



Report on the Scottish Parliament election on 5 May 2011

October 2011

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Foreword

On 6 May 2011 everyone in Scotland was talking about the election result – that’s the way it should be. Unlike in 2007 when the electoral administrative process was the story, in 2011 the process was not in the limelight. It was rightly all about the voters and their choices.

On 5 May 2011, the people of Scotland were asked to vote in the Scottish Parliament election and the UK-wide referendum on the UK Parliamentary voting system. This report is our account of how the Scottish Parliament election was run. It also reviews the impact of combining the election with the referendum. I would like to thank all those who provided us with assistance and information in compiling this report, including Returning Officers, Electoral Registration Officers, electoral administrators, political parties, candidates, agents, and voters.

This report focuses on the experience of voters. We use public opinion research and other data to consider people’s experience of registering to vote, of the public information available about the election and of voting either in polling stations or by post.

I am pleased to report that the Scottish Parliament election and the referendum on the UK Parliament voting system were well administered by Returning Officers and their staff. A lot has changed since 2007 in terms of how Scotland’s elections are run. In particular, the establishment of the Electoral Management Board (EMB) for Scotland has, in our view, improved administration and produced greater consistency and co-ordination of electoral administration. The process is truly becoming more voter focused.

There is still, however, much to be done. The Elections Convener of the EMB remains a non-statutory post for all but local government elections and I would urge governments to legislate to provide for a statutory EMB with a power of direction for other elections before the next Scottish Parliament election in 2016.

The Commission welcomes the new statutory role we have been given for local government elections in Scotland. Preparations for these elections to be held on 3 May 2012 are well underway. We look forward to working with all of those who have a responsibility for ensuring the successful delivery of these elections.

John McCormick
Electoral Commissioner for Scotland
October 2011

Summary

About the report and our role

Our report is about the administration of the Scottish Parliament election held on 5 May 2011. It identifies and comments on key issues that emerged and on voters' experience of the election. It also reviews the impact of combining the election with the referendum on the UK Parliamentary voting system.

The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate party and election finance and set standards for well-run elections and electoral registration. We are responsible for publishing reports on the administration of elections and referendums. For local government elections in Scotland we undertake a number of roles relating to the administration of the elections and for these we report directly to the Scottish Parliament.

Facts and figures

Our report focuses particularly on the experience of voters, based on public opinion research and other research data. 3,950,751 people were registered to vote in Scotland and 50.6% of them did so in both the constituency and regional votes. In total 14.1% of the electorate had a postal vote for this election and a high proportion of those, 77.0% in the constituency and 76.9% in the regional vote used their postal vote. Postal votes accounted for 20.2% of all votes cast at the election while the rest 79.8% voted at a polling station. Our report reviews people's experience of voting in polling stations or by post.

A total of 321 constituency candidates campaigned to be elected and 21 political parties nominated lists of regional candidates. This was 14 fewer constituency candidates and seven fewer political parties than in the Scottish Parliament election in 2007. Eleven individuals stood on the regional lists, three more than in 2007. Our report gives more detail on campaigning in the election.

Did people feel informed?

We undertook a public information campaign to increase people's awareness of the Scottish Parliament election and the UK-wide referendum. We sent an information booklet to all households in Scotland and used television, radio and online advertising to inform people about the polls taking place on 5 May. We evaluated levels of people's awareness by conducting public opinion research before and after our campaign. Of those surveyed, 67% recognised at least one element of our campaign.

Of those we surveyed, 79% said they had enough information to make an informed decision on how to vote in the election. Of those aged 55 or over, 85% felt informed compared with 72% of 18-34 year-olds.

Prior to polling day, some members of political parties and the media were concerned that holding the Scottish Parliament on the same day as a UK-wide referendum would lead to the referendum overshadowing the election. However, analysis of the content of media conducted for us by the University of Exeter prior to polling day suggested that the election gained more coverage in the Scottish media, while the referendum tended to receive more coverage in most of the UK media. Across the UK-based newspapers, television and radio news included in their study, Exeter found that referendum stories outnumbered those on the various elections taking place by nearly two to one.

Across the Scottish media outlets studied, however, (including Scottish editions of UK newspapers), there was far more election coverage, with a ratio of more than six stories on the elections to every one story on the referendum. It would appear that despite concerns, the prominence of the Scottish election was not overshadowed by the referendum.

People's experience of voting

The 2007 Scottish Parliament election was notable for the high numbers of rejected ballots (2.88% of regional and 4.08% of constituency ballot papers). Ron Gould's independent report on the 2007 elections concluded that while there were a number of contributory factors relating to supplier management problems and too much political involvement in the design process, at the heart of the problem was a poorly designed ballot paper. The 2007 single ballot sheet – on which both the regional and constituency ballot papers were located side by side – was widely seen to have failed in enabling voters to express their voting preferences.

For the 2011 election the two ballot papers were again presented to the voter on separate pieces of paper as they had been at the 1999 and 2003 Scottish Parliament elections and the layout of the ballot papers had been redesigned. Rejection rates for ballots at the 2011 election were 0.42% of constituency ballots and 0.34% of regional list ballots. This returned rejected vote rates to the levels experienced in 1999.

In our public opinion research we asked whether voters found it easy or difficult to complete their ballot papers at the 2011 election. Nearly all (97%) said that they found it easy to fill in the Scottish Parliamentary ballots, with three-quarters (75%) finding it 'very easy' and just 1% reporting difficulties.

Lessons learnt: what should change

Timing of election counts

The timing of election counts has increasingly become an area of discussion between political parties and Returning Officers (ROs) in Scotland. Opinion varies as to whether they should take place overnight or the next morning. Tensions emerged over the timing of the count at the 2007 Scottish Parliament election, the 2010 UK Parliament election and again at the 2011 Scottish Parliament election. We have no role in determining the timing of any election counts. However, it is clear that the question of the timing of election counts need to be addressed.

We intend to circulate an Issues Paper on the timing of election counts. It will include evidence on the time taken to count votes at different elections and the impact of factors such as: the combination of elections; different electoral systems; and the number of ballot papers. It will identify the different perspectives that can be held by those delivering elections, parties campaigning in them and broadcasters who cover election results.

We will circulate the Issues Paper on the timing of election counts by the end of November 2011. We will seek views from those with an interest in the timing of election counts, including governments, political parties, Returning Officers, broadcasters and voters.

Following analysis of views received, we will seek to make recommendations in early 2012 on the timing of election counts and the way in which they are organised, taking account of the type of elections and a range of relevant circumstances.

Electoral Management Board for Scotland

The Commission has championed the development of the concept of the Electoral Management Board (EMB) since 2008 and continues to support it as a robust mechanism for the co-ordination of Scotland's electoral process. The EMB has continued to progress since it was established in November 2008. While still an interim EMB – given its lack of statutory recognition for the Scottish Parliament elections – it has added value to the planning and delivery of elections in Scotland and built upon the positive support it enjoys among the various stakeholders in the electoral community.

We welcomed the decision of the Scottish Government to establish the EMB on a statutory basis for local government elections with a power of direction for its Elections Convener. The subsequent passing of the Local Electoral

Administration (Scotland) Act 2011 in March 2011 is a welcome development in electoral administration for the future.

The establishment of the EMB was intended to bring clear benefits to the voters in Scotland through the delivery of better and more consistent electoral administration. This was particularly important in the light of events surrounding the 2007 Scottish elections.

The next 12 months is an important time for the EMB and the Elections Convener as they undertake on a statutory basis for the first time activities in relation to the local government elections in May 2012. Ministers in Scottish Government and the Scotland Office, and the Commission, expect that the EMB, led by the Elections Convener, will proactively develop its role as the co-ordinating body for Scotland's elections both strategically and operationally.

The EMB's period as a steering group is over we will seek to support it as it develops into the national focal point for the administration of elections. We will consider the implications for the Commission as the EMB assumes a greater role and powers over time.

Invalid postal votes

Of the 429,432 postal ballots that were returned by voters at the Scottish Parliament election, 25,042 postal votes were rejected or not included in the counts in constituency contests and 25,058 in regional list elections. The rejection rates of 5.9% and 5.8% respectively were markedly higher than at the UK Parliamentary election in 2010 when 3.6% of returned postal votes in Scotland were rejected prior to the count. ROs rejected returned postal votes for the following reasons: the postal vote statement which must accompany the ballot paper was missing; the ballot paper was missing; or because the signature or date of birth supplied by postal voters could not be matched with their postal vote application. Our report contains more information and data about invalid postal votes.

Allowing Electoral Registration Officers (EROs) to request a refreshed identifying signature, and also to provide electors with feedback if their postal vote has been rejected would help address this problem. We first made this recommendation to the UK Government in 2007 and have since reiterated it. In September 2011, the UK Government said that it would work with the Commission and electoral administrators to avoid the problems we have highlighted with the current postal voting system, while taking into consideration the need to ensure it remains secure against fraudulent applications for postal votes.

We will work with the UK Government to ensure changes are in place by the UK Parliamentary General Election in 2015.

Our materials and resources for Returning Officers

We received positive feedback from ROs about the materials and resources and the direct support we provided to them, but there was also negative feedback. Some felt that we 'micro-managed' the UK referendum, with consequent impact on the combined elements of the election. There was also some negative feedback about presentational issues, with some electoral administrators saying they found our website difficult to navigate, preferring to have the guidance in one printed volume and not to receive updates by email, in case these were missed.

We have taken account of the feedback we received in planning our guidance and resources for elections in 2012 and how we present that information on our website.

Costs of the election

Our report gives detail on how much the election cost. Scottish Parliament elections are funded by the Scotland Office. They meet the costs incurred by Returning Officers in administering the election. The total maximum recoverable for the constituencies in Scotland was £7,785,521 and for the regions was £20,080. The overall total cost was £7,805,601.

The actual cost that Returning Officers incurred in running the elections is not yet known as the Scotland Office has set the deadline of 5 January for the submission of Returning Officers election accounts.

Scotland Office also met the costs of Royal Mail's delivery of the freepost election communications of candidates and political parties. Royal Mail delivered 11,404,377 addressed items and 12,650,313 unaddressed items totally 24,054,690. The total cost of all postings was £6,402,314.

Summary of all recommendations

The following is a list of all the recommendations contained in the report with a reference to the paragraph of the report in which they can be found.

Public awareness

- The Commission will make template public awareness materials available to the Public Awareness Network of the EMB at an earlier date at future elections. This will ensure that they receive them in adequate time to use them in their local public awareness activity (paragraph 2.23).

Postal voting

- We recommend that the UK and Scottish Governments amend legislation on postal voting to provide the power for EROs to request a refreshed identifying signature, and to provide feedback to electors, in cases where their postal vote has been rejected as a consequence of mismatched or incomplete identifiers (paragraph 3.33).
- In order to obtain a clearer understanding of the scale of postal vote rejection on the grounds of mismatched or incomplete identifiers we will work with ROs to review our postal vote data collection forms ahead of the 2012 local government elections and provide additional guidance for those collating the data if required (paragraph 3.30).
- Urgent steps need to be taken by ROs, EROs and ourselves ahead of the Scottish local government elections in 2012 to review postal voting materials in Scotland to ensure that the instructions for postal voters are sufficiently clear and the consequences of mismatched or missing identifiers are highlighted to the voter. We will work with the EMB to ensure that this happens and, as part of this review, we will consider other materials and communications for voters in which information about postal voting can be added, including canvass forms and poll cards) (paragraph 3.40).

Ballot papers and other voter-focused election material

- We continue to recommend that all election materials aimed at voters, including ballot papers, should be thoroughly tested with voters to ensure they are accessible before being used in an election (paragraph 3.52).
- We recommend that the legislation concerning 'commonly used names' is reviewed to ensure clarity as to what ROs can and cannot accept in time for the 2015 UK Parliamentary general election and subsequent elections (paragraph 4.16).
- ROs must ensure that, when outsourcing the printing of the ballot papers, they have sufficient arrangements in place with their printer to produce a ballot paper of any length (paragraph 5.71).
- In future elections, the exact colours to be used for each ballot paper will need to be agreed well in advance of the election and must take account of the lighting conditions in which they will be used. In Scotland, the Elections Convener of the EMB will be best-placed to undertake this role (paragraph 5.73).
- We recommend that a member of the RO's staff should always be present at the printing and issue of ballot papers and postal votes in order to ensure that any errors are identified and addressed before they impact on voters (paragraph 5.74).
- We will work with the forms sub-group of the EMB in advance of the 2012 Scottish local government elections, to ensure that voter-focused forms are accessible and produced timeously for electoral administrators (paragraph 5.94).

Candidates and agents

- We will evaluate the new format of our guidance for candidates and agents and will consider their feedback as part of that process (paragraph 4.20).
- Government's must ensure that any changes in the rules on spending at elections – such as the introduction of the long campaign for candidate spending at the 2011 Scottish Parliament election – are carefully thought through and clearly communicated in good time to all organisations that may need to reflect the rules in their own guidance (paragraph 4.48)
- We will seek to work with the Scottish Parliament to ensure that the guidance provided to incumbent Members in advance of future elections is comprehensive (paragraph 4.48).

Co-ordination of elections

- We urge governments to legislate to provide for a statutory EMB with a power of direction for other elections before the next Scottish Parliament election in 2016.
- Ahead of the 2012 local government elections in Scotland the EMB must be proactive in developing its role as the co-ordinating body for Scotland's elections both strategically and operationally.
- As the EMB assumes a greater role and powers the Commission will consider the implications of the EMBs development for our own role in elections in Scotland (paragraph 4.53).
- We will take account of the feedback received on our performance monitoring and revise our performance standards scheme for ROs to monitor their performance in real-time. We will ensure that new standards are in place for elections held in May 2012 (paragraph 5.67).
- Following any boundary reviews ROs and EROs must make thorough checks with the relevant Boundary Commission to ensure they are able to precisely identify the exact boundaries that are set out in legislation (paragraph 5.84)
- We welcome the recent decision of the Scottish Government to enact a legislative provision for the 2012 local government elections to allow for the issuing of ballots to those electors who were present in the polling station before the close of poll. We continue to recommend that similar provisions are brought in for other elections (paragraph 5.91)

Timing of counts

- We will circulate a discussion paper by the end of November 2011 on the timing of election counts, identifying issues that have arisen at elections across the UK in recent years and inviting feedback from stakeholders. We commit to giving our view on the future timing of counts by mid-2012 (paragraph 5.105).

1 Introduction

1.1 On 5 May 2011, a general election to the Scottish Parliament took place. This report is about the administration of that election and the experiences of the voters, candidates and parties who took part in it. The report also identifies the key issues which emerged during the election in relation to the effective delivery of the poll

1.2 The election on 5 May was combined with a UK-wide referendum on the UK Parliamentary voting system. Scheduled elections to the National Assembly for Wales and the Northern Ireland Assembly, local government across Northern Ireland and 279 local authorities in England also took place. In addition there was a UK parliamentary by-election in Leicester South; five mayoral elections in England and one referendum in Great Yarmouth on having an elected mayor.

1.3 The Electoral Commission is an independent body which reports directly to the UK Parliament. The Commission was established by the Political Parties, Elections and Referendums Act 2000 (PPERA). We regulate party and election finance and set standards for elections and electoral registration. We are responsible for publishing reports on the administration of elections and referendums. For local government elections in Scotland we undertake a number of roles relating to the administration of the elections and for these we report directly to the Scottish Parliament.

1.4 Alongside this report, we have published separate reports on the elections held in Wales and Northern Ireland. We have also published a [report on the UK-wide referendum](#) which includes an assessment of the impact of combining the referendum with scheduled elections across the UK.¹

1.5 We have also separately published on our website details of campaign expenditure incurred by election candidates and political parties who reported spending under £250,000 contesting the Scottish Parliament election. Parties who report spending more than £250,000 have a longer period in which to make their return and details of these will be published in early December 2011.

1.6 Sources used to inform this report and the research methodology we used are explained in Appendix A.

¹ The Electoral Commission, *Referendum on the voting system for UK parliamentary elections: Report on the May 2011 referendum* (October 2011), available at www.electoralcommission.org.uk/_data/assets/pdf_file/0019/141328/Final-PVS-report.pdf.

About the election

1.7 The Scotland Act 1998 provides 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 and 2007. The Fixed Term Parliaments Act 2011 provides for the current session of the Scottish Parliament to be extended from four to five years. This means that the date of the next general election to the Scottish Parliament will be May 2016, thereby avoiding a clash with a UK Parliamentary general election in May 2015.

1.8 Previous Scottish Parliament elections have been held on the same day as local government elections in Scotland. In 2007 the combined elections were notable for the high levels of spoilt ballots in the Scottish Parliament election (and for other problems caused by delayed delivery of postal votes and the failure in some count centres of the e-counting technology).

1.9 The Electoral Commission appointed Ron Gould, a Canadian elections expert, to lead a full independent review of the 2007 Scottish Elections. The 'Gould report' was published in October 2007 and contained a series of recommendations for the Commission, Government and electoral administrators aimed at strengthening electoral administration in Scotland. Many of the Gould recommendations have been carried through into practice and where relevant in this report we will assess the impact these measures have had.

1.10 Members of the Scottish Parliament 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.²

1.11 There are 73 constituency Members of the Scottish Parliament (MSPs) who are elected using the first-past-the-post system. There are 56 regional MSPs across eight Scottish Parliament regions who are elected using a closed party list system.³ Regional seats are allocated according to a mathematical formula, where the total number of votes for a party in a region is divided by the number of constituency seats won by the party in that region, plus one. This enables

² Under S5 (3) of the Scotland Act 1998 candidates who stand on the regional list are known as individual candidates. We have chosen to employ the term independent candidates throughout this report as this is what they are commonly known as by the public.

³ 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). 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 and so on.

those parties who have not won any constituency seats and individual regional candidates to be included in the calculation.

1.12 At the 2011 Scottish Parliament election 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 Voters were also issued with separate ballot papers at the Scottish Parliament elections in 1999 and 2003. However, in 2007 the design of the ballot papers was changed and the two different ballots were combined to sit side by side on a single sheet of paper.

1.14 A summary of the election results on a constituency and regional basis, together with election turnout and vote share, is shown below.

Facts and figures

Table 1 – Turnout in Scottish Parliament elections

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

Table 2 – Total seats won by parties and independents at Scottish Parliament elections

	1999	2003	2007	2011
Conservatives	18	18	17	15
Greens	1	7	2	2
Labour	56	50	46	37
Liberal Democrats	17	17	16	5
SNP	35	27	47	69
Independents	1	3	1	1
Others	1	7	0	0

2 Voters' experience – information

2.1 This chapter explores the experience of voters on 5 May. It looks at whether they knew how to take part and how confident they felt in casting their vote. It also considers whether voters clearly understood what they were voting on and looks at the impact of the public awareness campaign run by the Electoral Commission and supplemented by others.

Informing electors

2.2 Voters require different strands of information to be able to participate confidently in elections. They need factual information from impartial sources about how to register and vote and about the voting system so they have sufficient knowledge to cast their vote in a way which expresses their intentions. Voters also look for campaign material from candidates and parties contesting the elections explaining why people should vote in a particular way.

2.3 In the months preceding the Scottish Parliament election commentators in the media, politics and the electoral community raised concerns that the combination of the election with the UK-wide referendum would lead to information on the election being swamped by information and news stories about the referendum. This would potentially risk voter confusion. In this section we review the availability of public information for voters and whether voters felt they had enough information to be able to vote confidently.

Levels of voter awareness

2.4 From March to May 2011 we undertook campaign tracking research to establish levels of public awareness about the election and referendum in Scotland prior to launching our public information campaign.⁴

2.5 In March – before the public awareness campaign – research found that 41% of Scottish respondents were spontaneously aware of the upcoming Scottish Parliament elections; only 6% were spontaneously aware of the referendum (i.e. when they were simply asked about forthcoming opportunities to vote). After polling day these figures had risen to 72% for the election and 52% for the referendum.

⁴ Research was undertaken by GfK NOP in three waves. Wave 1 was from 4 to 27 March, wave 2 from 2 to 4 May and wave 3 from 6 to 29 May.

2.6 After prompting, more people in Scotland were able to identify the election as imminent, giving a total awareness figure of 64% at the time of the March survey. This was higher than prompted levels of total awareness of the National Assembly for Wales election (48% of those in Wales) or Northern Ireland Assembly election (54% of those in Northern Ireland).

2.7 In March 2011, over two-fifths (44%) of electors in Scotland were aware that they had two votes in the Scottish Parliament election, one for the constituency and one for the region. This increased to 59% in the period immediately before polling day, after our campaign activity had been undertaken.

2.8 In March 2011, one fifth (21%) thought they only had a constituency vote and one third (33%) did not know how many votes they would get in the election. These figures fell to 15% and 21% respectively after our campaign.

Public information campaign

2.9 The Commission ran a multi-media public awareness campaign in Scotland. The campaign aims were to ensure that electors:

- were aware that there was an election and a referendum taking place
- knew what the election and referendum were about
- had all the information they needed to be able to understand how to vote

2.10 The focal point of our campaign was an information booklet, which was distributed to every household in Scotland (different versions were sent to households in England, Wales and Northern Ireland). The booklet contained information about the Scottish Parliament election, including how to register and how to vote. It included details on the referendum, including the question voters would be asked, an explanation of the first-past-the-post system and the Alternative Vote system, and practical information on how to take part in both the election and referendum, such as details of postal and proxy applications and how to apply to register to vote.

2.11 We also undertook a programme of public research to ensure that the text used in the booklet was understood by voters. This involved in-depth interviews with members of the public in England, Scotland, Wales and Northern Ireland. We also consulted the Plain Language Commission and disability groups to ensure that the text was as accessible as possible.

2.12 Distribution of the booklet took place via Royal Mail's door-to-door service, and was completed by 16 April. We commissioned an independent evaluation of the distribution of the booklet which found an estimated delivery rate of 96%, which compares well with household mailshots of this type.

2.13 Our distribution plan for the delivery of the booklets covered every postcode sector in Scotland and included addressed mail for those postcodes which were split across the border between Scotland and England to ensure

that each household received the right version of the booklet. We were aware that for a mailing of this kind to every household, it would be very difficult to ensure complete coverage. There were occasions when the booklet may not have been delivered or it may have arrived with other forms of promotional mail shots (seen as junk mail) and inadvertently discarded. We were contacted by some individuals who said they had not received a booklet. In these instances we sent an individually addressed booklet immediately to them by first class mail.

2.14 On 1 April we launched a comprehensive media campaign which featured adverts on television, local radio and online. The campaign had two phases which were timed around the distribution of the booklet. The specific aim of the first phase of the campaign (1–15 April) was to inform the public that the election and a referendum were due to take place on 5 May, as well as alerting people to look out for the information booklet that was on its way to them.

2.15 The second phase of our campaign ran between 25 April and 4 May (the day before polling day). It aimed to reinforce the information in the first phase, while also ensuring that anyone without a copy of the booklet for whatever reason knew they could download a version from our website, www.aboutmyvote.co.uk. It advertised a helpline number for people to call if they hadn't received a booklet and wished to order one, or if they had any queries relating to the referendum or the elections being held in their area.

2.16 The Commission's voter website, www.aboutmyvote.co.uk, had a specific section on the Scottish Parliament election and the referendum. It included information on how to complete ballot papers, an explanation of the different voting systems which were the subject of the referendum and a copy of the booklet. There were 46,861 hits on the dedicated Scottish Parliament election page on www.aboutmyvote.co.uk during the campaign period, with our voter website as a whole receiving around 778,000 hits.

2.17 As part of the awareness campaign we also carried out work with stakeholder groups in order to reach specific audiences. This included disseminating information about accessible versions of the booklet through disability networks. We worked in partnership with the Care Commission and the Scottish Human Rights Commission to produce information for care home staff on supporting residents to participate in the election and this was sent to every care home in Scotland. We also worked with Shelter Scotland to reach people in the social rented sector and those at risk of homelessness with information about how they could register and vote. These partnerships enabled us to reach people who may be missed by traditional forms of advertising and we are grateful to all the organisations who supported us in this work.

How effective was the public awareness campaign?

2.18 We evaluated levels of people's awareness by conducting public opinion research after our public information campaign and compared this with the data we had gathered before the launch of the campaign.

2.19 Of those surveyed in Scotland, once prompted, 67% recognised at least one element of our campaign with 45% having seen our television advertising. The recognition of the radio advert in Scotland at 8% was lower than the UK total of 12%; however, online advertising recognition in Scotland at 14% was significantly higher than the 9% across the UK.

2.20 People who said unprompted that they were aware of the Scottish Parliament election rose from 41% prior to our campaign to 72% after polling day, rising to 88% when prompted. This compares with unprompted awareness of the UK-wide referendum on the UK Parliamentary voting system, which rose from 6% to 52% over the same period, and to 77% when prompted.

Other sources of information for voters

2.21 Since the 2007 Scottish elections a network has existed of communication professionals working in councils across Scotland who take a lead on running voter information campaigns in their council area. It is part of the Electoral Management Board (EMB) structure. Some staff from Electoral Registration Offices who are tasked with providing information for the public are also members of the network. The 'public awareness network' was active in advance of the 5 May polls and was used as a forum to share resources and ideas for communication activities and develop joint working. By pooling campaigns in this way, the network ensures that there are consistent messages to voters across Scotland, thereby reducing the risk of voter confusion. It still allows for some local flexibility to address particular local issues such as changes to the locations of polling places.

2.22 Network members and their local authorities carried out a wide range of local activity including traditional press releases and poster campaigns in public spaces. Many also used local authority vehicles to carry advertising about the election and referendum. Local authorities increased in 2011 their use of social media, including Twitter, Facebook, blogging sites and some well-developed web pages.

2.23 An evaluation of the effectiveness of the public awareness network demonstrated that members found the shared resources and planning to be particularly useful. Increased coverage of the election was obtained in local press when template releases were tailored and issued locally. The evaluation did highlight some concerns about the late production of public awareness materials by the Commission. While this was in some part related to delays in the legislation which provided for the referendum, we are committed to making materials available to the network earlier at future elections.

Party election broadcasts and media coverage

The Communications Act 2003 requires certain broadcasters to carry party election broadcasts (PEBs), or party political broadcasts (PPBs), based on

allocation rules created by Ofcom. The BBC, which is not regulated by Ofcom, is required to carry PEBs under its Charter and Agreements.

2.24 Each broadcaster is responsible for deciding the allocations made available to a political party. In practice the broadcasters work together through the Broadcaster Liaison Group to ensure a consistent approach.

2.25 To qualify for a broadcast for the Scottish Parliament election parties had to stand:

- a minimum of four candidates in each of the eight regional lists; or
- candidates in a minimum of one sixth of the total seats being contested in the election (i.e. 22 constituency candidates)

2.26 In practice this gave broadcast slots to the following parties:

- British National Party
- Scottish Conservative and Unionist Party
- Scottish Labour Party
- Scottish Liberal Democrats
- Scottish Christian Party
- Scottish Green Party
- Scottish National Party
- All Scotland Pensioners Party
- Socialist Labour Party
- UK Independence Party

2.27 As well as the PEBs, both BBC Scotland and STV ran a number of panel and audience debates at venues across Scotland and televised party leaders' debates were held on 29 March (STV), 1 May (BBC), and 3 May (STV).

2.28 The party leaders debates included the leaders of the four biggest parties represented in the previous Scottish Parliament, namely the Scottish Conservative and Unionist Party, the Scottish Labour Party, Scottish Liberal Democrats and the Scottish National Party. The Scottish Green Party, which had held two seats in the previous Parliament, was not invited to participate in the debates. Patrick Harvie, Co-Convenor of the Scottish Green Party, was invited to take part in BBC Scotland's 'economy debate' on 17 April, alongside the finance spokespersons of the four larger parties. The Scottish Green Party appealed to the Director General of the BBC, and subsequently to the BBC Trust, over its exclusion from the leaders' debates but was unsuccessful in its appeal.

How informed did voters feel overall?

2.29 The results of our public opinion survey, conducted by ICM during the weeks following polling day, show that four in five respondents (79%) agreed that they had enough information to make an informed decision on how to vote

in the Scottish Parliamentary election. People who had in fact voted in the election were more likely to say that they had enough information to make an informed decision on how to vote (89% of voters in comparison to 66% of non-voters). Of those aged 55 and over, 85% said they had enough information on which to make an informed decision compared with 72% of 18–34 year olds.

2.30 Perhaps unsurprisingly, respondents who described themselves as interested in politics were more likely to say they had enough information to inform their vote (85%) than those who described themselves as ‘not interested’ (63%).

2.31 In Scotland 72% of respondents in our survey agreed that there was a lot of media coverage on the election. This is higher than those responding to our survey in Wales and England where 54% and 45% respectively agreed that there was a lot of media coverage on their respective elections. This is likely due to the presence of a long established and distinctly Scottish media sector which focused heavily on the Scottish Parliament election instead of the referendum.

2.32 Those who voted were more likely to say that there was a lot of media coverage (78% of voters compared with 62% of non-voters). Older people (81% of 55+ compared with 68% 18-34 year olds), and people who are interested in politics (76% compared with 58% of those not interested) were also more likely to think there was a lot of media coverage of the election.

2.33 Media content analysis conducted for us by the University of Exeter suggested that the election gained more coverage in the Scottish media, while the referendum tended to receive more coverage in most of the UK media. Across the UK-based newspapers, television and radio news included in their study, Exeter found that referendum stories outnumbered those on the various elections taking place by nearly two to one.

2.34 Across the Scottish media outlets studied, however, (including Scottish editions of UK newspapers), there was far more election coverage, with a ratio of more than six stories on the elections to every one story on the referendum. Despite fears from some members of political parties and the media, that the prominence of the Scottish election would be overshadowed by the referendum, it was not.

3 Voters' experience – registration and voting

Registering to vote

3.1 A complete and accurate electoral register underpins any poll, because inclusion in the register of electors is essential for people to be able to vote. The main focus of electoral registration activity is the registration of electors within households which is undertaken annually in the autumn (commonly known as the 'annual canvass'). Individuals may also register or amend their existing details at any time of the year, a process known as 'rolling registration', usually as a result of moving home or having missed the annual canvass. The deadline to register to vote for the Scottish Parliament election was Friday 15 April 2011.

Who could vote?

The registers for 5 May

3.2 The franchise for the Scottish Parliament election is the local government electorate. To be eligible to vote in the Scottish Parliament election a person must be aged 18 or over on polling day, be a British, Irish, European Union or qualifying Commonwealth citizen⁵ and be registered to vote at an address in Scotland.

3.3 The referendum held on the same day used the UK parliamentary franchise, which is not the same as for the Scottish Parliamentary election. This meant two registers had to be used, and polling station staff had to be careful to issue the correct ballots to those entitled to vote only in the election or the referendum or both. While creating an additional burden this situation is not unique at elections.

3.4 A total of 3,950,626 people were on the electoral register for the Scottish Parliament election on 5 May. This was an increase of 53,076 (1.4%) electors on the 2007 electorate of 3,897,675. A total of 25,480 (0.6%) of these electors were added to the register under the '11-day rule',⁶ i.e. between 11 March and the registration deadline of 15 April, an average of 349 per constituency.

⁵ Qualifying Commonwealth citizens are those who have leave to remain in the UK or do not require such leave. This includes Rwanda, which became a Commonwealth country in March 2010.

⁶ The Electoral Administration Act 2006 moved the deadline for registration under rolling registration from six weeks before the election to 11 days before.

3.5 Electoral Registration Officer records indicated that at least 3,549 people in Scotland applied to register between the deadline to register to vote, 15 April, and polling day. In addition we are aware that Presiding Officers recorded a total of 867 people who tried to vote on polling day but were not on the electoral register.⁷

3.6 We cannot draw any conclusions about non-registration levels from the total of the 4,416 people above who we know tried to register or vote after it was too late for them to join the register for this election. However, the numbers are indicative of an expectation from some members of the public that you would be able to register very close to polling day. While the convenience of late registration deadlines for the public must be weighed against the need to maintain the integrity of electoral registers (in allowing sufficient time for checks to be carried out) we continue to believe that the cut-off at 11 days before the poll strikes the right balance between that convenience and integrity.

3.7 In our public opinion survey 85% of those surveyed in Scotland said they were satisfied with the procedure for registering to vote, which is the same figure as for Great Britain. In Northern Ireland a 77% satisfaction figure was found. Only 2% in Scotland said they were dissatisfied with the procedure for registering to vote.

Voting

3.8 Voter turnout in the constituency seats was 1,997,648 (50.6%) and in the regional seats 1,997,720 (50.6%). This was slightly down on the turnout for the 2007 Scottish Parliament election (53.9% in both votes).

3.9 The highest constituency turnout was in Eastwood at 63.4% and the lowest in Glasgow Provan at 35%.

Why people did and didn't vote

3.10 The most common reasons given in our public opinion poll for voting on 5 May related to civic responsibility (e.g. having a duty to vote/feeling it's important to do so). Sixty-five per cent of Scottish voters gave a 'civic' reason for voting. Other common reasons given were expressing a view (37%), and creating change (11%). These findings are fairly consistent with the reasons given for voting in public opinion surveys carried out at previous elections.

3.11 Over half (58%) of all non-voters said they didn't vote due to circumstances (e.g. too busy/away), with about half of these saying that they were too busy to vote.

⁷ Data on the number of people trying to vote on polling day without being registered was supplied for 47 out of 73 constituencies so the true figure is likely to be higher.

The experience of people who voted in polling stations

3.12 Nearly four in five (78%) of the Scottish public believed that voting at a polling place is convenient. This was slightly higher than the convenience rate reported in England (70%), Wales (73%) and the UK as a whole (71%). Unsurprisingly, respondents who cast their vote at their local polling place were significantly more likely to rate the polling place as convenient (96%) than those who cast their vote by post (56%). Ensuring that voters can continue to choose the method of voting most suitable for their personal circumstance (whether in person, by post or by proxy) will ensure that elections remain as accessible as possible within the current electoral framework.

Accessibility to and atmosphere in the polling place

3.13 Ninety-nine per cent of respondents in our public opinion survey said that it was easy for them to get inside their polling place to vote on 5 May, with 91% saying it was very easy. Those voters who did vote in a polling place were asked about the atmosphere inside the polling place. Nearly all (98%) of polling place voters agreed that 'it was well ordered' and 97% described the polling places as safe.

Information in the polling place

3.14 Three-quarters (75%) of Scottish polling place voters who were asked felt that the help / support available from polling station staff was useful and 77% of respondents said that the written instructions (posters or guidance) on display in the polling place were useful.

3.15 Prior to the referendum some Counting Officers (COs) suggested that the Commission's public information booklet should be available in polling stations in order to provide electors with information on request about the referendum at the point at which they cast their vote. Following consultation with Regional Counting Officers (RCOs) the Chief Counting Officer (CCO) issued a direction not to allow our booklet to be used. The purpose of this was to help ensure that polling stations remained places where campaign material, even unbiased information about the referendum options, could not be perceived as having influenced voters as they made their choices. This mirrors the approach taken in an election, where no information is permitted in polling stations about the position or body that candidates are being elected to. The CCO also wanted to make sure that there was a consistent provision of information to voters in polling stations across the UK. We did issue a 'Frequently-asked questions' document to help polling station staff respond to any questions from voters about what the referendum was about. We did not receive any adverse feedback from polling station staff or voters about a lack of information about the referendum in polling stations.

Voting by post

3.16 The deadline for applying for a postal vote was 5pm on Thursday, 14 April. **In total** 558,202 postal ballot packs were issued amounting to 14.1% of the electorate. This compared with 13.2% in 2010, 11.2% in 2007 and 3.6% in 2003. Use of postal voting continues to increase (albeit more slowly than in the past).

3.17 Across constituencies, the proportion of electors having postal votes ranged from 7.9% in Glasgow Kelvin to 20.1% in Aberdeen South and North Kincardine. Across local authorities the smallest percentages were in Glasgow (9.4%) and North Lanarkshire (9.8%) and the largest in Aberdeen (18.8%), East Renfrewshire (18.6%), South Ayrshire (18.5%) and Edinburgh (18.4%).

3.18 Postal ballots returned in the constituency elections totalled 429,595 (77.0% of those issued). In the regional list elections the figures were 429,432 and 76.9%. For comparison, the 2007 figure was 73.5%. These figures indicate that postal voters were and remain much more likely to vote than 'in person' electors.

3.19 Postal votes amounted to 20.2% of all votes included in the count at the Scottish Parliament election. This figure was an increase on the 16.7% at the UK Parliament election in 2010 and the 14.7% at the Scottish Parliament election in 2007.

3.20 The CCO had directed the COs to make use of the Royal Mail 'sweep' service to ensure postal votes posted on polling day were received by the CO / RO before the close of poll. Scottish ROs have always used this service although in other parts of the UK this has not been the case. Feedback from the EMB indicates that ROs continue to believe the sweep is a useful service. Despite the sweep, a total of 2,363 postal ballots were received across Scotland after the close of poll. These were, therefore, excluded from further consideration. The figures relate however to the postal votes received in the two weeks after the close of poll and not the day following.

Experience of people who voted by post

3.21 Results from our public opinion survey indicated that nearly six in ten (59%) think that voting by post is convenient. Ninety-five per cent of postal voters in Scotland said that it was easy to understand what had to be done in order to return postal votes. Most postal voters (98%) also found the written instructions on how to return their ballot useful.

3.22 Overall, those people who voted by post on 5 May were positive about their experience. However, although 94% in Scotland of those who voted by post said that they were satisfied with the process, they were less likely to say this than those in England (99%).

Checking of Postal votes

3.23 The Electoral Administration Act 2006 (EAA) introduced absent vote identifiers (AVIs). This was to enhance the security of the ballot by making sure

that absent votes are used by the people to whom they are issued. This provision was first used on a Scotland-wide basis in 2009.

3.24 All absent voters must provide their date of birth and signature as a security measure at the time of application. Postal voters must then provide these 'identifiers' again on their postal voting statement which they send back with the ballot paper. When ROs receive the returned postal ballot packs, they must check (a) that both fields of the postal voting statement have been completed and (b) that the identifiers supplied match those supplied at application. The law currently requires that at least 20% of returned postal voting statements are checked. If identifiers are found not to match then the postal vote is rejected and not included in the count.

Postal vote rejection

3.25 While ROs are currently required by law to check the identifiers on at least 20% of returned postal votes, in practice Scottish ROs have verified 100% of postal votes since they were first used in Scotland. The Commission supports this policy. Indeed for the 5 May polls, the CCO directed that 100% of identifiers should be checked which all Scottish ROs complied with.

3.26 We continue to support 100% checking of AVIs to help maintain the integrity of the process. We therefore welcome the announcement in September 2011 of the UK Government's proposal to amend legislation to require ROs to check the personal identifiers on 100% of returned postal voting statements. As part of this change government will need to ensure that sufficient funding is made available to ROs to support mandatory 100% checking.

3.27 Of the 429,303 postal ballots that were returned by voters at the Scottish Parliament election, 25,042 postal votes were rejected and not included in the counts in constituency contests and 24,783 in regional list elections. The rejection rates of 5.9% and 5.8% were markedly higher than at the UK Parliamentary election in 2010 when 3.6% of returned postal votes in Scotland were rejected prior to the count.

3.28 The rejection figure includes those envelopes which did not contain both valid ballot papers. This may have occurred, for example, in those instances where an elector chose to return only one of the two ballot papers used at the Scottish Parliament election. In such instances only one ballot paper could be counted. Some ROs have told us that this did occur, and some were not clear how this category of rejection should be recorded on the statutory statement. This is likely to have contributed to our calculation of the number of rejected postal votes being slightly higher than the initial totals provided by COs.

3.29 Another factor that may explain why the rejection rate was higher than in 2010 is the combined electoral events. In analysis conducted for us, Professors Rallings and Thrasher of the University of Plymouth conclude that the combination of elections and the referendum had an impact on the number of rejected postal ballots in local elections in England. For example, they noted that in London (where no elections were held) 4.8% of postal vote returns were

rejected, whereas in the English metropolitan boroughs, which are the most comparable authorities, the figure was 6.6%. Because there were elections across Scotland, it is not possible to undertake an equivalent comparison of election and non-election areas. However, given that combination of electoral events appears to have made a moderate contribution to the rate of rejection elsewhere, it may also have done so in Scotland.

3.30 We asked all ROs to categorise under seven reasons their reasons for rejecting postal votes and then send us the data. Some of the data returned contained inconsistencies. For example, the total number accounted for under the different categories of rejection was not always consistent with the overall number reported as having been rejected. For this reason, we consider the data we have to *indicate* the proportion of postal votes rejected for each reason, rather than *represent* the precise numbers rejected. We will work with ROs and the EMB to identify how we can ensure greater consistency in the recording of rejected postal ballot data. Before the 2012 local government elections, we will clarify the form used to return data to us and provide additional guidance on using the form if required.

Postal vote rejections at 2011 Scottish Parliament election

Reason for rejection	% rejected
Missing signature	14
Missing date of birth	3
Missing both signature and date of birth	12
Mismatched signature	15
Mismatched date of birth	12
Both signature and date of birth mismatched	4
Statement or ballot paper not returned	40

Reasons for rejection

3.31 The most common reason for rejection was that either the statement or the ballot paper was not returned. Otherwise, one or both of the personal identifiers was missing or did not match those given on the postal vote application (each reason accounting for around three in ten rejections). Some ROs and EROs have reported that many postal voters remain unaware of the implications of mismatched signatures or missing postal voting statements. All those involved in the process need to make greater effort to ensure voters are aware of the implications of completing the postal vote pack incorrectly.

3.32 ROs suggest that where identifiers do not match it is largely down to voter error rather than attempted fraud. Common examples cited include postal votes being rejected because people gave the date that the postal vote was completed rather than their date of birth; or because their signature had changed over time, often due to age or deteriorating health. EROs have

suggested that they should be able to follow up with electors whose postal ballots were rejected to request refreshed signatures immediately after an election where their votes were rejected. This should happen instead of waiting until 2013 when the identifiers are next due to be refreshed (and every five years thereafter).

3.33 While it is clearly important that measures are in place that are effective in detecting and preventing fraud, these measures should not inadvertently disenfranchise voters who simply make mistakes on their postal voting statements. In practice this means that some people are voting but their vote is not being counted. Allowing EROs to request a refreshed identifying signature, and also to provide electors with feedback if their postal vote has been rejected, would help address this problem.

3.34 We first made this recommendation in our July 2007 evaluation of the introduction of personal identifiers for absent voting in England and Wales. We reiterated it in our July 2010 report on the 2010 UK Parliamentary general election. In its response to that report in September 2011, the UK Government⁸ said that it would work with the Electoral Commission and electoral administrators to identify how to avoid the problems we have highlighted with the current postal voting system, while ensuring that it remains secure against fraudulent applications for postal votes. We look forward to hearing in more detail how the UK Government intends to take forward this work and will seek to work with government to ensure that systems are in place in future for the UK Parliamentary general election in 2015.

3.35 At every election there are also incidents where spouses have accidentally completed each other's postal voting statement, resulting in neither of their identifiers matching those on record. UK government has recently responded to our report on the UK Parliamentary general election 2010 indicating they will look at AVI checking. We will research the scale of the problem and feed into the UK government's review.

3.36 Some ROs have suggested that they should have the discretion to accept a date of birth that does not match if they believe it to be a genuine voter error. While we share ROs' concerns about the potential disenfranchisement of voters through error as opposed to attempted fraud, in the absence of alternative security measures we believe that the provisions for matching dates of birth must be consistently applied in order to ensure fairness and integrity in elections and to uphold public confidence in the postal voting system.

3.37 A number of ROs reported an increasing number of postal voting statements signed by a power of attorney on behalf of an elector. The decision on whether and how to vote must be made by the individual concerned and

⁸ Cabinet Office, *The UK Government's Response to Reports on the Administration of the 2010 UK Parliamentary general election* (September 2011).

power of attorney does not extend to voting rights. Consequently any ballot papers returned with a power of attorney's signature was not included in the count.

3.38 There is also provision in 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. This may be appropriate in certain circumstances. Across Scotland 5,896 waivers were granted by EROs and in force for the Scottish Parliament election. This amounts to an average of 81 waivers in each constituency.

3.39 In preparation for the Scottish local government elections in May 2012 we will work with relevant statutory and voluntary organisations in the social care sector to increase understanding of the law on power of attorney and voting and to promote awareness of the availability of waivers.

3.40 Urgent steps need to be taken ahead of the Scottish local government elections to review postal voting materials in Scotland, including postal vote application forms and postal voting statements, to ensure that the instructions for postal voters are sufficiently clear and the consequences of mismatched or missing identifiers is highlighted to the voter. We intend to work with the Forms sub-group of the EMB to ensure that this occurs. As part of this review, we need to consider other voter materials and communications that could carry information about postal voting.

3.41 The Electoral Commission will also develop a programme of work with EROs and ROs through the EMB to identify opportunities for promoting awareness of postal voting rules to all voters and targeting information about waivers to groups who may particularly benefit from them. This should include working with relevant stakeholders in both the public and voluntary sectors

Voting by proxy

3.42 If an elector had a valid reason why they were unable to vote in person, such as illness, physical incapacity, work commitments, or being overseas, they could appoint a proxy to vote on their behalf, either in a polling station or by post.

3.43 The deadline for appointing a postal proxy voter was 5pm on 14 April 2011 and 5pm on 21 April for an in-person proxy voter. After that time, anyone who was suddenly taken ill and was unable to vote could appoint an emergency proxy, up to 5pm on polling day itself.

3.44 In total 6,890 people appointed a proxy – 0.2% of the whole electorate in Scotland. Of those, 97 were proxies appointed as result of medical emergencies.

3.45 Electoral administrators continue to raise concerns about the very limited scope of the emergency proxy provisions. Current legislation only allows for an emergency proxy in the case of sudden physical incapacitation and is not

available to those having unexpected caring responsibilities or being sent away on business at short notice. We have previously recommended that the UK government should consider changing the law to expand the criteria which would allow for the provision of an emergency proxy vote.

3.46 We are pleased therefore that the UK government has recently announced its intention to extend the emergency proxy voting provisions to those called away on business or military service unexpectedly. However, we would like the government to take this opportunity to further extend these provisions so that those who have unforeseen caring responsibilities or who have experienced the death of a close relative would also be eligible to apply for an emergency proxy vote.

Ballot paper design

3.47 A ballot paper's primary function is to enable electors to vote easily and confidently knowing that their vote will be counted in the way they had intended. Good ballot design, which provides for a well laid-out and clear ballot paper, is a critical component in delivering a voter-friendly election.

3.48 The 2007 Scottish Parliament election was notable for the high numbers of ballots papers rejected at the count (2.88% of regional and 4.08% of constituency ballot papers). Ron Gould's independent report on the 2007 elections concluded that while there were a number of contributory factors relating to supplier management problems and too much political involvement in the design process, at the heart of the problem was a poorly designed ballot paper. The 2007 single ballot sheet – on which both the regional and constituency ballot papers were located side by side – was widely seen to have failed in assisting voters to express their voting preferences.

3.49 Following the 2007 election we developed a set of standards for the design of voter-friendly ballot papers and other electoral forms. We aimed to provide expert guidance for those tasked with producing ballot papers so that the ballot paper made it easy for voters to:

- understand what the ballot paper is for
- find their chosen candidate or party
- mark their choice in such a way that their vote is valid and reflects their intention

3.50 As part of this programme of work we carried out qualitative research with voters across the UK in the form of focus groups and one-to-one usability interviews. We also explored the design of other voter materials including guidance and instructions for voters in polling stations and postal voting forms. We consulted electoral administrators and those with particular expertise in accessibility and usability.

3.51 The outcome of this research was a better understanding of what makes voter materials easier or more difficult to use and in October 2009 we published

Making your mark, a comprehensive guidance resource to support local authorities and policy makers to produce clear voting materials. We expect that governments will take account of this guidance when designing ballot papers. However, design must be undertaken in conjunction with robust user testing.

3.52 The Scotland Office of the UK government was responsible for designing the ballot paper for the 2011 Scottish Parliament election. Following the 2007 Scottish elections, the Scotland Office decided to revert back to using two separate ballot papers, as had been the case at the Scottish Parliament elections in 1999 and 2003, rather than trying to combine the regional and constituency ballot papers on one sheet. As this was a significant departure from what voters had experienced at the 2007 election we recommended in May 2010 that the Scotland Office test the new design with voters before it was used on polling day. The Scotland Office did not follow our advice. While there were ultimately low levels of rejected votes (0.42 % of constituency ballots and 0.34% of regional list ballots) in the May 2011 election we continue to believe that all materials aimed at voters should be thoroughly tested with voters to ensure they are accessible before being used in an election.

3.53 A significant change from the previous election related to the use of party descriptions on the ballot. In 2007 parties standing candidates on a regional list ballot could have their registered party name printed on the ballot paper to identify them to voters. Alternatively, they could choose to have one of the 12 descriptions their party registered with the Commission printed on the ballot paper in place of the registered party name. Ballot papers are ordered alphabetically by party followed alphabetically by independents. This means that if candidates chose a description beginning with A or their party name began with A they could likely appear at the top of the ballot paper. Following the election the Gould report noted that:

The use of 'naming strategies' to achieve advantageous positions on the regional side of the ballot sheet was raised consistently by electoral stakeholders. This includes the use of high profile names in party slogans and political parties strategising to ensure that their registered description begins with an early letter of the alphabet.⁹

⁹ Ron Gould, Report Summary: The independent review of the Scottish Parliamentary and local government elections 3 May 2007 (October 2007), p7, available at www.electoralcommission.org.uk/document-summary?assetid=13223.

In his conclusions Ron Gould recommended that:

*'It would be in the interest of voters that legislation be amended to require that registered political party names always be listed first. A party description could then be printed below the party name, preferably without using individual names.'*¹⁰

3.54 The Scotland Office consulted on a number of Gould recommendations in 2008, including the use of descriptions. The majority of respondents supported changing the rules so that the name of the party appeared first and could then be followed by a registered description. Some respondents proposed that parties should be able to add a prefix of 'Scottish' if that was not already part of their registered party name.

3.55 The election rules were amended in 2009 so that in the 2011 election a party contesting a regional list was required to have the party name stated first on the ballot paper. Parties could then choose whether to add 'Scottish' as a prefix to the party name and also whether to have a registered description. Constituency candidates standing on behalf of a political party could only use their registered party name on the ballot paper, preceded by 'Scottish' if it was not already part of their party name.

3.56 Analysis of candidates for the main parties in Scotland indicates that Labour, Conservatives and the Liberal Democrats all used the 'Scottish' prefix in all eight electoral regions. The National Front used it in the only region they stood in (North East), the Christian Peoples Alliance used it in both regions they stood in (Lothian and Mid Scotland and Fife) and the Christian Party used it in three of the eight regions they contested (Lothian, Mid Scotland and Fife and South Scotland).

3.57 Following the close of nominations for the Scottish Parliament election it became apparent that some parties had chosen not to use any of their descriptions on the ballot paper and to display only their registered party name. Other parties continued to use descriptions similar to the ones they had used in 2007, but with the registered party name printed first. The use of these descriptions gave rise to some accusations via the media that such 'sloganisation' and naming strategies could confuse the voter in similar ways to that which occurred at the 2007 election. We also received a small number of representations from voters complaining about the use of slogans on ballot papers. The incidence of rejected ballots across Scotland was 0.42 % of constituency ballots and 0.34% of regional list ballots. This level of rejected votes had returned to nearer those experienced in 1999, suggesting that voters were not confused by the use of such descriptions.

¹⁰ Ron Gould, Scottish elections 2007: The independent review of the Scottish Parliamentary and local government elections 3 May 2007 (October 2007), p60, available at www.electoralcommission.org.uk/document-summary?assetid=13223.

3.58 Details of the percentage of rejected votes are shown in Table 4.

Table 4: Rejected ballots at Scottish Parliament elections as percentage of all votes at count

Year	Constituency	Region
1999	0.39%	0.37%
2003	0.82%	0.8%
2007	4.08%	2.88%
2011	0.42%	0.34%

3.59 In Table 5 the reasons for rejection of ballots in 2007 and 2011 are detailed. As in previous elections a paper being unmarked or void for uncertainty as to the voter's intentions is by far the commonest reason for rejection, followed by the elector voting for too many candidates.

Table 5: reasons for ballots being rejected 2007 and 2011 (as percentage of total ballots rejected at count)

	2007		2011	
	Constituency	List	Constituency	List
	%	%	%	%
Unmarked or void for uncertainty	96.8	69.6	85.8	62.2
Voting for more than one candidate	3.0	30.1	13.7	36.3
Writing/mark identifying voter	0.1	0.2	0.5	1.4
Want of official mark	0.02	0.03	0.01	0.1

3.60 In our public opinion research we asked whether voters found it easy or difficult to complete their ballot papers at the 2011 election. Nearly all (97%) said that they found it easy to fill in the Scottish Parliamentary ballots, with three-quarters (75%) finding it 'very easy' and just 1% reporting difficulties.

3.61 96% said they found it 'very' or 'fairly' easy to find the candidate name they wanted to vote for on the constituency ballot. Only a small proportion (2%) said it was difficult. Again, nearly all (96%) said it was easy to find the name of the party they wanted to vote for on the regional list ballot.

3.62 We noted that 96% of those that voted in both the Scottish Parliament election and referendums said they found it easy 'to fill in more than one ballot paper on the same day'. Among the very few (1%) who reported having difficulties filling in their ballot papers in 2011, the main reasons given related to not having clear instructions.

3.63 This contrasts with our opinion survey following the 2007 election when we asked how easy or difficult it was to fill in the ballot papers. On that occasion only four in five (82%) said it was easy to fill in, with only 51% saying it was very easy. In 2007, 10% had said it was difficult to fill in the ballot paper while 3% said it was very difficult.

3.64 Of those respondents who said they found it difficult to fill in the ballot paper in 2007, 44% said that the layout was confusing, 30% thought the candidates had been placed in a confusing order and 13% said the parties were in a confusing order.

3.65 In conclusion therefore we believe the work undertaken between 2007 and 2011 by government, ROs and us has made it easier for voters to complete the Scottish Parliament ballot papers. This overall view is shared by the Scottish Election Study, based at Strathclyde University, which also suggests that voters found the Scottish Parliament ballot papers less difficult to fill out in 2011 than in 2007.

4 The experience of those standing in the election

4.1 This chapter explores the experience of candidates at the election and draws upon information received in the post-election / referendum seminar, meetings with political parties and a survey of candidates and agents.

Standing at the elections

4.2 A total of 321 candidates stood for election in the 73 Scottish Parliament constituencies, an average of 4.4 per seat. The number of constituency candidates represents a small reduction from the 335 candidates who stood in 2007. The constituency with the fewest candidates on the ballot paper was Clydesdale with three candidates and the most contested was Glasgow Kelvin, with six candidates.

4.3 The 2011 election also saw a decline in the number of parties and individual (non-party) candidates standing in constituencies. Twelve parties stood candidates in the constituencies compared to 19 in 2007. Similarly the number of independent candidates standing in constituencies fell from 19 in 2007 to 14 in 2011.

4.4 The Conservative Party, Labour and the Scottish National Party stood candidates in every constituency. Due to their candidate missing the nomination deadline in error, the Liberal Democrats had no candidate in Clydesdale but stood candidates in the other 72 constituencies. In 47 out of 73 constituencies only the four main parties contested the election.

4.5 A total of 21 parties and 11 individual candidates stood for the 56 seats across the eight electoral regions. The number of parties was down slightly from the regional total of 28 in 2011 but the number of individuals was slightly up from the eight who stood in regions in 2007. Eleven parties stood candidates in all eight electoral regions. All but one of the 56 regional seats were won by parties. Margo MacDonald was returned as an Independent MSP in Lothian region for the third time.

4.6 After a peak at the 2007 election in the numbers of parties and independents contesting the regional elections, the numbers have declined.

4.7 The most contested region in 1999 and 2003 was Lothian with 17 parties or independents on the regional ballot paper. In 2007 this increased to 23 parties or independent candidates on the Lothian regional ballot. In 2011 there were 18 parties or independents on the Lothian regional ballot paper.

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

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

4.8 The decline in the number of parties and independents contesting the regional elections in 2011 may be a one off. It is important that the ROs remain able to provide a ballot paper to the electorate which complies with accessibility guidelines and has been tested.

Nomination process

4.9 The nomination process appeared to go relatively smoothly for candidates and parties across Scotland. Following problems with late postal votes in 2007, an extra week had been inserted into the Scottish Parliament election timetable and nominations consequently opened and closed a week earlier than they had done previously. The last date for nominations was 29 March 2011.

4.10 Candidate feedback has raised no concerns about the earlier date of nominations within the timetable and it has not proved to be a barrier to standing for election. It was noted however that while the period between dissolution and polling day was a week longer than previously, the expenditure limit had not changed and parties faced increased spending to cover office and administration costs for the longer 'short' period.

4.11 ROs continue to provide advice and support for candidates during the nominations period. This is valued by candidates and agents. Some ROs held candidates briefing sessions in advance of the election, while others set aside time to brief candidates when they were collecting their nominations packs or lodging their nominations.

4.12 An issue arose during the nomination period around the use of titles. Since 2007 candidates have been able to use their 'commonly known as' name, rather than their formal name on the ballot paper. For example, this might allow someone to be named as 'Sandy' on the ballot paper as opposed to Alexander. The candidate can request the use of a 'commonly used' forename, surname or both. The RO must refuse a 'commonly used' name if they believe that it is likely to confuse or mislead voters, or it is obscene or offensive, in which case they must write to the candidate to inform them of this.

4.13 During the nomination period we were made aware of two candidates who had their request to use a 'commonly used' name on the ballot paper rejected by the RO. One candidate had wanted to use the title 'Dr' in front of his name and the second wanted to include 'Cllr' before his name. Both used the 'Commonly used name' provision on the nomination form to request this. The ROs in question refused the titles on the grounds that they were not forenames or a surname.

4.14 We were asked by the candidates concerned to comment and advised the ROs in question that in our view the legislation regarding commonly used names only gave the RO discretion to reject a commonly used name if they thought the use of the commonly used name may be likely to mislead or confuse electors, or was obscene or offensive.

4.15 Despite this, both ROs in question proceeded to refuse the commonly used names given on the nomination forms. As independent officers answerable only to the courts, ROs are by law personally responsible for the running of the election in their area and the final decision falls to them.

4.16 The Commission remains of the view that, as the legislation is currently framed, titles should be accepted as commonly used forenames. However, we do acknowledge that there is some degree of uncertainty about this and there is no consensus amongst ROs. We recommend that the legislation concerning commonly known as names is reviewed to ensure clarity as to what ROs can and cannot accept in time for the 2015 UK Parliamentary general election and subsequent elections.

Advice and guidance for candidates and agents

4.17 The Commission produced specific guidance for candidates and parties at the Scottish Parliament election. The guidance documents gave advice on a range of issues including: what constituted election expenditure, managing election expenditure and how to record and report expenditure along with information on nominations, the count and other electoral process matters.

4.18 Following feedback from candidates at previous elections and a review of our guidance in 2009 we produced our guidance for candidates and agents at the Scottish Parliamentary election in bite-size documents. We published these on our website and in hard copy, for ROs to use with candidates and agents at local level.

4.19 Ahead of the election period we also contacted political parties likely to stand candidates in the election to offer training and advice on complying with the election rules. The larger parties in Scotland tend to have their own 'in house' briefings for candidates and have a number of experienced agents to support candidates. However, smaller parties and independent candidates do

not have this support for standing and made good use of our advice and support service.

4.20 We have received feedback on our new 'bite-size' guidance from candidates and political parties. In general, the comments received have been supportive of the new style but a few have indicated they would have appreciated receiving a comprehensive, single, printed document. We will be evaluating the new format of the guidance and will consider this feedback as part of that process.

Freepost election addresses

4.21 At the Scottish Parliament election constituency candidates, independent regional candidates and the nominating officer of a party standing in a regional list were all entitled to send one mailing to voters free of charge. Candidates and parties remain responsible for the costs of producing, printing and addressing the mailing but Royal Mail deliver it without cost to every elector or household in the electoral area that the candidate or party is contesting.

4.22 Royal Mail delivered nearly 33 million items of freepost communication during the election period at a cost of £6.4 million.

4.23 Feedback from parties at the Scottish Parliament Political Parties Panel after the election indicated improving confidence in and satisfaction with Royal Mail. However, parties highlighted that there was still a need for more clarity on Royal Mail's guidance regarding election mailings. Royal Mail undertook to review its guidance well before the next relevant election.

Campaigning and expenditure

Candidate expenditure rules

4.24 Constituency candidates and individual (non-party-list) candidates standing in a region at the Scottish Parliament election on 5 May 2011 were subject to new spending regulations, introduced by the Scottish Parliament (Elections etc.) Order 2010. At previous Scottish Parliament elections candidate spending was only regulated from the dissolution of the Scottish Parliament at earliest. The new rules for 2011 brought in a longer regulated period which was split into two parts:

- A 'long campaign' – 6 January to 22 March, when the Scottish Parliament dissolved.
- A 'short campaign' – 23 March to 5 May, from the dissolution of the Scottish Parliament to polling day.

Table 7: Spending limits for the ‘long campaign’ in 2011

Type of seat	Limit
Constituency (burgh)	£17,500 plus 3.5p per elector
Constituency (county)	£17,500 plus 4.9p per elector
Individual regional candidate	The total of the maximum limit for each constituency in the region for long campaign
Candidate on a party list in a region	Cannot incur expenses on own behalf

Table 8 – Spending limits for the ‘short campaign’

Type of seat	Limit
Constituency (burgh)	£7,150 plus 5p per elector
Constituency (county)	£7,150 plus 7p per elector
Individual regional candidate	The total of the maximum limit for each constituency in the region for short campaign
Candidate on a party list in a region	Cannot incur expenses on own behalf

4.25 Candidates were required to submit separate spending reports for each campaign period to the RO within 35 days of the election. The requirement to submit spending reports did not apply to candidates standing as party list candidates in a region as any expenditure on the campaign is reported by the party.

4.26 ROs are required to make candidate returns available for public inspection for two 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 be publishing the data online in mid-October. We do this to ensure that there is increased transparency in how the election was financed and contested. We are also undertaking 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.

Impact of the new long campaign

4.27 The ‘long campaign’ regulated period was introduced at the 2011 Scottish Parliament election to control candidate spending in the period before the dissolution of the Parliament. It was largely modelled on similar provisions for UK Parliamentary general elections which were introduced for the May 2010 election. The use of separate long and short campaigns for UK general elections was intended to deal with the uncertainty arising from the absence of fixed polling dates. However, it contributed to the challenges facing candidates

and agents in complying with the rules in 2010, as described in our report on campaign spending at the election.¹¹

4.28 We drew the emerging evidence of problems arising from the use of separate long and short campaigns at the UK Parliamentary general elections to the attention of the Scotland Office in summer 2010. We suggested that it would be preferable to adopt a single regulated period for the May 2011 Scottish Parliament election. Despite this, in October 2010 the government advised us that it intended to proceed with the long and short campaign approach. We subsequently issued guidance for candidates and agents at the Scottish Parliament election on how to deal with the two regulated periods and highlighted the challenges that the two-period approach would pose to candidates in our briefings for ROs.

4.29 Our checks to date on the accuracy of candidate spending returns at this election suggest that the new long period may have caused some difficulties, although on a lesser scale than at the 2010 UK Parliamentary general election. We will report fully on this issue and make any consequent recommendations for future elections in our report on campaign spending at the 2011 electoral events. This will be published in early 2012 after all the relevant spending returns have been submitted.

Party expenditure

4.30 Spending on party campaigning for the Scottish Parliament election was regulated from 6 January until close of poll on 5 May 2011. The spending limits for each party in the 'regulated period' were based on how many constituencies and regions the party contested.

4.31 Parties' campaign spending limits were calculated by adding £12,000 for each constituency they contested, and £80,000 for each region they stood in. A party standing candidates in all 73 constituencies and eight electoral regions would have a total campaign spending limit of £1,516,000.

4.32 Parties reporting spending up to £250,000 at the election were required to submit a spending return to the Commission on 5 August 2011, details of which are on our website.¹² Parties reporting spending above £250,000 are required to submit an audited return to us by 5 November 2011 and we expect to publish this information in early December.

¹¹ The Electoral Commission, www.electoralcommission.org.uk/_data/assets/pdf_file/0011/109388/2010-UKPGE-Campaign-expenditure-report.pdf, (February 2011) paragraphs 3.20 onwards.

¹² The Electoral Commission, www.electoralcommission.org.uk/party-finance/party-finance-analysis/campaign-expenditure/2011-devolved-elections#a, (September 2011).

4.33 In addition non-party campaigners or 'third parties' could undertake activity as individuals or organisations campaigning at the election. Such groups do not stand at the election as a party or candidate but they may campaign for or against a particular policy, party or candidate. If such activity incurs expenditure of more than £5,000 then they are required to register as a third party with the Commission. A spending limit of £75,800 applied and submission of an expenditure return was required by 5 August 2011. Details of these returns are on our website.¹³

4.34 As indicated above we will report fully on campaign spending at the 2011 electoral events in early 2012 after all the relevant spending returns have been submitted. This will include party and third party activity.

Monitoring campaigns

4.35 As part of our risk-based approach to regulating party and election finance we carried out desk-based monitoring of party campaigns at the Scottish Parliament election. The purpose of this work was to promote compliance by gathering information on campaigns which could be referred to when checking statutory returns. The research included monitoring advertising, leaflets and internet activity. We will report on this work in early 2012. By then we will have received all campaign spending returns for UK electoral events in 2011, completed our checks and finalised our conclusions about spending issues.

Candidates' experience of the administration of the election, polling day and the count

4.36 We conducted a survey of candidates and agents immediately after the election to inform our post-election reports. We issued nearly 700 and received 124 completed surveys back, a response rate of 18%. The results should be taken as reflecting the views of respondents, rather than as being representative of the views of all candidates.

¹³ The Electoral Commission, www.electoralcommission.org.uk/party-finance/party-finance-analysis/campaign-expenditure/2011-devolved-elections#a, (September 2011).

4.37 Feedback from candidates and agents was broadly positive or neutral about the administration of the election. The most positive response given by respondents related to the helpfulness of the RO – 94% agreed or tended to agree that the RO was helpful.¹⁴

4.38 The majority of respondents (94%) agreed that the nomination process was straightforward. Fewer, 81%, agreed that the spending rules were clear, with 9% disagreeing.

4.39 Respondents were asked whether they agreed that key electoral administration processes were transparent. A majority of 79% agreed that staff had made it clear what was happening at the count and 73% agreed in the case of postal vote verification sessions. However, 10% disagreed in the case of the count and 4% disagreed for postal vote verification. A number of respondents took the opportunity to add further comments on the count and in many cases their concerns related to the length of time it took to declare their result.

4.40 Overall satisfaction with how the election was run on 5 May appears high with 90% agreeing that it was well run on polling day.

4.41 We also took the opportunity to ask candidates and agents whether holding the referendum on the same day had an effect on campaigning. Most (58%) found it made no difference; however, 30% said it made campaigning more difficult and, in addition, 11% said it had made campaigning a lot more difficult. A number of candidates added comments to this effect with themes being that either the referendum had overshadowed the election or that they found it difficult to focus on both events at once.

4.42 Candidates and agents were also asked how safe they think voting is in general. A total of 86% said very or fairly safe and 90% said they were not very or not at all concerned about fraud in their own constituency or region.

4.43 Respondents had the opportunity to add their own comments to the form to highlight any particular issues which they felt strongly about. Comments were varied and many were made only by one person. However, a theme emerged from representatives of smaller parties that they perceived the election process to favour the larger parties. These comments highlighted areas including the media's focus on the larger parties and the fact that smaller parties were rarely asked to speak at hustings.

¹⁴ Respondents were able to say that they 'Agree,' 'Tended to agree,' 'Disagreed' or 'Tended to disagree' with a statement (there were also 'Neither' and 'Don't know' options). For clarity, these have been aggregated to produce single figures for all those who agreed or disagreed with a statement.

Use of Parliamentary resource during the Scottish Parliament election regulated period

4.44 On 19 January 2011 an enquirer suggested to the Commission that incumbent MSPs may have been using the resources of the Scottish Parliament to produce unsolicited materials for electors, including materials distributed after 6 January 2011, the date on which candidate spending began to be regulated. This matter was also raised after polling day by a number of respondents to our candidates and agents survey. These suggested that incumbent MSPs seeking re-election had the opportunity to build electoral support while carrying out their duties in the weeks preceding the dissolution of Parliament.

4.45 The Commission had raised this issue with Scottish Parliament officials in mid-January 2011; they advised that on 15 December 2010 the Scottish Parliament had issued 'Guidance for Members and their staff during a parliamentary election campaign'. This guidance said that Members could use Parliamentary resources for communications with voters until 28 February 2011, provided that such activity was undertaken for the purpose of carrying out parliamentary duties. The guidance stated that a Member could not submit a claim which related to party political activities, and that Members should not enter into any arrangement which could give rise to a benefit to a party political organisation.

4.46 The Commission and Scottish Parliament officials considered it important that the Members of the Parliament did not inadvertently fail to meet the legal requirements about communications which would count as regulated candidate spending if distributed after 6 January 2011. Such communications are regulated if used 'with a view to, or otherwise in connection with, promoting or procuring the candidate's election', even if they also relate to a Member's Parliamentary duties.

4.47 The Scottish Parliament subsequently issued an update to its guidance for members on 18 February 2011, drawing Members' attention to the regulated period that had begun on 6 January, and advising Members to take extra care regarding any material issued to constituents during the regulated period. The update also referred Members to our guidance to candidates at the election. This guidance advised that candidates and agents should make a fair and honest assessment of the facts when considering whether spending they incurred was promoting their candidacy. The Parliament's guidance update emphasised that such spending could not be reimbursed from Parliamentary resources, which were available only for the purpose of carrying out parliamentary duties. Two incumbent Members have subsequently repaid resources claimed from the Scottish Parliament in respect of material issued after 6 January.

4.48 This issue highlights the need for changes in the rules on spending at elections – such as the introduction of the ‘long’ campaign for candidate spending at the 2011 Scottish Parliament election – to be carefully thought through and clearly communicated in good time to all organisations that may need to reflect the rules in their own guidance, including the affected legislatures as well as the Electoral Commission. For its part, the Commission will seek to work with the Scottish Parliament to ensure that the guidance provided to incumbent Members in advance of future elections is comprehensive.

5 Delivering the election

5.1 Many of the processes involved in administering an election are not visible or familiar to voters, yet all of them play a part in ensuring an accessible election with an accurate result. This chapter is an account of the planning and preparation in the months before the election and the actual delivery of the election including the management of polling stations, absent voting and counts.

5.2 A number of different organisations and statutory officers contributed to the delivery of the election including Returning Officers (ROs), Electoral Registration Officers (EROs), the Electoral Management Board for Scotland (EMB), Royal Mail, the police and commercial suppliers. This chapter also gives an account of those roles and any challenges that they faced.

5.3 Where applicable we also look at combination of the Scottish Parliament election with the referendum and consider what impact this had on planning and delivery including that by the Commission and the Chief Counting Officer (CCO).

5.4 This chapter does not look to record every incident which occurred in relation to the planning or delivery of the election in Scotland but rather to draw out key themes and issues.

Roles and responsibilities

Conduct of the election and referendum

Returning Officer

5.5 Scottish Parliamentary Constituency Returning Officers (CROs) are responsible for the administration of the election in accordance with the rules set out in legislation. The RO is normally the Chief Executive of the local authority, or another senior council officer, and may be responsible for several constituencies.

5.6 The CROs also acted as Counting Officers (COs) for the purpose of the referendum held on 5 May

Regional Returning Officer

5.7 The eight Regional Returning Officers (RROs) are responsible for certain aspects of the poll relating to elections to the Scottish Parliamentary regions. These responsibilities include nominations for the electoral region, the calculation of regional results and allocation of seats, and announcing the regional result. The RROs are not responsible for the conduct of the election or the count, other than for the constituencies for which they are also the CRO.

Electoral Registration Officer

5.8 The ERO is responsible for the preparation and maintenance of the electoral register and list of absent voters within their area. Every local authority is required to appoint an ERO. In Scotland some EROs have been appointed by a combination of local authorities. There are 15 EROs in Scotland covering the 32 local authorities.

Electoral Management Board

5.9 Following the issues which arose at the 2007 Scottish Parliament and local government elections and subsequent reviews and consideration of the future structure of electoral administration in Scotland, an Interim EMB was established in 2008. This aimed to improve the delivery of electoral administration. The Local Electoral Administration (Scotland) Act 2011 established the EMB statutorily for local government elections and provided it with a general function to co-ordinate the administration of those elections. For such 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 election on an individual basis.

5.10 For the Scottish Parliament election, as in 2010 for the UK Parliamentary general election the Elections Convener had no power of direction and sought to co-ordinate the administration of the election consistently across Scotland by consensus. Because the Elections Convener was also the CCO she did however have a power of direction that affected certain aspects of the Scottish Parliament poll.

Chief Counting Officer

5.11 A referendum held under the Political Parties, Elections and Referendum Act 2000 (PPERA) has a different management and accountability structure compared to an election. It requires a CCO, who is responsible for certifying the overall result. The Chair of the Electoral Commission, Jenny Watson, was the CCO at the referendum. She appointed Scotland's 32 ROs as the COs for the referendum votes.

Regional Counting Officer

5.12 Under the PVSC Act the CCO had the power to appoint RCOs for eleven regional areas in Great Britain, including Scotland. The role of RCO was to provide consistency of approach and effective communication between individual local COs and the CCO and to monitor preparations for the referendum and those elements of the Scottish Parliament election which were combined with the referendum.

5.13 The CCO appointed the Elections Convener of the EMB as the RCO for Scotland. For ease of administration the referendum was organised on the basis of Scottish Parliament constituency boundaries which is something the EMB asked the UK government to legislate for and which the Commission supported.

5.14 As a result of the combination of the polls the CCO had power to give directions to COs on both the referendum and election where the administration was combined. This was achieved through a series of documents which set out

instructions to the COs and RCO. For those aspects of the Scottish Parliament election which were not combined with the referendum, we issued guidance to advise ROs and the EMB provided additional advice.

Other key partners

5.15 Other partners involved in supporting the delivery of the 2011 Scottish Parliament election included the Association of Chief Police Officers in Scotland (ACPOS), which maintains a network of specialist officers across the forces to co-ordinate work to prevent and detect possible electoral malpractice. Royal Mail played a key role in the delivery of poll cards, public awareness booklets and candidate election material to voters in the run up to the polls. While retaining full legal responsibility for all aspects of the poll, ROs also contracted suppliers to support the delivery of certain tasks. Key suppliers included printers to produce all the election materials including the ballot papers and postal voting packs and also those who supplied the software systems for managing the registers for the poll and the electronic verification of absent vote identifiers.

The legal framework

5.16 Elections and referendums 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 rules underpin the delivery of elections and referendums and provide a framework for those delivering the polls to ensure that the events are delivered to a consistently high standard and that there is parity of all votes cast in the election, regardless of where or how the elector voted.

The Scottish Parliament conduct order

5.17 Responsibility for the legal and funding framework for the administration of the 2011 Scottish Parliament elections is not devolved to the Scottish Parliament and lies with the Scotland Office of the UK Government. Proposals, however, to devolve much of the responsibility for setting the rules and funding for the Scottish Parliament elections are contained in the Scotland Bill currently being considered by the UK Parliament.

5.18 Elections in the UK are underpinned by a complex web formed of many strands of legislation. The Scotland Act 1998 provides the over-arching framework for the Scottish Parliament election including the voting system and the date of the poll. PPERA sets the spending and donation rules for those campaigning in the election. However, the detailed rules governing the conduct of the election are contained in the Scottish Parliament (Elections etc.) Order 2010.

5.19 Following the publication of the Gould report into the problems experienced at the 2007 Scottish elections the Scotland Office committed to acting on a number of recommendations from the report including:

- removing the provision for the votes to be counted electronically
- separating the ballot papers back out to two separate sheets
- amending the rules on how parties are displayed on ballot papers so that they had to show their party name first before any description
- inserting an additional week into the election timetable to give more time for ballot papers to be printed and postal packs delivered to electors

5.20 The Scotland Office consulted on these changes in 2008 and updated the order in 2009. However, other more complex changes required additional time to be developed and were scheduled for early 2010. The Scotland Office were also mindful of two other conclusions of the Gould report. These were the need for consolidated legislation instead of a piecemeal series of partially amended orders and also the need to ensure that any new legislation was enacted at least six months before the election it was intended to affect in order to provide sufficient time for administrators to plan with some degree of certainty.

5.21 Despite a public commitment to meeting the six month target for legislation the Scotland Office was not in a position to consult the Commission on the draft order until 6 April 2010, the day on which the 2010 UK Parliamentary election was announced. The Scotland Office reported that the delay was a result of technical drafting problems, encountered whilst trying to consolidate a raft of legal provisions into the one election order. The dissolution of the UK Parliament inevitably delayed progress further but the order was eventually laid in the UK Parliament on 25 October 2010, just over six months from polling day.

5.22 The order once laid could only be accepted or rejected by both Houses of the UK Parliament and not amended. The Scotland Office circulated the draft order to all ROs and EROs that same day, so they could start to plan on the basis of the draft order. The order was eventually approved by both Houses of the UK Parliament and came into force on 30 December 2010, just over four months before the poll.

5.23 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 will impact on the timetable for making any significant financial commitments in respect of the election including signing contracts with suppliers. We note that the Scotland Office made efforts to share the draft conduct order with ROs and EROs over six months prior to the election. In our view this did assist with the planning process for the elections, as the rules on how the election was to be conducted, including the combination provisions, were clear at least six months before polling day. But six clear months of the legislation being in place would have been better.

5.24 It is also important to note that political parties and candidates together with those who regulate and monitor campaign expenditure require certainty at an early stage about the rules for campaigning in any poll. The election order introduced new rules in relation to candidate spending at the 2011 Scottish

Parliament election which came into effect from 6 January 2011, just seven days after the enactment of the legislation. These changes are discussed in detail in Chapter 4.

New boundaries

5.25 Boundaries are of course important as they are the basis upon which the election is fought. The Boundary Commission for Scotland began its first ever review of Scottish Parliamentary constituencies and regions in July 2007. The review sought to correct disparities in the electorates in each constituency and region which had evolved as a result of population change. However, there was no change to the number of constituencies (73) or regions (8), nor to the number of MSPs to be elected. The review was concluded in April 2010 but due to the UK Parliamentary election, the report and recommendations were not submitted to the Secretary of State for Scotland until 26 May 2010.

5.26 Once the recommendations of the Boundary Commission had been accepted by the Secretary of State for Scotland, specific legislation (a Boundary Order) was needed to bring the revised constituencies into effect. New electoral registers are published on 1 December every year. The Scotland Office was concerned that if the passage of the Boundary Order were significantly delayed it would mean that EROs would be unable to publish the registers based on the revised boundaries on which the Scottish Parliament election would be fought. To aid planning arrangements, on 23 March 2010, Ann McKeichin MP, the then Parliamentary Under-Secretary of State for Scotland, wrote to EROs and also to ROs to request that they start planning for the new boundaries before the legislation was in force.

5.27 The Secretary of State laid the Boundary Commission's report and a draft Order in the UK Parliament on 1 July 2010. The draft Order was debated and approved by the House of Commons on 15 September 2010 and then debated and approved by the House of Lords on Tuesday 26 October 2010. It came into force on 10 November 2010, which was just under six months from polling day.

Other legislation related to the election

5.28 Several additional pieces of secondary legislation required replacing in time for the 2011 Scottish Parliament election:

- On 13 October 2010 an order was made to update the list of offices which would disqualify a person from becoming a candidate for, or a member of, the Scottish Parliament.
- On 1 March 2011, just over two months before the poll, two new orders were made to designate the ROs for each electoral area at both the constituency and regional level.
- On 30 March an order was made to set the maximum sum that a RO could claim in recouping the administration costs of the election including their own fee for the election.

Parliamentary Voting Systems and Constituencies Bill

5.29 On 22 July 2010 the UK Government introduced the Parliamentary Voting Systems and Constituencies (PVSC) Bill into the UK Parliament. The bill provided for a UK-wide referendum to be held on the voting system for UK Parliamentary elections. While the referendum was to be held under the framework of PPERA, all detailed rules had to be passed in primary legislation.

5.30 The PVSC Bill contained provisions to combine the referendum with elections already scheduled to take place on 5 May 2011, that is, elections to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and local authorities in parts of England and across Northern Ireland. In England, there were also some parish or town council elections and a small number of local mayoral elections. In practice, this meant that across the UK, voters would be completing between one and five ballot papers on 5 May. In Scotland, they would be completing three.

5.31 Polls taking place on the same date can either be held concurrently but as separate events, or – if the relevant legislation allows – they can be combined, so that elements common to the different polls can be managed together. Combination simplifies matters for voters, so that they receive combined information relating to the polls taking place on the same day rather than separate sets of information. For example, voters can receive a single polling card giving information about the polls taking place on that day, rather than separate cards for each different poll. They can also vote in the same polling station for the two polls instead of casting each vote in a different station.

5.32 However, there were no existing legislative provisions enabling a referendum conducted under the rules in the PPERA to be combined with other polls. And when the PVSC Bill was introduced in Parliament in July 2010, it did not contain any such provision.

5.33 In July 2010, we issued a statement setting out our views on the proposal to combine the UK-wide referendum with scheduled elections. We said:

It is important that voters have access to information about the arguments for and against the choices they have at the different polls on 5 May. Elected representatives and others have raised concerns that if a UK-wide referendum is held on the same day as elections in different parts of the UK this would impact on the coverage of the campaigns for the elections. It is important that political parties, the media, referendum campaigners and the Electoral Commission all recognise this issue and play a part in ensuring that voters receive an appropriate level of information on the relevant campaigns and can make informed decisions.

But there are also benefits from holding a referendum on the same day as scheduled elections in many parts of the UK that can be set against these concerns, including some overall cost savings and avoiding asking

approximately 39 million electors to participate in an election and a referendum on two separate occasions.

Voting at different polls on 5 May 2011 – the Electoral Commission's position
22 July 2010

5.34 We acknowledged the possible risks that could occur as a result of holding the polls on the same day, including:

- Voters being confused by different or conflicting campaign messages for the referendum and other scheduled elections could lead to confusion among voters about their choices for each contest.
- Different ballot papers and voting systems used on polling day could lead to confusion and errors by voters in correctly recording their choices.
- Overlapping, conflicting and complex responsibilities for the conduct of the referendum and other scheduled elections could lead to poor quality electoral administration.
- If the legal framework did not provide for formal combination of the referendum and elections, but provided only that the two electoral events are held on the same day, the administration of the two events would be more complex and the cost savings would be reduced.
- Overlapping regulatory regimes for donations and campaign spending could lead to confusion for campaigners and reduced transparency.

5.35 We set out a number of steps which we felt the UK Government should take to address the risks we identified. We specified that:

- the UK Government work with the Commission to ensure planning for the 5 May took account of the different impact of the range of polls right across the UK
- the rules on how the referendum was to be conducted were clear from at least six months before polling day, that is by early November for a 5 May poll
- adequate provision be made for appropriate public awareness activities to ensure voters understood the election and referendum process.
- Appropriate funding be made available to deliver the referendum and scheduled elections together
- the legal framework for the referendum must make provision for it to be formally combined with the scheduled elections

5.36 On Thursday 11 November, around six months before polling day, we published an assessment of the progress of the legislation and steps taken to mitigate the risks we had identified in July 2010 to the successful delivery of the May 2011 polls. We concluded at that stage that we were broadly satisfied that sufficient progress had been made to enable the local ROs and COs to run the polls well and that voters would be able to participate in them.

5.37 We monitored the passage of the PVSC Bill closely and issued briefings at key stages. In the event, the PVSC Bill completed its passage through Parliament and became law on 16 February, less than three months before polling day.

Combination rules

5.38 New, specific rules had to be written to cover how the combined polls must be run in each part of the UK, taking into account the separate rules that would ordinarily apply to each of those polls and any differences between them. The rules also had to specify which parts of the polls would be combined and who would take lead responsibility for them, ROs or referendum COs.

5.39 The combination rules allowed the referendum COs to discharge a number of the functions common to the polls for which the RO for the election would normally be responsible, such as provision of polling stations, appointment of poll clerks and issuing of combined poll cards. The PVSC Act also provided for decisions on most core functions that related to the conduct of a combined poll to be made at the discretion of the CO.

5.40 Scottish Parliamentary CROs remained responsible for the non-combined aspects of the election, primarily candidate nominations and the counting of votes at the elections.

5.41 Our recently published report on the UK-wide referendum contains further detail on the rules for conduct of the referendum and on the complexities of combining referendum and election rules. It contains recommendations on how the difficulties experienced in 2010–11, as a consequence of having to make referendum and combination rules in a short space of time, should be addressed by the UK Government.

The impact of combination on voters

5.42 As noted earlier in this report, despite concerns raised by politicians in the Scottish and UK Parliaments and some members of the media, voters in Scotland appear to have been able to take combination in their stride. It did not lead to confusion amongst the electorate. However, there was a strong feeling amongst many politicians and the media that combination was forced upon the Scottish Parliament and that this was disrespectful to Scotland. In light of this we welcome the discussions which took place between both governments and parliaments in considering the potential coincidence of elections to the UK and Scottish Parliament elections in 2015. We are pleased that an agreement has been reached which will allow each to take place at different times.

5.43 We however, remain concerned that there is an increasing frequency of combined polls and new categories of election. Governments should undertake wider research on the impact of combination provisions for all types of elections on voters, political parties, candidates and electoral administrators.

Co-ordination and management of the polls

5.44 The UK-wide referendum with which the election was combined had a different management structure to that which applies in elections. We review that management structure in more detail in our companion report on the UK referendum. The Chair of the Commission, Jenny Watson, was CCO for the referendum and had a legal power of direction over RCOs and local COs.

5.45 The Commission set up the Elections and Referendums Steering Group (ERSG) to bring together the RCOs, and representatives of the relevant legislatures and UK Government departments, and the Association of Electoral Administrators. Its purpose was to provide UK-level strategic oversight of the development of legislation and the planning, management and delivery of the referendum and combined elections, ensuring that any risks to the smooth running of the 5 May polls were properly managed.

5.46 The Elections, Referendums and Registration Working Group (ERRWG) was established to assist the Commission in delivering the polls. The group was a continuation of the group that was initially constituted for the 2009 European Parliamentary election and continued for the UK Parliamentary general election in 2010.

5.47 The membership of the working group included an appointee of each RCO in Great Britain and of the Greater London RO, and a representative from the Cabinet Office, the Association of Electoral Administrators and the Scottish Assessors Association. Its objectives were to:

- Provide the Commission and the CCO with advice and support in the development and delivery of referendum and election instructions, guidance and resources.
- Respond to any issues identified by the ERSG and the electoral regions during the planning process for the spring 2011 electoral events.
- Articulate the needs of the electoral registration and elections staff in Great Britain and ensure that their needs were reflected in the development of instructions, guidance and resources.
- Enable effective communication between the Commission, CCO, government officials, COs, ROs, EROs and suppliers.
- Report back to the ERSG following each meeting of the working group.

The Electoral Management Board of Scotland

5.48 While the co-ordination of the referendum on the voting system for elections to the UK Parliament was undertaken by the Chair of the Electoral Commission, Jenny Watson, co-ordination of the Scottish Parliament election was undertaken by Mary Pitcaithly, Elections Convener of the EMB for Scotland. Mary Pitcaithly also undertook the co-ordinating role of RCO for Scotland for the referendum to ensure ease of co-ordination between matters relating to the election and referendum. While individual ROs are responsible for discharging

their statutory duties and are ultimately accountable to the courts for their actions, the EMB and its Elections Convener provided a central focus of practitioner advice and experience which helped coordinate the delivery of the election on 5 May.

5.49 The Commission has championed the development of the EMB and continues to support it as a robust mechanism for the co-ordination of Scotland's electoral process. The EMB has continued to progress since its establishment in November 2008 and the first major test of its ability to drive standards and consistency at the European Parliamentary elections in 2009. The Interim EMB has added value to the planning and delivery of elections in Scotland and built upon the positive support it enjoys among the various stakeholders in the electoral community.

5.50 We welcomed the decision of the Scottish Government to establish the EMB on a statutory basis for local government elections which led to the passing of the Local Electoral Administration (Scotland) Act 2011 in March of this year. The establishment of the EMB on a statutory basis with the Elections Convener having a power of direction is a welcome development for electoral administration in the future.

5.51 Although currently no power of direction exists for the Elections Convener in relation to the Scottish Parliament election, the Convener and the EMB continued in the run up to the election to act in an interim manner. The EMB met on a regular basis and its remit included the operational detail of planning the delivery of the election, providing practitioner advice from within the electoral community, additional advice via guidance and information through its bulletin to its membership, through to the more strategic consideration of legislation and policy.

5.52 For instance the EMB once again sought, albeit with little success, to develop a mature debate on the question of timing of counts to seek to 'square the circle' between the desire to have results produced as soon as possible against the need to deliver effective and efficient administration of counts in an increasingly complex process.

5.53 The Elections Convener also put in place an escalation procedure among ROs to allow discussion of issues arising locally which could have impacted elsewhere in the immediate run-up to polling day. This was useful on a number of occasions during the administrative process. We worked with the EMB on a number of issues, for instance the production of ballot papers, and witnessed the benefits of a co-ordinating body ensuring effective administration and avoiding situations such as those experienced in 2007. All this work contributed to a well-run election in Scotland.

5.54 The primary rationale behind the creation of the EMB was the intention to bring clear benefits to the voters in Scotland through the delivery of better and more consistent electoral administration. This was particularly important in the light of events surrounding the 2007 Scottish elections where Gould's verdict

was that the structures for decision making were extremely fragmented, roles were ill-defined and it was unclear where the buck actually stopped. The aims of greater consistency across Scotland; a simplified model of decision making and leadership and representation from an Elections Convener have guided the work of the EMB since its establishment on an interim basis.

5.55 The EMB is currently undertaking its own post-election evaluation and is developing ideas to inform its future thinking. The next 12 months is an important time for the EMB and the Elections Convener as they undertake on a statutory basis for the first time activities in relation to the local government elections in May 2012. Ministers in Scottish Government and the Scotland Office and the Commission expect that the EMB, led by the Elections Convener, will proactively develop its role as the co-ordinating body for Scotland's elections both strategically and operationally. The EMB's period as a steering group is over and the Commission will seek to assist and support it as it develops into the national focal point for the administration of elections. The Commission will consider the implications for us as the EMB assumes a greater role and powers.

The impact of combination on the administration of the election

5.56 The timetable for the passage of the PVSC Act through the UK Parliament meant that as stated previously legislation was delivered very close to the polls and well after the target of six months before the election. While we were able to issue draft instructions and guidance before Royal Assent, COs and ROs were understandably nervous about committing resources while uncertainty remained about the precise rules for the conduct of the polls. This meant ROs in Scotland kept two parallel project plans on the go until the PVSC Act was passed on 16 February 2011. One of these provided for an election combined with a referendum and the other provided for a stand-alone election. This uncertainty delayed progress in key areas such as the set-up of polling stations and the design and production of voter materials as these depended on knowing exactly what polls were taking place.

The referendum and the Chief Counting Officer's directions

5.57 The PVSC Act made provision for a referendum to be held on the UK Parliamentary voting system on 5 May 2011. The referendum was held under the framework provided by PPERA, while the administrative arrangements are set out in the PVSC Act.

5.58 A referendum held under PPERA has a different management and accountability structure compared to elections. The Chair of the Electoral Commission, Jenny Watson, was the CCO at the referendum. The CCO has the power to give directions to COs on the discharge of their functions. Given the UK-wide nature of the event, the CCO used this power to direct COs to ensure that the referendum was conducted to the same standards and principles in all voting areas. COs had a duty to follow the directions, unless they had been

granted an exception. The directions were in force for any combined aspect of the election and referendum. In all there were 77 directions for COs to follow.

5.59 The CCO issued a series of instruction documents to assist COs in meeting the directions. The instructions referred to the duties under the PVSC Act and contained the directions issued by the CCO. For any aspects of the Scottish Parliament election which were not combined with the referendum, the ROs were asked to interpret the instructions and directions as guidance as they could not be directed to follow them. The instructions were divided into five modules, covering the following areas:

- Planning and organisation – module 1
- Administering the polls – module 2
- Absent voting – module 3
- Verification and count – module 4
- After the declaration of results – module 5

5.60 In addition to the instructions covering the combined aspects of the referendum, we also produced specific guidance for ROs for use in the election on the candidate nomination process, and accompanying resource such as candidate nomination forms.

5.61 In all there were 77 directions to follow. The instruction documents were supplemented by a set of resources. These resources were accessible through links throughout the online documents and through the Commission's website.

Performance monitoring

5.62 To achieve consistency of delivery in the referendum the CCO undertook performance monitoring. At elections, where we have no operational role or power of direction, we have reported on the performance of ROs against published performance standards after the event. Following the approach we adopted at the March referendum in Wales, for the UK-wide referendum we continued to adopt a more proactive role and monitored the performance of local COs and ROs in real time as the combined electoral events progressed. Working closely with the RCO / Elections Convener for Scotland this enabled us to intervene quickly if circumstances required and to give guidance and support where it was needed.

5.63 Our monitoring strategy comprised the following four main strands:

- **Monitoring of planning and organisation:** ensuring that appropriate plans and resources were in place as the foundation for delivering the combined polls on 5 May 2011. This meant requiring COs to provide copies of their plans and risk registers along with a statement demonstrating that they had adequate resources in place to enable them to deliver the combined polls effectively and in line with the legislation and CCO directions.

- **Checking compliance:** general monitoring that directions were carried out by all COs through the completion of checklists at pre-determined points in the electoral process. This aspect covered the referendum and the combined aspects of the election.
- **Risk-based monitoring:** detailed monitoring of performance on a risk-based approach through monitoring visits and scrutiny of information and evidence. This covered the referendum and the combined aspects of the election.
- **Exceptions:** where a CO believed that they had a legitimate reason for not complying with a direction, they were requested to ask the RCO for an 'exception' to allow them to carry out a specific process or procedure in a different way to that set out in the direction. This applied to the referendum and the combined aspects of the election.

5.64 We analysed all the project plans and risk registers to check that ROs / COs had covered appropriately all the key tasks outlined in the instructions.

5.65 In addition RO / COs were asked to return checklists on a weekly basis confirming that all the directions were being followed. This monitoring enabled us, working with the Scotland RCO, to ensure that key tasks had been carried out on time and to deal with any problems – for example, to ensure that polling cards and postal votes were sent out at the required time and that there were no significant problems that might affect voters.

5.66 The monitoring enabled us, with the RCO, to intervene quickly in a number of specific instances to address local difficulties and to provide active support and guidance where needed. The approach meant that problems were averted and risks mitigated and addressed, contributing to the overall effective administration of the election across Scotland.

5.67 We received feedback from some electoral administrators that they found the 'real-time monitoring' burdensome during very busy periods in the run up to the 5 May polls, for example when postal votes were being issued. We also had some feedback that some of the information that was being requested in checklists was already contained in project plans and risk registers, meaning that some information was being duplicated. However, other administrators preferred this approach and said they found the checklists to be a reassurance to them that their plans were on track. We accept that the performance monitoring procedures put in place were not perfect and we are currently re-considering them.

5.68 We will take account of the feedback received, building on the lessons learnt from our approach to managing the March referendum in Wales and the combined polls in May for the management of future electoral events. In particular, we will revise our performance standards scheme for ROs to monitor their performance in real-time. We consulted widely on a new performance standards framework in autumn 2011 with the intention that new standards would be in place for elections held in May 2012.

Training

5.69 Each RO / CO was responsible for providing training to all presiding officers and poll clerks working at polling stations within their constituencies as well as those who would be undertaking the counts.

5.70 The Commission produced a polling station handbook and 'quick guide' for staff at polling stations. We also published two types of 'doubtful ballot' guides for the counts together with doubtful ballot summary placemats for use at count tables. One version covered the Scottish Parliament election and the other the referendum. Feedback from ROs indicates that such products continue to be valued.

The ballot paper

Size

5.71 At the 2007 Scottish Parliament election there had been a notable increase in the number of parties and individual candidates being nominated for the regional ballot, in comparison with the 2003 election. As there was the potential for the number to increase again at the 2011 election, the EMB collated information on the maximum size of ballot paper each RO could produce within the terms of their print contract. While many ROs had printers who could print any length of ballot paper, some ROs did not have contingency arrangements in place if the ballot paper was to be longer than in 2007. As a potential issue with the length of the ballot paper was identified at an early point, the EMB, the Commission and the relevant ROs held discussions to ensure that adequate contingency plans could be put in place to accommodate ballot papers of any length. However, as nominations closed it became apparent that fewer parties and individual candidates had been nominated than at the previous election so these contingency plans did not need to be used.

5.72 The RO is tasked with producing the ballot paper. While in practice this function is outsourced to commercial printing firms, ROs cannot outsource the responsibility. It is vital that all ROs ensure they have sufficient arrangements in place with their printer to produce a ballot paper of any length. This is because the number of rows required will never be known until the close of nominations and there is very little time after that to seek out an alternative printer if there is a problem.

Colour

5.73 Feedback from administrators and some members of the public highlighted concerns that the exact colours of the three ballot papers used in parts of Scotland made them difficult to distinguish between and were potentially confusing for voters. The shades of the lilac regional ballot paper and the grey referendum ballot paper in particular tended to look similar under the

light in some polling stations. This was not the case everywhere and was largely due to the colour of paper used by one particular printer.

5.74 However, the colour was not the only distinguishing feature of the ballot papers. The title of each poll was written on each ballot paper, and the regional and referendum ballot papers contained different kinds of information, looked different and were different lengths. The notice displayed in polling booths giving instructions on how to mark each ballot paper was colour-coded to reflect the ballot paper colours. Despite this, the similarity of the paper colours used in some places appeared to cause confusion for some voters. In future, the exact shades to be used for each ballot paper will need to be checked well in advance and take account of the lighting conditions in which they will be used. In Scotland, the Elections Convener of the EMB will be best-placed to undertake this role.

Overseeing printing

5.75 We recommend that a member of the RO's staff be present at the printing and issue of ballot papers and postal votes in order to make sure that everything is produced as it should be. In 2011, some ROs pooled their resources and, where they were using the same printer, sent one member of staff to do the checks on behalf of that group of ROs. This saved staff time and money as printers are not always local. In one instance, mistakes were spotted at the printer and were rectified quickly. We consider this to be a good use of resource particularly in the current financial climate.

Party Names

5.76 An issue occurred with the printing of ballot papers for both the Highlands and Islands Region and the Argyll and Bute constituency in relation to how a party name appeared on the ballot paper. As the Commission is responsible for registering political parties, ROs consult our registers to check the details of parties standing and verify their registered party name which must appear on the ballot paper.

5.77 The Liberal Party who were contesting the Highlands and Islands region as well as standing a candidate in Argyll and Bute constituency, were listed on the Commission's register as 'Liberal Party (The)' to aid searching of the registers alphabetically. We had issued guidance to ROs and on our website to advise that:

The Commission's website often displays the registered party name in a search-friendly manner, e.g. 'Parliament Party [The]'. The actual party name that should be shown on the description in such cases is 'The Parliament Party'.

5.78 On this occasion the RRO indicated that he hadn't received our guidance and proceeded to prepare the regional ballot with 'Liberal Party (The)' as did the

CRO for Argyll and Bute. The RRO was alerted to the problem by another political party and took immediate steps to correct the error. Some CROs had already printed their regional ballots and had to reprint at short notice. Despite this they all managed to issue the correct ballot paper on time for postal voters.

5.79 To prevent a reoccurrence, from late September 2011 we reordered the names of parties on our register that began with the word 'the' so that 'the' appears at the beginning of the party name and is alphabetised accordingly.

Boundary changes

5.80 As reported above, new boundaries came into effect for the constituencies and regions at the 2011 Scottish Parliament election. During the lead up to the election and in the weeks following we became aware of errors by administrators in implementing the new constituency and regional boundaries for the election.

5.81 Poll cards printed with the details of the wrong polling station were sent to 141 voters in Edinburgh Eastern and Southern constituencies as a result of confusion over the position of the new boundary between the two constituencies. When the mistake was discovered the RO sent a letter to all affected voters with the correct polling details and briefed polling station staff on what to do if an elector went to the wrong polling station.

5.82 A second similar case affected approximately 150 electors who live south and west of Glen Loin in Argyll. They were mistakenly left in the Argyll and Bute constituency and Highlands and Islands region when they should have been voting in the Dumbarton constituency and West Scotland region. This error was not identified until after the election and so no corrective measures could be taken.

5.83 We are aware of a similar problem having occurred between two constituencies at the 2010 UK Parliamentary general election following the revision of local authority boundaries.

5.84 In Glasgow, 700 electors in the Glasgow Shettleston constituency were advised by their poll card to go to the wrong polling place and the error did not become apparent until polling day. The RO arranged for notices to be hand delivered to the affected electors and provided a bus to transport any voters who turned up at the wrong polling place. Up to 30 people went to the wrong place and approximately half of them did so before any free transport was provided. All were re-directed to the correct polling place.

5.85 It is imperative at any election that ROs and EROs apply the exact boundaries proposed by the Boundary Commission for Scotland or Local Government Boundary Commission for Scotland and approved by the UK or Scottish Parliament. In future, ROs and EROs should make thorough checks with the relevant Boundary Commission to ensure they are able to precisely

identify the exact boundaries that are set out in legislation. Administrative errors should not confuse voters about which candidates they are voting for or who represents them once the election results have been declared.

Postal vote issue

5.86 The administration of elections has become increasingly complex over the last ten years as legislation has been amended to introduce new processes and security measures – yet the electoral timetables have not changed significantly to accommodate the new pressures on the system. Nowhere is this more evident than in the processing of postal votes, the volume of which has grown at each successive election since postal voting became available on demand in 2001. There has been increasing concern about the short timescale in which postal ballots have to be issued, completed and returned in order to be included in the count. In order to maximise the time available for postal voters to return their ballots for the 5 May polls the CCO issued the following directions to COs:

- The first issue of postal votes must take place by not later than 18 April 2011.
- Where the issue of postal votes has been combined, put in place a system to ensure that electors who are only entitled to vote by post in either the Scottish Parliament election or the referendum are issued with the correct postal ballot pack.
- Prioritise postal votes going overseas and ensure that they are sent out as soon as possible after 5pm on 14 April 2011.
- The first issue of postal votes to electors who have registered under the 11-day rule must take place as soon as possible after they have been added to the register, i.e., as soon as practicable after the publication of the notice of alteration on 26 April 2011.

5.87 The 11-day rule relates to those who have newly registered in the month preceding the registration deadline which is 11 working days before an election (or 15 April in the case of the 5 May polls). The law requires that there be a period of five working days between the close of registration and the publication of the final registers for the election in which the public may object to any person's application to register. As it is very rare for objections to be made ROs wanted to be able to issue postal votes to new registrants who had requested them before the five-day objection period had elapsed to provide ample time for the ballots to be issued and returned. While we understood their concerns we believe the law did not allow any discretion in this area.

5.88 We believe that absent voters – particularly service or overseas voters – should have sufficient time to apply for, receive and return their postal votes in time for them to be counted. Broadly, this means – within a longer timetable – allowing postal votes to be issued earlier than at present, but still allowing people to cancel their postal votes or make new applications until 11 days before polling day, as currently happens. We welcome proposals from the UK

Government to require additional notices of alteration to the register to be published during an election period so that more postal votes can be issued in good time to postal voters.

Polling stations

5.89 Across Scotland there was a total of 13,447 polling station staff at 5,239 polling stations. Polling day went fairly smoothly across Scotland and any problems which arose for voters did not typify the majority of voters' experiences on the day. As noted in Chapter 3 our research with voters indicated that they found the polling stations to be well laid out with welcoming and helpful staff. Commission representatives' observations at polling stations on the day would support the research findings.

5.90 In order to minimise the potential risk of queues at polling stations which occurred in some parts of England at the 2010 UK general election, the CCO was able to direct on the number of polling station staff that should be available to assist voters. She directed that there should be a Presiding Officer and one poll clerk for the first 750 electors allocated to a polling station, an additional poll clerk for up to 1,500 electors and a third poll clerk if up to 2,500 electors were allotted to the station

5.91 Since the first combined Scottish Parliament and local government elections in 1999, ROs in Scotland have been careful to ensure that enough members of staff are assigned to each polling station to assist voters. Feedback from ROs in Scotland and their staff indicated that the directions on polling station staffing had little impact on them as they would always keep within the directed ratios. The largest polling station in Scotland was at Ruchill Primary School in Glasgow where 1,481 electors were eligible to cast their vote.

5.92 We agree that the best way to avoid queues is to plan to avoid them by having sufficient staff in polling places and good contingency plans to deal with any unforeseen situations which may arise. Legislative provision allowing the issuing of ballots to those electors who were present in the polling station before the close of poll is however a wise backstop which puts the interests of voters first. We welcome therefore the recent decision of the Scottish Government to enact such a legislative provision in the election order for the 2012 local government elections and recommend similar provisions are brought in for other elections.

Forms and notices

5.93 The PVSC Act gave the CCO the ability to specify modifications to the wording or format of specific statutory forms and notices for the referendum, to make them easier for voters to understand or use. The provision also applied to specific forms and notices for the combined polls in Scotland and covered:

- the referendum ballot paper
- poll cards
- 'guidance for voters' polling station notice
- postal voting statement
- postal voting guide included in postal ballot packs

5.94 The modifications were based on the good practice set out in our *'Making your Mark'* guidance for designing voter materials which was developed using research with voters and advice from usability and accessibility experts and disability organisations.

5.95 Feedback from administrators on the forms and notices was largely positive with the poll card being particularly well received. A number of administrators called for these templates to be issued for all elections so that all voters can benefit from well designed and accessible stationery. However, a majority of administrators who commented on the forms believed that the templates need to be issued at a much earlier stage in election planning to allow sufficient time for printers to include them in their production schedules. We believe there is merit in what has been suggested to us and for the coming 2012 Scottish local government elections we will seek to support the Forms sub-group of the EMB to deliver a suite of forms and notices of a similar standard to an earlier timescale.

The count

5.96 Following the 2007 Scottish elections the Gould report recommended that if polls continued to close at 10pm then there should be no more overnight counting of ballot papers. He suggested that administrative and preparatory work may go on overnight with a view to readying the ballots for counting by a fresh team in the morning.

5.97 The Scotland Office's 2008 consultation on electoral administration issues post Gould found that while a majority of respondents (53.8%) would prefer a next day count, 20.5% strongly supported the immediate counting of votes at the close of poll. Electoral administrators formed the majority of those calling for next day counting and politicians and parties formed the bulk of those demanding close of poll counts. This typifies the nature of the debate in Scotland, and indeed around the UK, on the timing of counts.

5.98 In the lead up to the Scottish Parliament election the Elections Convener, on behalf of the ROs, prepared a paper for the Scottish Parliament Political Parties Panel setting out the pros and cons of both overnight and next-day counting. While ROs have consistently felt that the increasingly complex count would be best conducted the following morning when staff are fresh and less likely to make mistakes, the majority of political parties are adamant that the count should take place immediately following the close of poll.

5.99 Each RO retains the discretion as to when to conduct their Scottish Parliament counts as long as it is 'as soon as practicable after the close of poll'. In reaching a decision on what is practicable, ROs take into account a range of factors including the availability of appropriately skilled staff, the practicalities of venues, the security of ballot papers and the geography of the constituency. They often consult with local parties and candidates, the media and other interested groups before coming to a decision. For the 5 May polls they would also need to take into account the volume of ballot papers that would need accommodating as all three ballot papers (the two Scottish Parliament ballots and the referendum ballot) had to be verified before any Parliament results could start to be declared.

5.100 The verification of ballot paper accounts is the process for checking that the number of ballot papers in each ballot box either matches the number of papers recorded on the account completed by the Presiding Officer as issued in the polling station, or if it does not, that the source of the variance can be identified and explained. It also gives a figure that can be used to reconcile the total number of votes counted. The verification process is complete once the statement of verification for each poll has been prepared and signed. Verification is crucial in achieving an accurate election or referendum result.

5.101 Our priority was that voters, candidates and parties could be confident that all votes were counted accurately. Jenny Watson, CCO for the UK-wide referendum, was clear that Scottish voters should know as soon as possible the composition of the Parliament and who would form the Scottish Government. While the result of the referendum was important for the UK's constitutional arrangements, it did not have immediate consequences and did not need to delay the results of elections. Consequently the CCO directed that the referendum count would not commence until 4pm on 6 May, thereby enabling the election to be counted first. In arriving at her decision, the CCO had sought views on the timing of the referendum count from counting officers, political parties, referendum campaigners and broadcasters.

5.102 Ultimately, 61 of the 73 Scottish Parliament constituencies were verified and counted overnight. The ballot papers for the three Highland constituencies were verified overnight but not counted until the following morning. Of the remaining nine constituencies¹⁵ all undertook the verification and counting from Friday morning.

5.103 Of those ROs who opted to count Scottish Parliament ballots overnight, the last constituency to declare was Midlothian South, Tweeddale and Lauderdale at 8.50am and the last region to declare was Lothian at 3.36pm.

¹⁵ Argyll and Bute, Clackmannanshire & Dunblane, Cowdenbeath, Dunfermline, Kirkcaldy, Mid Fife and Glenrothes, Na h-Eileanan an Iar, North East Fife and Stirling

5.104 Among the RO who opted to count Scottish Parliament ballots the next day, the last constituency to declare was Clackmannanshire and Dunblane at 2.23pm and the last region to declare was Mid Scotland and Fife at 5.16pm.

5.105 Over the years the timing of election counts has increasingly become an area of disagreement between political parties and ROs. Tensions have emerged over the timing of the count at the 2007 Scottish Parliament election, the 2010 UK Parliament election and again at the 2011 Scottish Parliament election. The Commission has no role in determining the timing of any election counts. However, it is clear that the question of the timing of election counts need to be addressed.

5.106 We will circulate an Issues Paper by the end of November on the timing of election counts, identifying issues that have arisen at elections across the UK in recent years. The Issues Paper will include evidence on the time taken to count votes at different elections and the impact made by factors such as: the combination of elections; different electoral systems; and the number of ballot papers. The Issues Paper will identify the different perspectives that can be held by those delivering elections and parties campaigning in them, as well as broadcasters who make election results programmes.

5.107 We will seek views from those with an interest in the timing of election counts, including governments, political parties, ROs, broadcasters, and of course voters.

5.108 Following analysis of views received, we will seek to make recommendations on the timing of election counts, taking account of type of elections and a range of relevant circumstances.

Electoral Integrity

5.109 Eighty-three per cent of those surveyed in Scotland said that they thought voting in general was safe from fraud and abuse. Only five per cent of Scottish respondents said they thought voting is very or fairly unsafe and postal voters were more likely to consider that voting is unsafe from fraud (8%) compared to polling station voters (3%).

5.110 Ninety per cent of people in Scotland thought voting in person was safe and 61% of Scottish respondents thought voting by post was safe.

5.111 Scottish respondents were less likely to be concerned (17%) that fraud or abuse took place at the election than those in England (24%), Wales (25%) and Northern Ireland (26%). About one-quarter (27%) of the Scottish public were concerned that fraud took place at the 2010 UK general election.

5.112 As part of the electoral community's work to counteract any potential or actual electoral fraud, the we have worked with the Association of Chief Police Officers in Scotland (ACPOS) to collect data on the number of allegations of

malpractice reported to the police, to understand the scale and nature of electoral malpractice at elections and referendums. Data is collected locally by Single Point of Contact Officers (SPOCs) and sent to the Police National Information and Coordination Centre (PNICC). Each SPOC returns information, on a monthly basis, on any instances of alleged malpractice.

5.113 The Commission and the EMB have also encouraged individual ROs and EROs to develop strong links with their local SPOC. ROs and EROs have responded positively to such suggestions. This ensures police forces are aware of the potential nature of electoral fraud and electoral practitioners understand what to do if such instances are suspected. It is a matter of public record that the incidence of electoral fraud, alleged or actual, is very low in Scotland. That does not mean however that the electoral community is not aware of the potential damage to democracy such instances can cause and is vigilant against such potential occurrences. To that end the Commission works with ACPOS to provide guidance to Scotland's police forces on electoral malpractice. We also held, with the support of the EMB, a briefing with ACPOS on 22 March 2011 with approximately 45 police officers from all eight police forces in attendance.

5.114 At the election, the police investigated a case of suspicious postal voting statements which all came from residents at the same nursing home. Their enquiries concluded that a member of staff had tried to be helpful by completing the forms according to the wishes of residents but had failed to realise that the postal voters had to sign the postal voting statement themselves. The police gave advice to staff in the care home and did not bring charges.

Funding the election

5.115 Scottish Parliament elections are funded by the Scotland Office. They meet the costs incurred by ROs in administering the election. In line with changes to the funding regime at other elections, the Scottish Parliament (Returning Officers' Fees) Order 2010 was drafted so that a set fee is paid to each CRO and RRO for the areas they administer and a maximum recoverable amount is set for the administration of the election rather than ring-fenced amounts for particular activities. The total maximum recoverable in respect of the constituencies in Scotland was £7,785,521 and for the regions was £20,080, an overall total of £7,805,601.

5.116 The actual cost that ROs incurred in running the elections is not yet known. The Scotland Office provided guidance on how to account for the election and set the deadline of 5 January for the submission of ROs election accounts.

5.117 Scotland Office also met the costs of Royal Mail's delivery of the freepost election communications of candidates and political parties. Royal Mail delivered 11,404,377 addressed items and 12,650,313 unaddressed items – 24,054,690 in all. The total cost of all postings was £6,402,314.

Appendix A

Research Methodology

This report uses information from a number of research projects which were carried out by the Electoral Commission or by contractors working on our behalf. Details of the methodologies used for each of these projects follow.

Public opinion survey

ICM interviewed a representative sample of 1001 voters and non-voters in Scotland by telephone on 7–23 May 2011. Across, the UK, 3,961 voters and non-voters were interviewed in the same period. The sample breakdown for other areas is as follows: England 1,458, Wales 1,001 and Northern Ireland 501.

Data was weighted to the known national population profile in Scotland and in each area of the UK. Findings are statistically significant at the 95% confidence level or above. A technical report is available upon request.

Comparisons made between the different polls held in 2011 and elections held in previous years are indicative and should be treated with some caution.

Campaign tracking

GfK NOP interviewed 194 adults in Scotland (1409 adults across the UK) at the pre-wave (4 to 27 March), 107 adults in Scotland (418 across the UK) at the mid-wave (2 to 4 May), and 174 adults in Scotland (1392 adults across the UK) at the post-wave (6 to 29 May). The target audience for the research was adults aged 18+ who were eligible to vote in the election and the UK referendum in May 2011.

All interviews were conducted face-to-face in-home, with the sample drawn using random location sampling from Scotland and across the UK. Pre- and post-wave interviews were conducted using GfK NOP's Random Location Omnibus, and around 200 ad-hoc top up interviews were completed in Wales, Scotland and Northern Ireland. Mid-wave interviews were conducted as an ad-hoc study. All interviews were sampled using the random location methods, and were conducted in the same way, to enable them to be combined and comparisons to be made.

Electoral data

David Denver, Emeritus Professor, Lancaster University collected and collated data on the Commission's behalf, working in collaboration with Professors Colin Rallings and Michael Thrasher at the Elections Centre, University of Plymouth. This included data relating to electoral registration, turnout, absent voting and

rejected ballots. Data was collected from Returning Officers (ROs) and Electoral Registration Officers (EROs) across Scotland.

Media analysis

Professor Susan Banducci and Dr Daniel Stevens at the Centre for Elections, Media and Parties at the University of Exeter captured and analysed news content across 41 outlets across the UK for a 53-day period in the run up to polling day. News outlets monitored in Scotland included television news and newspapers including Scottish newspapers and Scottish editions of newspapers available across the UK.

Survey of election candidates and agents

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 individual candidates who were standing on these lists. We issued around 700 surveys and received 124 completed surveys. This is a response rate of approximately 18%. Findings are not representative of the views of all candidates and agents.

Political parties' feedback

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

Returning Officers' and Counting Officers' feedback

The Commission issued an optional qualitative feedback form to ROs and Counting Officers (COs) in Scotland and across Great Britain to comment on their experience of administering the 5 May polls.

We also undertook a number of meetings with key stakeholders such as the Electoral Management Board and held a post-election event for RO / EROs and their staff to obtain the experiences and thought. In addition, we undertook a number of visits to ROs and observed preparation, polling day and the count activities in a number of constituencies across Scotland

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We are an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. We regulate party and election finance and set standards for well-run elections.

Democracy matters