The Scottish Green party officer whom we met explained that he had not sought formal party agreement to a position on spending limits. He indicated however that the proposed 16 week referendum period during which spending will be regulated is too short, and that therefore the limits that will apply during that period are arguably academic. He suggested that a referendum period of a year would more accurately reflect the nature of campaigning at this referendum. However, he did not expect their party’s campaign spending on the referendum to exceed any of the limits under discussion.

Applying the PPERA UK-wide referendum model

4.13 The limits proposed in the Yes Scotland submission¹⁵ contrast with the outcome produced by the PPERA model as applied at the 2011 referendum on the powers for the National Assembly for Wales. Assuming that in the context of the referendum on independence for Scotland, the limits are set with reference to a maximum spending limit of £1.5m, the PPERA model would produce party spending limits of:

Spending limits based on PPERA UK-wide bands			2011 vote share ¹⁶
Designated lead campaigners		£1,500,000	
30+%	100% of £1.5m	£1,500,000	SNP: 44.8%
20-30%	80% of £1.5m	£1,200,000	Labour: 27.8%
10-20%	60% of £1.5m	£900,000	Conservatives: 13.2%
5-10%	40% of £1.5m	£600,000	Liberal Democrats: 6.7%
Less than 5%	10% of £1.5m	£150,000	Scottish Green Party: 1.9%

4.14 This approach produces a total cumulative value of limits of £3,150,000 on the ‘Yes’ side, and £4,200,000 on the ‘No’ side (including the £1.5m limits for the designated lead campaigners)¹⁷. In the context of the independence referendum, this

¹⁵ Yes Scotland written evidence: paragraph 49

¹⁶ %s in this column calculated using the approach we took for the Welsh referendum to produce a single share of the vote figure. Where Labour and the Cooperative Party have run joint candidates, in line with the approach to calculating the parties’ spending limits (PPERA Sch 9, paragraph 5(2B)), the number of votes is divided by the number of parties the candidates are standing for (i.e. divided by two). A detailed breakdown of the calculation is available [here](#).

¹⁷ Assuming - Yes: SNP, Scottish Greens. No: Labour, Conservatives, Liberal Democrats.

structural imbalance between the cumulative limits on each side of the argument has the potential to affect perceptions of fairness and thus to damage voters' trust in the referendum rules.

Alternative method of applying the 'share of vote' principle

4.15 We therefore recommend an alternative method of setting party limits by reference to a party's share of the vote at the 2011 Scottish Parliament election, in a way that significantly reduces the structural imbalance identified above, while allowing parties to campaign effectively. This involves:

- calculating the limits with reference to the actual share of the vote that parties received at the 2011 Scottish Parliament election, rather than using bands which can distort the impact of the share of vote.
- applying the share of the vote to a maximum value that is equivalent to the combined value of the limits of the two lead campaigners. This provides party limits sufficiently high to enable the parties to campaign on a significant scale.

4.16 Applying this alternative method to the circumstances of the independence referendum would produce limits of:

Spending limits based on actual share of the vote at the 2011 Scottish Parliament ¹⁸		
Designated lead campaigners (combined)		£3m
SNP	44.8%	£1,344,000
Labour	27.8%	£834,000
Conservatives	13.2%	£396,000
Liberal Democrats	6.7%	£201,000
Scottish Green Party	1.9%	Same limit as other registered campaigners (see paragraph 4.17)

4.17 Under PPERA, registered campaigners that are political parties which won over 5% share of the vote at the last election have a higher spending limit than those parties that received less than 5% of the vote, and other registered campaigners. Under this approach the Scottish Green Party would not receive a higher limit than any other registered campaigner as they only received 2% share of the vote.

4.18 This approach produces a total cumulative value of limits of £2,994,000¹⁹ on the 'Yes' side and £2,931,000 on the 'No' side. This significantly reduces the structural imbalance between the cumulative limits on each side of the argument in comparison to the PPERA formula and should therefore reduce the risk of damaging voters trust in the rules (see paragraph 4.14).

¹⁸ See footnote 16

¹⁹ Assuming the Scottish Green Party register and receive a limit of £150,000

4.19 The resulting limits will allow each of the parties to campaign on a similar scale as they did at the 2011 election in putting across their party messages (see Appendix B).

5 Limit for other registered campaigners

5.1 In their January 2012 consultation, the Scottish Government proposed that the spending limit for other registered campaigners should be £50,000.

5.2 The Scottish Government's starting point was the £75,800 limit for third-party campaign expenditure at Scottish Parliament elections, reduced to recognise the lack of any constituency or regional vote. They suggested that £50,000 will allow campaigners to have national input, but is restrictive enough to encourage people to join the designated lead campaigners if they wish to contribute more substantially.

5.3 In our March 2012 consultation response we noted that for PPERA referendums in a single part of the UK, we have taken the view that the limit for non-party registered campaigners should be set at the higher of either (i) 10% of the limit for designated lead campaigners, or (ii) £100,000. This mirrors the ratio at PPERA UK-wide referendums, while ensuring a sufficient limit for other registered campaigners where the maximum limit for lead campaigners is below £1m.

5.4 Better Together expressed concerns about a £50,000 limit for non-party campaigners, particularly in respect of impact on campaigners' ability to use newspaper advertising during the 16 weeks before the poll. Better Together highlight that trade unions, business groups and representative groups will all be affected²⁰.

5.5 As a general point, the Yes Scotland submission notes that "if there are a large number of campaigners in the referendum, then the level playing field is under considerable threat"²¹. This is because there would be no overall limits on the overall spending power of each 'side' in the campaign. Yes Scotland suggest using the same starting point as the Scottish Government, the £75,800 limit for third-party campaign expenditure at Scottish Parliament elections, but argue for a lower limit of £40,000 which is calculated as an adjusted total based on spending limits that apply to third party campaigns for or against a candidate at local elections²².

5.6 However, the position of third party campaigners for or against a candidate at a local election is quite different from that of a campaigner on a referendum on the independence of Scotland. As we noted in our March 2012 consultation response, parties and candidates are rightly the focus of campaigning at elections, with other campaigners having a more limited role. In contrast, at referendums, campaigners other than political parties may have a strong interest in the outcome, and important arguments to put to voters.

²⁰ Better Together written evidence: page 8

²¹ Yes Scotland written evidence: paragraph 57

²² Yes Scotland written evidence: paragraphs 64-69

5.7 The PPERA spending limits for referendum campaigners cover a wide range of campaigning activities²³. The activities are similar to those covered by the limits on political party spending at elections, and the scope of the referendum controls is significantly wider than the controls on third party campaigning at elections. The third party limit only applies to “election material”- that is, communications (such as leaflets, adverts and websites) that can reasonably be regarded as intended to influence people’s voting choice. Costs associated with such material, including design and distribution costs, count against the third party limit at elections, but other types of campaign-related costs, including polling, media work, events and transport, and the associated overheads, are not counted against the limit. Since the limit at the referendum needs to cover all these types of campaign spending, it should be set at a higher level than the £75,800 limit for third party campaigners at Scottish Parliament elections.

5.8 As with the other spending limits for this referendum, our advice takes into account the available evidence on the likely cost of campaigning which we have drawn from sources including party spending returns at the 2011 Scottish Parliament election, spending returns at the 2011 referendum on the UK Parliamentary voting system and the views of campaigners (see paragraph 2.4).

5.9 The evidence tends to indicate that the Scottish Government’s proposal of £50,000 could significantly restrict the ability of non-party campaigners to put their arguments to voters across Scotland over a 16 week referendum period.

5.10 When considering the risks associated with setting the spending limits, the risk that low limits may artificially restrict the arguments put forward or the availability of information for voters has to be balanced against the risk that high limits may allow for more campaigning by one side than the other. On balance, we are of the view that the risk of restricting information available to voters outweighs the risk of setting the limits slightly too high. This is because if both sides have sufficient scope to put their arguments across but one side does more campaigning than the other, voters will still have access to the information they need to decide how to vote²⁴. Therefore, **we think it is appropriate to apply our 2010 principles to set a limit for other registered campaigners of 10% of the limit for designated lead campaigners, resulting in a spending limit of £150,000.**

6 Threshold for registration as a campaigner

6.1 The Scottish Government’s January 2012 consultation proposed that the spending threshold for registration as a campaigner at the independence referendum should be £5,000. This is based on the threshold for registration as a third-party campaigner at Scottish Parliament elections. Our initial view expressed in our March 2012 consultation response was that it would be more appropriate to use a higher threshold than £5,000 to reduce the administrative burden on local campaigners.

²³ See footnote 10

²⁴ We have also recommended to the Scottish Government that to ensure voters are aware of how campaigners are funded before the poll, the referendum legislation should provide for pre-poll reporting of donations to campaigners in respect of campaigning during the referendum period.

6.2 For referendums held under PPERA, campaigners are able to incur up to £10,000 of referendum spending without having to register with us. This limit applies to both UK-wide referendums and referendums held in a particular part of the UK²⁵ and applied at the 2011 referendum on powers for the National Assembly for Wales.

6.3 A threshold for registration means that the rules and regulation of campaigning only apply to those who spend a significant amount promoting their views. This reduces the regulatory burden on local campaigners and the risk of inadvertent non-compliance, and so helps voters engage with the arguments without unnecessary barriers.

6.4 When considering the threshold for registration, the key consideration is the level at which campaigners become subject to regulatory burdens. Having considered the evidence of the likely costs of campaign activity and the fact that we are recommending a spending limit for registered campaigners higher than that proposed by the Scottish Government in 2012, **we can see no reason to depart from the PPERA registration threshold of £10,000.**

7 Other issues considered when formulating advice on spending limits for the independence referendum

7.1 In the course of formulating our advice on spending limits, we have taken into account several other issues relating to the regulation of campaigning at this referendum. These include the length of the referendum period during which campaigning will be regulated, the potential regulatory implications of restrictively low spending limits, and the restrictions to be placed on referendum-related activities by the Scottish and UK Governments during the campaign. A summary of these issues is provided in Appendix C.

²⁵ s.117 PPERA

Appendix A

Total party and candidate spending and limits, 2011 Scottish Parliament elections

Party Name	Party spend	Party limit	Candidate spend	Candidate limit	Total spend	Total party and candidate limits
Scottish National Party (SNP)	1,141,662	1,516,000	576,251	2,219,628	1,717,913	3,735,628
Labour Party	816,889	1,414,000	500,604	2,055,829	1,317,493	3,469,829
Conservative Party	274,573	1,516,000	376,589	2,219,628	651,162	3,735,628
Liberal Democrats	176,391	1,504,000	272,567	2,188,156	448,958	3,692,156
Scottish Green Party	132,464	640,000	0	0	132,464	640,000
Other*	90,479	5,822,000	94,323	4,018,529	184,802	9,840,529
Total	2,632,458	12,412,000	1,820,333	12,701,769	4,452,791	25,113,770

Total party and candidate spending and limits, 2007 Scottish Parliament elections

Party Name	Party spend	Party limit	Candidate spend	Candidate limit	Total spend	Total party and candidate limits
Scottish National Party (SNP)	1,382,730	1,516,000	344,785	769,611	1,727,515	2,285,611
Labour Party	1,102,866	1,474,000	406,233	728,338	1,509,099	2,202,338
Conservative Party	601,982	1,516,000	302,093	769,611	904,075	2,285,611
Liberal Democrats	297,572	1,516,000	234,837	769,611	532,409	2,285,611
Scottish Green Party	99,132	652,000	1,305	9,905	100,437	661,905
Other*	576,242	7,734,000	136,201	1,262,414	712,443	8,996,414
Total	4,060,524	14,408,000	1,425,454	4,309,490	5,485,978	18,717,490

Note: (i) the 2011 elections saw the introduction of pre-candidacy controls on constituency spending. This means the aggregate candidate spending limits and expenditure at these elections appear significantly higher than in 2007, when this is actually due to the introduction of the new controls. Prior to these controls, there were no limits on spending on campaigns before the dissolution of Parliament. (ii) Where there are joint Labour/Co-operative candidates, in-line with the approach for calculating party spending limits, their spend and limits are divided equally between the two parties. * This line shows spending and limits for the 19 parties and 25 independent candidates in 2011, and 29 parties and 27 independents in 2007. The number of constituencies and regions contested by these parties produce the total maximum combined limits shown, which substantially exceed the amount these parties spent on campaigning at these elections.

Appendix B

Total party spend at the 2011 Scottish Parliament election by category²⁶

Party Name	Advertising	Unsolicited material to electors	Campaign broadcasts	Manifesto or Referendum material	Market research / canvassing	Media	Overheads & general admin	Rallies & other events	Transport	Grand Total
Scottish National Party (SNP)	294,601	405,728	71,961	14,067	201,613	32,269	65,777	20,689	34,957	1,141,662
Labour Party	115,986	545,746	46,236	9,147	32,623	6,153	24,503	19,695	16,799	816,889
Conservative Party	664	200,150	5,088	4,062	1,434	1,922	48,995	1,783	10,475	274,573
Liberal Democrats	8,263	103,592	4,558	1,972	20,680	20	24,608	1,936	10,761	176,391
Scottish Green Party	10,699	73,572	7,630	2,665	1,860	14,123	20,771	194	951	132,464
Other Parties*	9,910	58,343	11,616	2,430	147	50	1,921	4,087	1,975	90,479
Grand Total	440,122	1,387,132	147,090	34,343	258,358	54,537	186,575	48,384	75,918	2,632,458

Total party spend at the 2007 Scottish Parliament election by category²⁸

Party Name	Advertising	Unsolicited material to electors	Campaign broadcasts	Manifesto or Referendum material	Market research / canvassing	Media	Overheads & general admin	Rallies & other events	Transport	Grand Total
Scottish National Party (SNP)	494,642	323,580	90,726	56,999	178,705	45,041	76,146	64,652	52,239	1,382,730
Labour Party	337,609	270,020	59,685	17,525	107,477	29,710	118,789	89,685	72,366	1,102,866
Conservative Party	119,419	247,521	29,338	9,134	15,353	17,957	160,747	270	2,243	601,982
Liberal Democrats	26,166	98,323	15,381	6,905	64,626	29,481	25,345	1,710	29,635	297,572
Scottish Green Party	28,979	35,947	3,161	7,111	2,199	3,855	15,279	2,036	565	99,132
Other Parties*	109,024	280,261	26,482	16,179	61,721	36,980	30,733	5,091	9,771	576,242
Grand Total	1,115,839	1,255,652	224,773	113,853	430,081	163,024	427,039	163,444	166,819	4,060,524

²⁶ The table does not include what party candidates spent on advertising, unsolicited materials etc

* This line shows the spending by the 16 parties that reported national expenditure in 2011 and the 19 that reported national expenditure in 2007.

Appendix C

Other issues considered when formulating advice on spending limits for the independence referendum

Further details can be found in Commission Board paper [EC02/13](#).

The length of the referendum period during which campaigning will be regulated

Our advice on spending limits is based on the Scottish Government's proposal that the regulated referendum period for this referendum should be 16 weeks. This is consistent with our recommendation that the referendum period at PPERA referendums should be a minimum of 16 weeks, in the light of experience at the 2011 PPERA referendums²⁷.

In our discussions with campaigners, the Yes Scotland and Better Together campaigns, and all the political parties represented in the Scottish Parliament except the Scottish Green Party, suggested to us that a 16 week referendum period is now generally accepted as appropriate for this referendum. The Scottish Green Party suggested that the referendum period should be a year.

However, there is a question as to whether campaigning being unregulated until 16 weeks before the poll is in the interests of the voters. Donations given to political parties for the purpose of future referendum campaigning are controlled by PPERA in the usual way, so donations above £7,500 will be reported to us for publication at the end of the quarter in which they are received, but donations to other campaigners are only regulated and reportable if they are used during the referendum period.

Both the Yes Scotland and Better Together campaigns have said that they will adopt self-imposed restrictions on the sources of donations toward campaigning before the referendum period begins, and will publish information about this funding²⁸. In our view voluntary reporting of donations relating to campaigning before the referendum period would be in the interests of voters. The Commission would not have a role in any voluntary arrangements put in place by campaigners,

We have also recommended to the Scottish Government that the referendum legislation should provide for pre-poll reporting of donations to campaigners in respect of campaigning during the referendum period, so that by the time voters go to the polls they will have information about the sources of funding of all registered campaigners, including those that are not political parties.

²⁷ [Referendum on the voting system for UK parliamentary elections. Report on the May 2011 referendum. October 2011](#) Recommendation 11

²⁸ [House of Commons, oral evidence before Scottish Affairs Committee 20 November 2012: Blair Jenkins & Blair McDougall](#) Q1819

In view of the circumstances of this referendum, we do not see a strong argument for recommending a longer referendum period than our recommended standard minimum period of 16 weeks.

The potential regulatory implications of restrictively low spending limits

When considering the spending limit for registered campaigners, it is important to note that:

- many campaigners other than political parties are likely to wish to put arguments to voters, and if more of these favour one outcome than another, that is not something that the campaigning rules should restrict, and
- a limit that is materially lower than the amount we consider reasonable to run an effective campaign aimed at voters in Scotland over a 16 week period, is likely to distort campaigners' behaviour in a way contrary to the principles we set out in 2010. In particular, it may lead to campaigners shifting their campaigning activity to before the start of the referendum period, or campaigning via multiple registered campaigns, rather than choosing to limit their campaigning.

The legislation on the 2011 referendum on the UK Parliamentary voting system included provisions intended to prevent campaigners getting around spending limits by setting up multiple campaigns that work to a common plan. We have recommended to the Scottish Government that the legislation for the independence referendum should contain equivalent provisions.

If the limits for registered campaigners are ultimately set at a level that makes it difficult for them to make their case to voters, it is possible that some campaigners will seek to co-ordinate their activity as far as possible within these provisions. This in turn may lead to allegations of material breaches of the rules, and potentially to enforcement activity or legal challenges which could affect voters' confidence in the referendum process.

The restrictions to be placed on referendum-related activities by the Scottish and UK Governments during the campaign

The Edinburgh Agreement between the Scottish and UK Governments provides that:

“The Scottish Government will set out details of restricted behaviour for Scottish Ministers and devolved public bodies in the Referendum Bill to be introduced into the Scottish Parliament. These details will be based on the restrictions set out in PPERA. The UK Government has committed to act according to the same PPERA-based rules during the 28-day period.”

The relevant PPERA provisions impose restrictions on the publication of material about a referendum by central and local government and by publicly funded bodies in the 28 days before the poll. In our report on the 2011 referendums, we

recommended that the UK Government should clarify the provisions and should consider what sanctions, if any, should apply to breaches.

We understand that the Scottish Government may not make any provision for sanctions in respect of breaches of the relevant provisions in the referendum legislation, and that the UK Government does not intend to put its Edinburgh Agreement commitment on a statutory basis. Therefore it is likely that the Commission will have no regulatory or sanctioning role in respect of restrictions on government activity in respect of this referendum.

This is not in itself a concern, provided that both Governments explain to voters how the Edinburgh Agreement commitments will be observed.