

# Consultation on a Draft Referendum Bill

October 2016



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

# **Consultation on a Draft Referendum Bill**

© Crown copyright 2016



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78652-555-0

Published by The Scottish Government, October 2016



# Foreword

In May 2016 the current Scottish Government was elected with a clear mandate that the Scottish Parliament should have the right to hold an independence referendum if there was clear and sustained evidence that independence had become the preferred option of a majority of the Scottish people – or if there was a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out of the EU against our will.

On the 23 June, Scotland delivered a strong and unequivocal vote to remain in the EU.

In Scotland, there was a majority for Remain in every single local authority, with 62 per cent across the country voting to Remain. In contrast a majority in England and Wales voted to leave the EU.

As a consequence, Scotland is now faced with one of the specific scenarios in which this government pledged that the Scottish Parliament should have the right to hold an independence referendum.

In the immediate aftermath of the EU referendum, as we face the social, economic and financial damage that leaving the EU will bring, I made it clear that I would explore all options to protect Scotland's vital national interests and that the Scottish Government would begin, in line with the commitment we were elected on, to prepare the required legislation to enable a new independence referendum to be held if it became clear that was the only or best way of protecting those interests.

In our Programme for Government we repeated that commitment, stating that we would publish for consultation a draft referendum bill.

The UK Government's recent statements on its approach to leaving the EU raise serious concerns for the Scottish Government. We face unacceptable risks to our democratic, economic and social interests and to the right of the Scottish Parliament to have its say.

Indeed those statements contradict the assurances given before the independence referendum in 2014 that Scotland is an equal partner within the UK and that a vote against independence would secure our EU membership.

For many people, this approach will be evidence of a wider democratic deficit within the UK, where decisions about Scotland are too often taken against the wishes of people who live here.

Protecting Scotland's interests is the most important job of this government. We must have every option available to do this and it is for that reason we are now publishing the draft referendum bill for consultation.

In 2014, our objective was for the conduct of the referendum to meet the highest standards of fairness, transparency and propriety. That objective was achieved then and remains crucial for any future referendum. The consultation and draft bill propose that the approach should be broadly the same as in 2014, with some technical adjustments to reflect recent changes in elections law and procedures such as individual registration.

As in 2014 the proposed franchise for the referendum will match that for Scottish Parliament elections. That will mean that two important groups of people would have a voice that was denied to them in the recent referendum on EU membership: 16 and 17 year-olds and citizens of EU countries who have made Scotland their home.

This government remains willing to work with the UK Government to negotiate a future relationship with Europe that is in line with the views of the overwhelming majority of the Scottish people and which works for the United Kingdom as a whole.

We will put forward constructive proposals that will both protect Scotland's interests and give an opportunity for the UK Government to demonstrate that Scotland is indeed an equal partner.

But if it becomes clear that it is only through independence that Scotland's interests can be protected, then the people of Scotland must have the ability to reconsider that question, and to do so before the UK leaves the EU.

A handwritten signature in black ink, reading "Nicola Sturgeon". The signature is written in a cursive, flowing style.

The Rt Hon Nicola Sturgeon MSP

First Minister of Scotland

# Summary

This paper sets out the Scottish Government's proposals for legislation for a referendum on independence for Scotland. It sets out proposals for the rules governing the referendum campaign, the conduct of the poll and the counting of votes.

As announced in September 2016 in *A Plan For Scotland: The Scottish Government's Programme For Scotland 2016-17*, the Scottish Government is publishing for consultation a draft Referendum bill in order that it is ready for introduction should the Scottish Government conclude that seeking the view of the Scottish people on independence is the best or only way to protect Scotland's interests in the wake of the EU referendum. It would then be for the Scottish Parliament to consider the bill and decide whether a referendum should be held. The Scottish Government will reach a conclusion on whether to ask the Scottish Parliament to approve such a bill in the light of developments over the coming months. If the Scottish Government decides to formally introduce the Bill to Parliament, it would be expected that a section 30 order would be sought and agreed, as in 2014.

This consultation paper invites views on the proposals for how the referendum would be run. A draft Scottish Independence Referendum bill is set out as an appendix to this document.

The proposals are based on the Scottish Independence Referendum Act 2013 ("the 2013 Act") which was used very successfully for the 2014 referendum. The objective for that referendum was to meet the highest standards of fairness, transparency and propriety. That objective was achieved. In the foreword to the Electoral Commission's report on the 2014 Independence referendum, held on 18 September 2014, John McCormick, the Electoral Commissioner with special responsibility for Scotland, said:

"First of all, I am pleased to report that the referendum was well run. At 84.6%, turnout at the referendum was the highest recorded at any Scotland-wide poll since the advent of universal suffrage. In addition, 10% of the voters we spoke to reported that the referendum was their first experience of voting at any statutory poll. And voters were happy with their experience of the electoral process. 94% of people who voted in polling stations, and 98% of those who voted by post, reported to us that they were satisfied with this."

This paper proposes a number of changes to update the provisions of the 2013 Act in light of more recent changes to the law on elections, particularly the change to individual electoral registration (IER) and the Scottish legislation to lower the voting age to include 16 and 17 year-olds for local and Scottish Parliament elections. There are other changes to address specific issues which were raised following the 2014 referendum.

The Scottish Government will publish the contributions it receives (except where respondents request confidentiality) and use them to inform the further development of the bill.

**Chapter 1** sets out the context and background to the publication of this consultation.

**Chapter 2** covers the management and regulation of the referendum and the franchise – the rules on who would be able to vote.

As in 2014 the referendum would use Scotland’s unique electoral management structure, co-ordinated by the Electoral Management Board for Scotland, a body independent of the Scottish Government. The poll and the count would be managed in the same way as for elections, by local returning officers (designated for the referendum as “counting officers”) directed by a Chief Counting Officer (CCO) who would be responsible for ensuring the proper and effective conduct of the referendum.

Counting officers, electoral registration officers and their staff would be responsible for managing the registration, poll and count processes within their local areas. The detailed rules about the conduct of the poll would be broadly the same as used in 2014.

The consultation proposes that, as in 2014, the regulation and monitoring of the referendum campaign should be undertaken by the Electoral Commission, which would also issue a range of guidance. The Commission would also report on the referendum process after it has been completed. In its responsibilities for this referendum the Commission would report to the Scottish Parliament.

The franchise for the referendum on Scotland’s constitutional future would reflect residency in Scotland. Eligibility to vote would be the same as for the 2014 Referendum, and for Scottish Parliament and local government elections. It would include 16 and 17 year-olds and EU citizens in line with the principle that decisions on the future of Scotland should be for those who live and work here, including all those who have chosen to make Scotland their home.

Some changes to absent voting arrangements are proposed. These would update the 2013 Act to reflect developments in accepted practice at other Scottish elections, for example by ensuring 100% checking of postal vote identifiers.

A change in arrangements for the appointment of polling and count staff is suggested. This was recommended by the Electoral Commission in its report on the 2014 Referendum and makes provision that returning officers should not knowingly appoint polling or count staff who have been involved in campaigning.

**Chapter 3** describes the proposed rules to ensure that the referendum campaign is run in a fair and transparent manner.

The rules are broadly the same as used in 2014. Updates to the rules on permissible participants are proposed. These bring the draft bill up to date with more recent

changes in electoral law and referendum practice, and implement minor changes recommended by the Electoral Commission in its report on the 2014 referendum. Those include requiring the person who is to be appointed as the responsible person for permitted participant bodies to sign the application for declaration as a permitted participant, and allowing for a political party's campaigns officer to take on the treasurer's role of responsible person.

As in 2014, an individual or organisation wishing to spend more than £10,000 on campaigning for a particular outcome would need to register with the Commission as a permitted participant.

A permitted participant may apply to the Commission to be the principal campaigner (the "designated organisation") for an outcome in the referendum. The draft Referendum bill sets out the spending limits for different types of permitted participant.

No public funding would be provided for those who wish to campaign.

**Chapter 4** explains how to respond to the consultation.

The deadline for responses is Wednesday 11<sup>th</sup> January 2017.



# 1 Introduction and Context

1.1 The Scottish Government was elected in 2016 on a commitment that the Scottish Parliament should have the right to hold a referendum on independence for Scotland if there was a significant and material change in the circumstances that prevailed for the 2014 referendum, such as Scotland being taken out of the EU against the will of its people.

1.2 In the referendum on the UK's membership of the European Union held on 23 June 2016, the people of Scotland voted by a margin of 62% to 38% to remain in the European Union. The United Kingdom as a whole voted by 52% to 48% to leave the European Union.

1.3 Because the circumstances described in the election commitment have arisen, the Scottish Government has prepared the attached draft bill for consultation to ensure that the option of independence can be put to the people of Scotland by the Scottish Parliament should it consider that is the best approach to safeguarding Scotland's interests.

1.4 In the 2014 referendum, an Order in Council under section 30 of the Scotland Act 1998 was agreed by Westminster and the Scottish Parliament, recognising the mandate of the Scottish Government, and the support of the Scottish Parliament, for a referendum on independence. The Order put it beyond doubt that the Scottish Parliament could legislate for that referendum. If the Scottish Government decided to formally introduce this Bill to Parliament, it would be expected that a section 30 order would be sought and agreed, as in 2014.

1.5 The decision on Scotland's future should be taken through a process that is beyond reproach. The Scottish Government is committed to ensuring that the highest standards of fairness, transparency and propriety are maintained. This paper gives people the opportunity to examine the proposed changes to the referendum legislation so that it is ready for introduction to the Scottish Parliament should this be required. The draft bill applies the rules in the Scottish Independence Referendum Act 2013 that applied to the 2014 referendum, subject to some specified changes.

## The Question

1.6 In the 2014 referendum the question was "Should Scotland be an independent country?" At this stage, it is expected that the same question would be used again - but if as a result of consultation the Scottish Government is minded to propose a variation on that question it would submit the proposal to the Electoral Commission for independent testing in the usual way.

## A simple majority

1.7 As in 2014, the referendum would not be subject to any minimum turnout requirement or approval threshold where approval is required by a minimum percentage of registered voters. This is in line with established practice within the UK and across Western Europe.

## 2 Mechanics of the Referendum

### Chapter Summary

- The proposals for the management and regulation of the referendum align closely with the arrangements used successfully to deliver a fair and transparent referendum in 2014. As in 2014 they closely mirror what happens for local and parliamentary elections in Scotland. They make use of Scotland's unique electoral management structure, co-ordinated by the Electoral Management Board for Scotland.
- The proposed split of responsibilities is as follows:
  - the poll and the count will be managed in the same way as for elections, by local returning officers (designated for the referendum as "counting officers") directed by a Chief Counting Officer
  - regulation of the referendum campaign, and reporting on the referendum process, will be the responsibility of the Electoral Commission. In this role the Electoral Commission will report to the Scottish Parliament.
- Eligibility to vote will be the same as for Scottish Parliament and local government elections.

### Management of the referendum

2.1 The Electoral Commission viewed the 2014 Referendum as well run, and commended those responsible for administering the referendum.<sup>1</sup> Voters were also happy with their experience of the electoral process. 94% of people who voted in polling stations, and 98% of those who voted by post, reported that they were satisfied with the electoral process.

2.2 Accordingly, the Scottish Government proposes that the poll and the count would be managed in the same way as in 2014, by the returning officer (designated for the referendum as the "counting officer") for each of Scotland's 32 local government areas under the overall direction of a Chief Counting Officer.

### Regulation and oversight

2.3 The Electoral Commission oversees and reports on elections in Scotland, and has reported on the 2016 Scottish Parliament election and 2014 referendum. The draft bill proposes that the Electoral Commission would also be responsible for regulating the referendum, and would be responsible to the Scottish Parliament for the role that it will play.

---

<sup>1</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/179812/Scottish-independence-referendum-report.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf), p1.

2.4 The division of responsibilities outlined above mirrors precisely the system established for other elections in Scotland in response to the Gould Report<sup>2</sup>, an independent review which made recommendations on improving the administration of elections following the problems experienced in 2007. Under this approach, guidance and regulatory functions are for the Electoral Commission while the operational role is for returning officers, electoral registration officers and their staff.

## **The conduct of the poll and the count**

2.5 The draft bill provides for the appointment of a Chief Counting Officer (CCO) who would be responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of the votes. As in 2014, the convener of the Electoral Management Board for Scotland is expected to be the CCO.

2.6 The CCO would have a power of direction over local counting officers. The draft bill confers a range of functions on the CCO and local counting officers, including:

- making arrangements for the issue of poll cards and to allow for absent or proxy voting
- making arrangements for the designation and management of polling stations and appointing presiding officers and clerks
- publishing notice of the referendum
- ensuring the security of the ballot
- counting the votes and declaring the result.

2.7 Votes would be counted in each local authority area and reported to the CCO, who would make a declaration of the national results.

2.8 Votes would be counted by hand in the traditional way. The detailed rules about the conduct of the poll are based on those applying to the conduct of elections. The Scottish Government will discuss the detailed referendum rules further with the Electoral Management Board and others.

## **Role of the Electoral Commission**

2.9 The draft bill confers a range of guidance, regulatory and monitoring functions on the Commission:

- publishing guidance for voters
- publishing guidance for permitted participants
- recording the money spent and donations received by permitted participants and making that information available for public inspection
- observing the conduct of the referendum at polling stations
- observing the conduct of the count
- publishing a report on the conduct and administration of the referendum.

---

<sup>2</sup> <http://www.gov.scot/Publications/2010/09/02171513/2>

2.10 The Electoral Commission would be expected to take a fair and balanced approach to its activities and to be seen to be operating in this manner. The functions are specified in the bill in a way which would ensure that the Commission is at no risk of Scottish or UK Government influence in its affairs.

**Question 1: What are your views on the proposed arrangements for managing the referendum?**

**Proposed technical changes from the 2014 referendum procedures**

**Eligibility to vote**

2.11 Eligibility to vote in the referendum will be the same as for Scottish local government and Scottish Parliament elections. The franchise for these elections most closely reflects residency in Scotland and has been chosen for that reason. The choice of this franchise reflects the internationally accepted principle that the franchise for constitutional referendums should be determined by residency and the Scottish Government's view that sovereignty lies with the people of Scotland.

The following groups of people will therefore be entitled to vote in the referendum (if they are not subject to any legal incapacity to vote):

- British citizens resident in Scotland
- Commonwealth citizens resident in Scotland
- citizens of the Republic of Ireland and other EU countries resident in Scotland
- members of the House of Lords resident in Scotland
- Service/Crown personnel serving in the UK or overseas in the Armed Forces or with Her Majesty's Government who are registered to vote in Scotland.

2.12 With the passing of the Scottish Elections (Reduction of Voting Age) Act 2015, it is no longer necessary to make specific provision for 16 and 17 year-old voters as they are now included in the existing register of local government electors. The draft bill therefore disapplies provisions in the 2013 Act that relate solely to 16 and 17 year-old voters and replaces them with references to the relevant provisions in the 2015 Act. The effect of these changes is that 16 and 17 year-olds will, as was the case in 2014, be able to vote in this referendum if they have reached the age of 16 by the day of the poll.

**Absent Voting**

2.13 The draft bill contains provisions on absent voting (postal and proxy voting) which are in line with accepted practice at other elections. The bill includes a requirement that the person who is to be appointed as a proxy for another voter must themselves be registered to vote. This change reflects practice at other elections and is designed to ensure that a proxy's identity has been confirmed using the individual electoral registration process. (See the modification to paragraph 5 of schedule 2 of the 2013 Act).

2.14 The draft bill restricts the access to emergency proxy votes to electors who require it on the grounds of a disability, occupation, service or employment, where the grounds have arisen after the cut-off date for a normal proxy application. This reflects current practice at other elections and addresses concerns from stakeholders following the 2014 referendum, that the 7,770% increase in emergency proxy applications (6,690 compared to 85) compared to the European Parliamentary elections held in June 2014 caused excessive administrative burdens. (See the modification to paragraph 7 of schedule 2 of the 2013 Act).

2.15 The draft bill proposes changes to the checking of postal votes statements. These require that the personal identifiers on all postal voting statements are checked. While the statutory requirement at the 2014 referendum was that not less than 20% of personal identifiers were to be checked, in line with normal practice at other elections the counting officers checked all personal identifiers. The bill therefore proposes to change the legislation to require 100% checking and bring the legislation into line with previous practice and accepted practice at other elections. (See the modifications to paragraphs 35 to 39 of schedule 2 of the 2013 Act).

### **Polling and Count Staff**

2.16 In schedule 3 of the 2013 Act, rules 10 and 29, which set out rules relating to the appointment of polling and count staff, are amended by the draft bill so that the counting officer “must not knowingly” appoint or employ anyone who has been involved in campaigning during the referendum. This change reflects recommendation 19 of the Electoral Commission’s report on the 2014 referendum.

### **Verification Statements**

2.17 Schedule 3 of the 2013 Act, rule 30, is a changed provision that would require the counting officer to supply a copy of the verification statement (which confirms that the number of ballots counted equals the number recorded) to any counting agent on request. The provision of copies of the verification statement is normal practice at most other elections and this change reflects current best practice at election counts.

**Question 2: What are your views on the proposed technical changes to polling and count arrangements?**

# 3 Campaign Rules

## Chapter Summary

- The draft bill applying the 2013 Act includes rules to ensure that the referendum campaigns are run in a fair and transparent manner.
- The Electoral Commission will have responsibility for policing these rules and for reporting to the Scottish Parliament. Any individual or organisation wishing to spend more than £10,000 on campaigning must register with the Commission in order to be a “permitted participant”.
- There will be no public funding for campaign organisations.

## The need for campaign rules

3.1 The accepted approach in the UK for running a referendum has its origins in the Fifth Report of the Committee on Standards in Public Life. That led to the Political Parties, Elections and Referendums Act 2000 (PPERA) that governs referendums held under legislation made by the Westminster Parliament.

3.2 It is essential that there are rules in place to ensure that the referendum campaigns are run in a fair and open manner. The proposals in the draft bill are broadly the same as those used in 2014, which in turn mirrored those prescribed in PERA. They place some restrictions on expenditure and donations by those campaigning at the referendum. The aim is to create a level playing field for those involved in campaigning. No political party or organisation should have an unfair advantage over another.

3.3 The day of the referendum poll would be preceded by a “referendum period” (at this stage proposed to be 16 weeks) during which the rules on campaign conduct and spending would apply. For the 2014 Scottish independence referendum, the period was 16 weeks. For the 2016 EU referendum and the 2011 referendum on the Alternative Vote it was 10 weeks.

3.4 It is customary for there to be a period before elections and referendums in the UK, during which Ministers and other public bodies refrain from publishing material that would have a bearing on the election. The draft bill specifies a 28-day referendum restricted period that would apply to the Scottish Government and public bodies. This is in line with the 2013 Act and PERA. In 2014, in line with the Edinburgh Agreement, the UK Government agreed to act according to the same PERA-based rules during the 28-day period.

3.5 It is also essential that the campaign rules are followed and policed. The Scottish Government proposes that the Electoral Commission should take on this role as explained in the previous chapter and, in doing so, report to the Scottish Parliament as it does for its activities in monitoring local elections in Scotland.

## **Participants in the referendum campaign**

3.6 In line with the approach taken in Part 7 of PPERA, the draft bill provides that any individual or organisation (including a political party) who wishes to spend more than £10,000 on campaigning would have to notify the Commission that they wish to be a “permitted participant”. The purpose of having declared permitted participants is to help to ensure an open process where those who wish to campaign for a particular outcome must register that intention.

3.7 The draft bill provides that a permitted participant may apply to the Electoral Commission to be the principal campaigner representing one of the outcomes of the referendum. These permitted participants are called “designated organisations”. A designated organisation would have a higher campaign spending limit than other permitted participants. The Scottish Government would seek agreement with the UK Government that each designated organisation would be entitled to one free mail-shot to every household in Scotland, or to every voter entitled to vote in the referendum, to promote its campaign. The Scottish Government would also seek agreement with the UK Government on campaign broadcasts. Designated organisations would also be entitled to use meeting rooms in schools or other public buildings for public campaign meetings during the 4-week period before the referendum is held.

## **No public funding**

3.8 It is not proposed that there should be any grants of public money to those who wish to campaign.

### **Proposed technical changes from the 2014 referendum procedures**

#### **Permissible Participants**

3.9 The list of permissible donors and permitted participants (Schedule 4 of the 2013 Act, paragraphs 1, 2 and 40) has been updated to reflect changes to the campaigning rules under the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014. These changes also take account of recommendation 7 of the Electoral Commission’s report on the 2014 referendum.

3.10 In schedule 4 of the 2013 Act, paragraph 3 has been updated to require that the person who is to be appointed as the responsible person for permitted participant bodies should sign the application for declaration as a permitted participant. This is to ensure that the person is aware that they are being appointed and the responsibilities they will take on. This change reflects part of recommendation 8 of the Electoral Commission’s report on the 2014 referendum.

3.11 In schedule 4 of the 2013 Act, a new paragraph 3A has also been added to allow the Electoral Commission to reject a declaration if the campaigner proposes to register a name which is obscene or offensive or includes words the publication of which would be likely to amount to the commission of an offence. This change reflects the legislation at recent referendums.

3.12 In schedule 4 of the 2013 Act, paragraph 4 has been updated to allow a political party's campaigns officer to take on the treasurer's role of responsible person. This change reflects part of recommendation 8 of the Electoral Commission's report on the 2014 referendum.

### **Question 3: What are your views on the proposed changes to rules on permissible participants?**

#### **Spending limits for participants in the referendum campaign**

3.13 The draft bill proposes broadly the same approach to spending limits as was used in 2014. These limits were developed with reference to the levels of spending used for the Scottish Parliament elections, and worked well in practice.

3.14 Breach of these limits would be treated as an offence. Sanctions for non-compliance are set out principally in schedules 4 to 6 of the 2013 Act as applied by the draft bill.

#### **Referendum expenses**

3.15 The draft bill provides that expenses count towards the spending limits if they support a campaign or promote an outcome. The purpose of this definition is to capture every activity that is related to campaign expenditure and the definition is, for that reason, quite broad. Expenses that count towards the spending limits include those of:

- campaign broadcasts
- advertising
- unsolicited material addressed to voters
- any material that provides information about the referendum or its questions or promotes an outcome
- market research or canvassing
- press or media conferences
- transport costs for the purposes of obtaining publicity about the referendum
- rallies and other forms of public meetings.

3.16 Cost savings associated with property, facilities or services that are provided free of charge or at a preferential rate are also counted as referendum expenses if they exceed £200. These are referred to as "notional referendum expenses" in the 2013 Act as applied by the draft bill and must be declared to the Commission along with the other expenses.

3.17 To ensure that the referendum campaign is conducted openly, it is crucial that the campaign expenditure incurred is properly accounted for and reported. Permitted participants must demonstrate that they have maintained control over what they have spent on their campaigns so that their spending can be reported and made public. The draft bill therefore contains detailed rules to ensure that each participant has appropriate procedures in place to authorise and account for its expenses.



**Question 4: What are your views on the proposed campaign rules and rules on spending?**

### **Proposed technical changes from the 2014 referendum procedures**

#### **Calculation of Permitted Participants' Expenses**

3.18 Schedule 4 of the 2013 Act, paragraph 19 has been updated in line with recommendations from the Electoral Commission, made in the run up to the 2014 referendum. This change clarifies the way that the expenses limits are calculated for permitted participants who are also registered parties. Rather than rounding the constituency and regional percentages to one decimal place before adding together to calculate the relevant per cent, the constituency and regional percentages should be added together before rounding to two decimal places. This produces minor amendments to the spending limits.

#### **Transactions Between Qualifying and Non-Qualifying Persons**

3.19 In paragraphs 52, 55 and 57 of schedule 4 of the 2013 Act modifications have been made to reflect changes brought in for other referendums since the 2013 Act. These provide that it is an offence for a permitted participant knowingly to receive money under a loan or other regulated transaction from a person who has ceased to be a qualifying person, or to fail to repay money received under a loan or other regulated transaction from a person who has ceased to be a qualifying person after becoming aware the person has so ceased. These provisions also set out the information that must be recorded in relation to each recordable transaction to which a qualifying person and a non-qualifying person was a party.

**Question 5: What are your views on the proposed changes to the rules on permissible participants' expenses and transactions between qualifying and non-qualifying persons?**

## 4 How to Comment

- This consultation is your opportunity to shape the referendum on Scotland's constitutional future. Responses should be made by Wednesday January 11<sup>th</sup> 2017.
- It would be helpful to have your response by email or using the electronic response form. The electronic response form can be accessed at the following website address: <https://consult.scotland.gov.uk>. You can also email your response to the mailbox below.
- We are, of course, happy to receive written submissions too.

### Responding to this Consultation

We are inviting responses to this consultation by 11<sup>th</sup> January 2017.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/elections-and-constitutional-development-division/draft-referendum-bill/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 11<sup>th</sup> January 2017.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Referendum Consultation  
Elections Team  
Area 2 West  
St Andrew's House  
Regent Road  
Edinburgh EH1 3DG

### Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

## **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to:

Referendum Consultation  
Elections Team  
Area 2 West  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

## **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>).

Responses will be analysed and used as part of the decision-making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

# Consultation on a Draft Referendum Bill

## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (anonymous) – Individuals only  
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No

# Scottish Independence Referendum Bill

## [CONSULTATION DRAFT]

An Act of the Scottish Parliament to make provision for the holding of a referendum in Scotland on a question about the independence of Scotland.

### *Referendum*

#### **1 Referendum on Scottish Independence**

- (1) A referendum is to be held in Scotland on a question about the independence of Scotland.
- (2) The question is—  
“Should Scotland be an independent country?”.
- (3) The ballot paper to be used for the purpose of the referendum is to be printed—
  - (a) in the form set out in schedule 1, and
  - (b) according to the directions set out in that schedule.
- (4) The date on which the poll at the referendum is to be held is [*insert date*], unless before then regulations are made under subsection (6).
- (5) Subsection (6) applies if the Scottish Ministers are satisfied—
  - (a) that it is impossible or impracticable for the poll at the referendum to be held on [*insert date*], or
  - (b) that it cannot be conducted properly if held on that date.
- (6) The Scottish Ministers may by regulations appoint a later day as the date on which the poll at the referendum is to be held.
- (7) Regulations under subsection (6)—
  - (a) may include supplementary or consequential provision,
  - (b) may modify any enactment (including this Act), and
  - (c) are subject to the affirmative procedure.

*Franchise***2 Those who are entitled to vote**

- (1) A person is entitled to vote in the referendum if, on the date on which the poll at the referendum is held, the person is—
  - (a) aged 16 or over,
  - (b) registered in the register of local government electors maintained under section 9(1)(b) of the Representation of the People Act 1983 for any area in Scotland,
  - (c) not subject to any legal incapacity to vote (age apart), and
  - (d) a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union.
- (2) For the purposes of this Act, a person is, on any date, subject to a legal incapacity to vote if the person—
  - (a) would be legally incapable (whether by virtue of any enactment or any rule of law) of voting at a local government election in Scotland held on that date, or
  - (b) is legally incapable, by virtue of section 3, of voting in the referendum on that date.

**3 Offenders in prison etc. not to be entitled to vote**

- (1) A convicted person is legally incapable of voting in the referendum if, on the date on which the poll at the referendum is to be held, the person is detained in a penal institution in pursuance of a sentence imposed on the person.
- (2) For the purposes of subsection (1)—
  - (a) a convicted person who is unlawfully at large at a time when the person would otherwise be detained as mentioned in subsection (1) is to be treated as being so detained at that time,
  - (b) a person detained by virtue of a conditional pardon in respect of an offence is to be treated as detained in pursuance of the sentence for the offence,
  - (c) a person detained for default in complying with a sentence is not to be treated as being detained in pursuance of the sentence, whether or not the sentence provided for detention in the event of default, and
  - (d) it does not matter whether a person was convicted, or a sentence imposed, before or after the commencement of this Act.

- (3) In this section—

“convicted person” means a person found guilty of an offence (whether under the law of any part of the United Kingdom or anywhere else) and—

- (a) includes a person found guilty by a court of a service offence within the meaning of the Armed Forces Act 2006, but
- (b) does not include a person dealt with by committal or other summary process for contempt of court,

“penal institution” means an institution to which the Prison Act 1952, the Prison Act (Northern Ireland) 1953 or the Prisons (Scotland) Act 1989 applies.

*Further provision about conduct of referendum etc.*

**4 Application of the Scottish Independence Referendum Act 2013**

- (1) The Scottish Independence Referendum Act 2013 applies for the purposes of the referendum under this Act as it applied for the purposes of the referendum under that Act.
- (2) That is subject to the exceptions and modifications in schedule 2.

**5 Information about persons aged under 16**

Section 14 of the Scottish Elections (Reduction of Voting Age) Act 2015 (exceptions from prohibition on disclosure of information about persons aged under 16) has effect subject to the following modifications—

- (a) in subsection (1)(b), the reference to the conduct of an election is to be read as including a reference to the conduct of the referendum under this Act,
- (b) in subsection (3)—
  - (i) the reference to a relevant supply enactment is to be read as including a reference to the Scottish Independence Referendum Act 2013 as applied by this Act,
  - (ii) the reference to an election at which the young person will be entitled to vote is to be read as including a reference to the referendum under this Act if the young person will be entitled to vote in the referendum.

**6 Registration officers' expenses**

- (1) A registration officer is entitled to recover from the Scottish Ministers any expenses incurred by the registration officer that are attributable specifically to the exercise of the registration officer's functions under this Act (including the Scottish Independence Referendum Act 2013 as applied by this Act).
- (2) The amount of expenses recoverable under this section is not to exceed such maximum amount as is specified in, or determined under, regulations made by the Scottish Ministers.
- (3) Regulations under subsection (2)—
  - (a) may make different provision for different functions, cases or areas,
  - (b) may include incidental and supplementary provision.
- (4) Sums payable by the Scottish Ministers under subsection (1) are payable on submission of an account for the sums to the Scottish Ministers by the registration officer.

**7 Power to make supplementary etc. provision and modifications**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary or consequential provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) The power in subsection (1) includes power to make provision in consequence of, or in connection with, any modification or proposed modification of any enactment relating to—
  - (a) the conduct of a referendum or campaigning in a referendum,



- (b) the conduct of an election or campaigning in an election.
- (3) Regulations under subsection (1) may—
  - (a) modify any enactment (including this Act),
  - (b) apply for the purposes of the referendum any provision of any enactment (either with or without modifications),
  - (c) include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (4) Regulations under subsection (1) are subject to the affirmative procedure.

*Final provisions*

**8 Interpretation**

- (1) Any word or expression used in this Act which is also used in the Scottish Independence Referendum Act 2013 has the same meaning as in that Act.
- (2) Subsection (1) does not apply where the context requires otherwise.

**9 Commencement**

This Act comes into force on the day after Royal Assent.

**10 Short title**

The short title of this Act is the Scottish Independence Referendum Act 2017.

SCHEDULE 1  
(introduced by section 1(3)(a))

FORM OF BALLOT PAPER

**Front of ballot paper**

|  |                          |
|--|--------------------------|
| <b>BALLOT PAPER</b>                        | <i>[Official mark]</i>   |
| <b>VOTE (X) ONLY ONCE</b>                  |                          |
| Should Scotland be an independent country? |                          |
| <b>YES</b>                                 | <input type="checkbox"/> |
| <b>NO</b>                                  | <input type="checkbox"/> |

**Back of ballot paper**

*[Unique identifying number]*

Area of *[insert council name]*.

Referendum on *[insert date]*.

**Directions as to printing the ballot paper**

- 1 Nothing is to be printed on the ballot paper except as set out in this schedule.
- 2 So far as practicable, the instructions specified in paragraphs 3 to 6 must be observed in printing the ballot paper.
- 3 Words printed on the ballot paper must be printed—
  - (a) in a sans serif font (for example, Arial), and
  - (b) in characters of at least 14 point size.
- 4 The direction to “**VOTE (X) ONLY ONCE**” and the “**YES**” and “**NO**” options must be printed in bold capital letters.
- 5 The ballot paper must be at least 180mm wide.

- 6 The voting boxes where the vote is to be marked must each be 21mm square.

SCHEDULE 2  
*(introduced by section 4(2))*

APPLICATION OF THE SCOTTISH INDEPENDENCE REFERENDUM ACT 2013

*Interpretation*

- 1 In this schedule, “the 2013 Act” means the Scottish Independence Referendum Act 2013.

*General exceptions*

- 2 The following provisions of the 2013 Act do not apply—
- (a) section 1 (referendum),
  - (b) sections 2 and 3 (franchise),
  - (c) section 33 (power to make supplementary etc. provision and modifications),
  - (d) schedule 1 (form of ballot paper),
  - (e) in schedule 2—
    - (i) paragraph 18 (preparation of the Polling List),
    - (ii) paragraph 37 (procedure in relation to postal voting statements),
    - (iii) paragraph 39 (postal voting statements: additional personal identifier verification),
    - (iv) paragraph 50 (supply of free copy of edited Polling List etc. to designated organisations).

*General modifications*

- 3 In the 2013 Act as applied by section 4(1), unless the context requires otherwise—
- (a) references to the Polling List are to be read as references to the register of local government electors,
  - (b) references to the 2013 Act are to that Act as applied by this Act.

*Specific exceptions and modifications*

- 4 (1) The provisions of the 2013 Act specified in column 1 of the table apply subject to the exceptions and modifications specified in the corresponding entry in column 2 of the table.
- (2) In the case of a modification, the provision in question is to be read as if the modification were applied.

| <i>Provision of the 2013 Act</i>                             | <i>Modifications</i>   |
|--|--|
| Section 5 (Chief Counting Officer)                           | In subsection (2), the reference to the coming into force of section 5 of the 2013 Act is to be read as a reference to the coming into force of this Act.  |
| Section 9 (expenses of counting officers)                    | In subsection (3), for “an order” substitute “regulations”.<br><br>In subsection (4), for “An order” substitute “Regulations”.   |
| Section 29 (estimates of Electoral Commission’s expenditure) | In each of subsections (3) and (4), the references to the commencement of the 2013 Act are to be read as references to the coming into force of this Act.  |
| Schedule 2, paragraph 2 (existing absent voters)             | In each of sub-paragraphs (1)(b) and (3)(b), the references to the Scottish Parliament (Elections etc.) Order 2010 are to be read as references to the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425).  |
| Schedule 2, paragraph 5 (proxies)                            | After sub-paragraph (3) insert—<br><br>“(3A) A person is not capable of being appointed to vote, or of voting, as proxy unless the registration officer is satisfied that the person is or will be registered in the register of electors.”.<br><br>In sub-paragraph (7)(b), the reference to the Scottish Parliament (Elections etc.) Order 2010 is to be read as a reference to the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425). |
| Schedule 2, paragraph 6 (voting as proxy)                    | In sub-paragraph (4)(b), the reference to the Scottish Parliament (Elections etc.) Order 2010 is to be read as a reference to the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425).   |

| <i>Provision of the 2013 Act</i>   | <i>Modifications</i>   |
|--|--|
| Schedule 2, paragraph 7 (requirements as to applications)  | In sub-paragraph (9)(a), paragraph (ii) does not apply.  |
| Schedule 2, paragraph 8 (additional requirements as to certain applications to vote by proxy)                  | In sub-paragraph (1), omit “or (ii)”.  |
| Schedule 2, paragraph 13 (appeals)   | In each of sub-paragraphs (3)(a), (5)(b)(i), (9)(b)(i) and (11)(c)(i), for “18” substitute “16”.                         |
| Schedule 2, paragraph 17 (alterations in the register of electors)   | In sub-paragraph (2), omit “or 13BB(4) or (5)”.  |
| Schedule 2, paragraph 35 (opening of covering envelopes)   | Sub-paragraph (4) does not apply.  |
|  | Sub-paragraph (2) does not apply.  |
|  | In sub-paragraph (3), omit “that is not set aside”.  |
|  | In sub-paragraph (4), omit “37 or”.  |
|  | Sub-paragraph (7) does not apply.  |
|  | In sub-paragraph (8), for “37” substitute “38”.  |
| Schedule 2, paragraph 38 (procedure in relation to postal voting statements: personal identifier verification) | For sub-paragraph (1) substitute—<br><br>“(1) This paragraph applies in the circumstances described in paragraph 35(4).” |
|  | In sub-paragraph (2), omit “open the envelope and”.  |
| Schedule 2, paragraph 48 (supply of free copy of Polling List etc. to counting officers)                       | In sub-paragraph (1)(b), paragraph (iii) does not apply.   |
| Schedule 2, paragraph 49 (supply of free copy of Polling List etc. to Electoral Commission)                    | In sub-paragraph (1)(b), paragraph (iii) does not apply.   |

| <i>Provision of the 2013 Act</i>   | <i>Modifications</i>   |
|--|--|
| Schedule 2, paragraph 51 (supply of free copy of register of local government electors etc. to permitted participants) | In sub-paragraph (1)(b), paragraph (iii) does not apply.   |
| Schedule 2, after paragraph 51   | After paragraph 51 insert—<br><br><i>“Dates of birth to be omitted from copies of register supplied</i><br><br>51A A copy of the register of local government electors supplied under paragraph 48, 49 or 51 is to contain the same information as in the register except that any dates of birth are to be omitted.”. |
| Schedule 2, paragraph 53 (general restriction on use of registration documents and information contained in them)      | In sub-paragraph (3), omit “and 50(1)”.  |
| Schedule 2, paragraph 54 (offence in relation to disclosure of registration documents)                                 | In sub-paragraph (1)(a), omit “50(5)”.   |
| Schedule 2, paragraph 55 (destruction of copies of the Polling List etc.)  | In sub-paragraph (1), omit “, 50(1)”.  |
| Schedule 2, paragraph 56 (supply of marked Polling List etc. to designated organisation)                               | In sub-paragraph (1)(b), paragraph (ii) does not apply.<br><br>In sub-paragraph (4)(b), for “50” substitute “51”.<br><br>In sub-paragraph (5), for “50(5)” substitute “51(4)”.<br><br>In sub-paragraph (8), omit “, 50(1)”.<br><br>In sub-paragraph (10)(b), omit “or 13BB(4)”.  |
| Schedule 3, rule 10 (appointment of presiding officers and clerks)   | In paragraph (2), for “may not” substitute “must not knowingly”.   |

| <i>Provision of the 2013 Act</i>                          | <i>Modifications</i>   |
|---|--|
| Schedule 3, rule 13 (equipment of polling stations)       | In paragraph (4), omit “or 13BB(4) or (5)”.  |
| Schedule 3, rule 19 (questions to be put to voters)       | In paragraph (3), omit “or 13BB(4)”.   |
| Schedule 3, rule 21 (voting procedure)                    | In paragraph (4), omit “or 13BB(4)” in each place those words occur.   |
| Schedule 3, rule 22 (votes marked by presiding officer)   | In paragraph (3), omit “or 13BB(4)” in both places those words occur.  |
| Schedule 3, rule 23 (voting by persons with disabilities) | In paragraph (10), omit “or 13BB(4)” in both places those words occur.   |
| Schedule 3, rule 24 (tendered ballot papers)              | In paragraph (11), omit “or 13BB(4)” in each place those words occur.  |
| Schedule 3, rule 26 (correction of errors on polling day) | In paragraph (1), omit “or 13BB(4)”.   |
| Schedule 3, rule 28 (procedure on close of poll)          | In paragraph (2)(c), omit “or 13BB(4)”.  |
| Schedule 3, rule 29 (attendance at counting of votes)     | After paragraph (1) insert—<br><br>“(1A) In making arrangements, the counting officer must not knowingly appoint or employ any person who has been involved in campaigning for a particular outcome in the referendum.”. |
| Schedule 3, rule 30 (the count)                           | For paragraph (3) substitute—<br><br>“(3) The counting officer must, on the request of any counting agent present at the verification, supply a copy of the verification statement to the counting agent.”.              |
| Schedule 3, rule 36 (sealing up of ballot papers)         | In paragraph (2)(d), omit “or 13BB(4)”.  |
| Schedule 3, rule 37 (delivery of papers)                  | In paragraph (2)(f), omit “or 13BB(4)”.  |

| <i>Provision of the 2013 Act</i>                         | <i>Modifications</i>  |
|--|---|
| Schedule 3, rule 40 (orders for production of documents) | In paragraph (8), omit “or 13BB(4)”.  |
| Schedule 4, paragraph 1 (interpretation of schedule)     | <p>In sub-paragraph (2)(g)—</p> <p>(a) for the words from “or a society” to “1965 or” substitute “, a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered (or deemed to be registered) under”,</p> <p>(b) omit “and” at end.</p> <p>In sub-paragraph (2), after paragraph (h) insert—</p> <p>“(i) any body incorporated by Royal Charter and not otherwise within this sub-paragraph,</p> <p>(j) any Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005,</p> <p>(k) any charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011 or Part 11 of the Charities Act (Northern Ireland) 2008, and</p> <p>(l) any partnership constituted under the law of Scotland which carries on business in the United Kingdom.”.</p> |
| Schedule 4, paragraph 2 (permitted participants)         | <p>In sub-paragraph (3)(b), paragraph (ii) does not apply.</p> <p>In sub-paragraph (4)(e)—</p> <p>(a) for the words from “or a society” to “1965 or” substitute “, a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered (or deemed to be registered) under”,</p> <p>(b) omit “or” at end.</p> <p>In sub-paragraph (4), after paragraph (f) insert—</p> <p>“(g) any body incorporated by Royal</p>   |



| <i>Provision of the 2013 Act</i>  | <i>Modifications</i>  |
|---|---|
| <p>Schedule 4, paragraph 3 (further provision about declarations under paragraph 2)</p> | <p>Charter and not otherwise within this sub-paragraph,</p> <p>(h) any Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005,</p> <p>(i) any charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011 or Part 11 of the Charities Act (Northern Ireland) 2008, or</p> <p>(j) any partnership constituted under the law of Scotland which carries on business in the United Kingdom.”.</p> <p>In sub-paragraph (3), after “qualifying body” insert “within any of paragraphs (a) to (f) of paragraph 2(4)”.</p> <p>After sub-paragraph (3) insert—</p> <p>“(3A) A declaration under paragraph 2 by a qualifying body within any of paragraphs (g) to (j) of paragraph 2(4) must—</p> <p>(a) state—</p> <p>(i) the details mentioned in sub-paragraph (3B), and</p> <p>(ii) the name of the person or officer who will be responsible for compliance on the part of the body with the provisions of this schedule, and</p> <p>(b) be signed by the body’s secretary or a person who acts in a similar capacity in relation to the body.</p> <p>(3B) The details referred to in sub-paragraph (3A)(a)(i) are—</p> <p>(a) in the case of a body within paragraph 2(4)(g) (body incorporated by Royal Charter)—</p> <p>(i) the name of the body, and</p> <p>(ii) the address of its main office in the</p> |

| <i>Provision of the 2013 Act</i> | <i>Modifications</i>  |
|----------------------------------|---|
|                                  | <p>United Kingdom,</p> <p>(b) in the case of a body within paragraph 2(4)(h) or (i) (charitable incorporated organisation)—</p> <p>(i) the name of the body, and</p> <p>(ii) the address of its principal office,</p> <p>(c) in the case of a body within paragraph 2(4)(j) (Scottish partnership)—</p> <p>(i) the name of the body, and</p> <p>(ii) the address of its main office in the United Kingdom.”.</p> <p>In sub-paragraph (4), for “or (3)” substitute “, (3) or (3A)”.</p> <p>In sub-paragraph (4)(b), for “or (as the case may be) (3)” substitute “, (3) or (as the case may be) (3A)”.</p> <p>After sub-paragraph (5) insert—</p> <p>“(6) A declaration under paragraph 2 must be accompanied by a statement by the person who is the responsible person which—</p> <p>(a) states that that person is willing to exercise in relation to the referendum the functions conferred by and under this Act on the responsible person, and</p> <p>(b) is signed by that person.</p> <p>(7) Sub-paragraph (6) applies to a notification of alteration if the notification replaces a statement under sub-paragraph (1)(b), (3)(a)(ii) or (3A)(a)(ii).”.</p> |
| Schedule 4, after paragraph 3    | <p>After paragraph 3 insert—</p> <p><i>“Unincorporated associations with offensive etc. names</i></p> <p>3A (1) Sub-paragraphs (2) to (4) apply to a declaration made under paragraph 2 by an unincorporated association within sub-paragraph (4)(f) of that paragraph.</p>   |

*Provision of the 2013 Act**Modifications*

(2) The declaration is not to be treated for the purposes of paragraph 2 or 5 as having been made unless the Electoral Commission have accepted the declaration.

(3) As soon as reasonably practicable after receiving the declaration, the Electoral Commission must decide whether or not to accept the declaration and they must accept it unless, in their opinion, the name of the association—

(a) is obscene or offensive, or

(b) includes words the publication of which would be likely to amount to the commission of an offence.

(4) As soon as reasonably practicable after deciding whether to accept the declaration, the Electoral Commission must give written notice to the association—

(a) stating whether they accept the declaration, and

(b) if their decision is not to accept the declaration, giving the reasons for that decision.

(5) Where—

(a) a permitted participant is an unincorporated association within paragraph 2(4)(f),

(b) the Electoral Commission is notified under paragraph 3(4) of a change of name of the association, and

(c) in the opinion of the Electoral Commission the new name is obscene or offensive or includes words the publication of which would be likely to amount to the commission of an offence,

the Electoral Commission does not have to enter the new name in the register under paragraph 5.

| <i>Provision of the 2013 Act</i>  | <i>Modifications</i>  |
|---|---|
|   | <p>(6) If the Electoral Commission decide not to enter the new name in that register, the Electoral Commission—</p> <p>(a) must as soon as reasonably practicable give written notice to the association of that decision and the reasons for it, and</p> <p>(b) in any case where they are required to make available for public inspection a document that uses the association’s new name, may replace that name in the document with the name that appears on the register in respect of the association.</p> <p>(7) The fact that the association’s new name is not entered in the register does not cause the association to cease to be a permitted participant.”.</p> |
| <p>Schedule 4, paragraph 4 (further provision about responsible persons)</p>                            | <p>In sub-paragraph (3), for “or (3)(a)(ii)” in both places the words occur substitute “, (3)(a)(ii) or (3A)(a)(ii)”.</p> <p>After sub-paragraph (5) insert—</p> <p>“(6) Section 25(6) of the 2000 Act (references to the treasurer to be read in certain cases as references to the campaigns officer) applies for the purposes of this paragraph as it applies for the purposes of Part 7 of that Act.”.</p>  |
| <p>Schedule 4, paragraph 12 (notional referendum expenses)</p>  | <p>In sub-paragraph (13)(b)(ii), the reference to the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (S.I. 2013/242) is to be read as a reference to the Scotland Act 1998 (Modification of Schedule 5) Order 2016 (S.I. 2016/[ ]).</p>  |
| <p>Schedule 4, paragraph 19 (special restrictions on referendum expenses by permitted participants)</p> | <p>In each of sub-paragraphs (2) and (3), for “2011” in each place it occurs substitute “2016”.</p> <p>In sub-paragraph (2)(b)—</p> <p>(a) in the opening words, after “sum” insert “(rounded to one decimal place)”,</p> <p>(b) in each of paragraphs (i) and (ii), omit “and rounded to one decimal place”.</p>   |

| <i>Provision of the 2013 Act</i>   | <i>Modifications</i>  |
|--|---|
| Schedule 4, paragraph 32 (payments etc. not to be regarded as donations) | In sub-paragraph (1)(b)(ii), the reference to the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (S.I. 2013/242) is to be read as a reference to the Scotland Act 1998 (Modification of Schedule 5) Order 2016 (S.I. 2016/[ ]).  |
| Schedule 4, paragraph 40 (donations from permissible donors)             | <p>In sub-paragraph (1)(c), at end insert “or, where the donor is within any of paragraphs (i) to (l) of paragraph 1(2), the information mentioned in sub-paragraph (1A)”.</p> <p>After sub-paragraph (1) insert—</p> <p>“(1A) The information to be recorded in the case of a donor within any of paragraphs (i) to (l) of paragraph 1(2) is—</p> <p style="padding-left: 40px;">(a) in the case of a body within paragraph 1(2)(i) (body incorporated by Royal Charter)—</p> <p style="padding-left: 80px;">(i) the name of the body, and</p> <p style="padding-left: 80px;">(ii) the address of its main office in the United Kingdom,</p> <p style="padding-left: 40px;">(b) in the case of a body within paragraph 12(j) or (k) (charitable incorporated organisation)—</p> <p style="padding-left: 80px;">(i) the name of the body, and</p> <p style="padding-left: 80px;">(ii) the address of its principal office,</p> <p style="padding-left: 40px;">(c) in the case of a body within paragraph 1(2)(l) (Scottish partnership)—</p> <p style="padding-left: 80px;">(i) the name of the body, and</p> <p style="padding-left: 80px;">(ii) the address of its main office in the United Kingdom.”.</p> |
| Schedule 4, paragraph 45 (operation of Part)                             | Sub-paragraph (5) does not apply.   |
| Schedule 4, paragraph 46 (regulated transactions)                        | In sub-paragraph (12)(a), after “paragraph 21” insert “(or would do so but for paragraph 21(5) and (6))”.   |

| <i>Provision of the 2013 Act</i>                               | <i>Modifications</i>   |
|--|--|
| Schedule 4, paragraph 48 (authorised participants)             | <p>After sub-paragraph (2) insert—</p> <p>“(3) In relation to transactions entered into by a permitted participant other than a designated organisation, references in this Part to an authorised participant do not include a registered party.”.</p>   |
| Schedule 4, paragraph 52 (offences)                            | <p>For sub-paragraph (17) substitute—</p> <p>“(17) A reference in sub-paragraphs (1) to (6) to entering into a regulated transaction of a description mentioned in paragraph 46(1) or (2) to which another party is not an authorised participant includes a reference to receiving an amount of money under a regulated transaction of a description mentioned in paragraph 46(1) or (2) at a time when a person who is also a party to the transaction (and who was an authorised participant when the transaction was entered into) has ceased to be an authorised participant.</p> <p>(18) It is a defence for a person charged with an offence under any of sub-paragraphs (1) to (3) by virtue of sub-paragraph (17) to prove that the person took all reasonable steps, as soon as practicable, to repay money received as mentioned in sub-paragraph (17).</p> <p>(19) Where a person is charged with an offence under sub-paragraph (3) by virtue of sub-paragraph (17), sub-paragraph (14) does not apply.</p> <p>(20) In relation to a case where sub-paragraph (4)(a) and (b), (5)(a) and (b) or (6)(a) and (b) applies by virtue of sub-paragraph (17), the reference in sub-paragraph (4)(c), (5)(c) or, as the case may be, (6)(c) to any money received by virtue of the transaction is to be read as a reference to any money so received after the party in question ceased to be an authorised participant.”.</p> |
| Schedule 4, paragraph 55 (identity of authorised participants) | <p>For paragraph 55 substitute—</p> <p><i>“Information about authorised participants</i></p> <p>55 (1) The statement must record, in relation to each recordable transaction to which an authorised participant was a party—</p>   |

| <i>Provision of the 2013 Act</i>                  | <i>Modifications</i>   |
|---|--|
| Schedule 4, paragraph 57 (details of transaction) | <p>(a) the information about the authorised participant which is, in connection with transactions entered into by registered parties, required to be recorded in transaction reports by virtue of paragraph 2 of schedule 6A of the 2000 Act, or</p> <p>(b) where the authorised participant is within any of paragraphs (i) to (l) of paragraph 1(2), the information mentioned in sub-paragraph (2).</p> <p>(2) The information referred to in sub-paragraph (1)(b) is—</p> <p>(a) where the authorised participant is a body within paragraph 1(2)(i) (body incorporated by Royal Charter)—</p> <p>(i) the name of the body, and</p> <p>(ii) the address of its main office in the United Kingdom,</p> <p>(b) where the authorised participant is a body within paragraph 1(2)(j) or (k) (charitable incorporated organisation)—</p> <p>(i) the name of the body, and</p> <p>(ii) the address of its principal office,</p> <p>(c) where the authorised participant is a body within paragraph 1(2)(l) (Scottish partnership)—</p> <p>(i) the name of the body, and</p> <p>(ii) the address of its main office in the United Kingdom.”.</p> <p>For “political” in each place it occurs substitute “registered”.</p> <p>In sub-paragraph (1), for “(read with any necessary modifications)” substitute “(read with the modifications mentioned in sub-paragraph (1A) and any other necessary modifications)”.</p> |

| <i>Provision of the 2013 Act</i>                       | <i>Modifications</i>  |
|--|---|
|  | <p>After sub-paragraph (1) insert—</p> <p>“(1A) In relation to the statement—</p> <p>(a) paragraph 5(3) of schedule 6A of the 2000 Act has effect as if the reference to section 71G were a reference to paragraph 47 of this schedule,</p> <p>(b) paragraph 5(4) of that schedule has effect as if the references to the relevant date for the transaction determined in accordance with paragraph 8 of that schedule were a reference to the relevant date for the transaction determined in accordance with paragraph 8(1) of that schedule, and</p> <p>(c) paragraph 8(1) of that schedule has effect as if—</p> <p>(i) the reference to a quarterly report were a reference to the statement,</p> <p>(ii) the reference to section 71M(4)(a) or (7)(a) were a reference to paragraph 54(3)(a) of this schedule, and</p> <p>(iii) the reference to section 71M(4)(b) or (7)(b) were a reference to paragraph 54(3)(b) of this schedule.”.</p> |
| <p>Schedule 4, paragraph 65 (interpretation)</p>       | <p>In sub-paragraph (1), in the definition of “authorised participant”, omit “(and see paragraph 45(5))”.</p>   |
| <p>Schedule 7, paragraph 2 (other voting offences)</p> | <p>In sub-paragraph (11), the reference to section 2(2) of the Scottish Independence Referendum (Franchise) Act 2013 is to be read as a reference to section 2(2) of this Act.</p>  |
| <p>Schedule 8 (interpretation)</p>                     | <p>In the definition of “date of the referendum”, the reference to section 1(4) or (6) of the 2013 Act is to be read as a reference to section 1(4) or (6) of this Act.</p> <p>Omit the definition of “Polling List”.</p>   |



| <i>Provision of the 2013 Act</i> | <i>Modifications</i>   |
|----------------------------------|--|
|                                  | <p>In the definition of “referendum question”, the reference to section 1(2) of the 2013 Act is to be read as a reference to section 1(2) of this Act.</p> <p>For the definition of “register of electors” substitute—</p> <p>    ““register of electors” means the register of local government electors for any area.”.</p> <p>Omit the definition of “register of young voters”.</p> <p>In the definition of “responsible person”, in paragraph (c), after “3(3)(a)(ii)” insert “or (3A)(a)(ii)”.</p> |



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

© Crown copyright 2016

ISBN: 978-1-78652-555-0

This document is also available on The Scottish Government website:  
**[www.gov.scot](http://www.gov.scot)**

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS81949 (10/16)

**w w w . g o v . s c o t**