



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

# Consultation on a Draft Referendum Bill: Analysis of Responses



PUBLIC SERVICES AND GOVERNMENT



# Consultation on a draft referendum bill: Analysis of responses

Dawn Griesbach, Alison Platts and Jennifer Waterton  
Griesbach & Associates

## Table of contents

<b>Executive Summary .....</b>	<b>1</b>
<b>1. Introduction and background .....</b>	<b>5</b>
Policy context	5
The consultation	5
About the analysis	6
Structure of this report	6
<b>2. About the respondents and responses.....</b>	<b>8</b>
Number of responses received and number included in the analysis	8
Types of respondent	8
Types of response	9
Responses to individual questions	10
<b>3. Summary of responses from key organisational stakeholders.....</b>	<b>11</b>
<b>4. Management and mechanics of the referendum.....</b>	<b>16</b>
Introduction	16
Arrangements for managing the referendum	17
Proposed technical changes from the 2014 referendum procedures	22
Comments on other aspects of the referendum arrangements	25
<b>5. Campaign rules.....</b>	<b>28</b>
Views on proposed technical changes	29
Views on the conduct of the campaign	31
<b>6. Other comments .....</b>	<b>40</b>
<b>Annex 1: Organisational respondents .....</b>	<b>41</b>
<b>Annex 2: Responses received and included in the analysis .....</b>	<b>42</b>
<b>Annex 3: Number of comments made at each question .....</b>	<b>43</b>

# Executive Summary

1. On 20 October 2016, the Scottish Government launched a consultation on a draft Referendum Bill.<sup>1</sup> The consultation paper set out the Scottish Government's proposals for legislation for a possible referendum on independence for Scotland. The consultation ran for three months, and closed on 11 January 2017.
2. The consultation paper proposed a number of changes to the procedures followed in the 2014 Scottish independence referendum. Some of these related to legislative changes implemented after 2014, and some were intended to address specific issues raised following the 2014 referendum. The consultation contained five open questions which all took the form: 'What are your views on...?' These addressed: (i) arrangements for managing the referendum; (ii) technical changes to polling and count arrangements (since the 2014 referendum); (iii) changes to rules on permitted participants; (iv) campaign rules and rules on spending; and (v) changes to the rules on permitted participants' expenses and transactions between qualifying and non-qualifying persons.
3. This Executive Summary covers the key findings from the responses to the consultation. Further details are provided in the full report which follows.

## About the respondents and responses

4. The consultation received 7,667 submissions. Of these, 469 were removed prior to analysis because: (i) they did not contain both a valid name and valid contact address; (ii) they were entirely blank; or (iii) the respondent had submitted more than one response to the consultation (multiple different responses submitted by the same individual were combined into a single composite response). Thus, the analysis was based on 7,198 responses. The vast majority of these (more than 99%) were submitted by individuals. There were 41 responses submitted by organisations or groups. Organisational respondents included those with specific expertise in relation to overseeing elections and voter registration, and a range of third sector bodies, campaign groups and political groups.

## Views of key organisational stakeholders

5. A separate analysis was undertaken of the responses from key organisational stakeholders. These were organisations with expertise or responsibilities in relation to the regulation and oversight of elections, voter registration, law and UK broadcasting. Among these organisations, there was general support for the proposed management arrangements set out in the consultation document. However, each organisation also highlighted specific areas where they thought further discussion with the Scottish Government was needed.
6. Other respondents expressed a range of views on the proposals put forward, and these are discussed below.

## Management and mechanics of the referendum

7. Respondents expressed a range of views on the Scottish Government's proposals for managing a future referendum. On the one hand, some endorsed the proposals. On the other, there were concerns expressed (particularly in relation to security issues), as well as disagreement with certain proposals (particularly in relation to the franchise).

---

<sup>1</sup> <https://consult.scotland.gov.uk/elections-and-constitutional-development-division/draft-referendum-bill/>

### *Role of the Electoral Commission*

8. There was a range of views expressed in relation to the role of the Electoral Commission. Some respondents expressed support for the Electoral Commission and valued its independent role in overseeing and regulating the referendum. There were also positive comments about the Electoral Commission's work in reviewing the conduct of the 2014 independence referendum, and endorsement of their recommendations. Some wished to see the powers of the Electoral Commission extended and strengthened.

9. However, other respondents expressed dissatisfaction with the role played by the Electoral Commission in the 2014 referendum. These respondents did not see the Commission as impartial or sufficiently independent of the UK Government. There were calls from respondents in this group for an alternative organisation (often an international organisation) to take on the role of independent scrutiny and oversight of the referendum – either in lieu of, or in addition to, the role of the Electoral Commission.

### *Conduct of the poll and the count (including proposed technical changes on absent voting and poll and count staff)*

10. In relation to the conduct of the poll and the count, one of the most prevalent themes in respondents' comments was a concern about security and the possibility of electoral fraud. These respondents thought that a range of actions should be taken to tighten up security arrangements for any future referendum.

11. Among those who expressed concerns about security issues, there was a particular lack of confidence in postal voting, and in whether the rules governing the use of postal voting were properly applied in the 2014 referendum. However, in general, and irrespective of whether they expressed concerns about postal voting, respondents supported the proposal set out in the consultation paper requiring 100% checking of personal identifiers on all postal voting statements.

12. There was widespread agreement with the proposal in the consultation paper that the counting officer must not knowingly appoint or employ anyone who has been involved in campaigning during the referendum. However, there was also a view that this change did not go far enough in ensuring the neutrality of polling and count staff.

### *Verification statements*

13. Regarding the proposed technical change in relation to the 'verification statement', a small minority of respondents offered comments. Among this group, the proposal was welcomed, with respondents agreeing that this would improve the transparency, security and fairness of the voting arrangements.

### *Eligibility to vote*

14. In relation to the eligibility to vote, there was much comment from respondents about who should and should not have a vote. In most cases, if respondents made a comment in relation to the franchise, they did so because they disagreed with some aspect of what was proposed in the consultation paper.

15. There were conflicting views about having a franchise based primarily on residence. Some agreed with the consultation paper that a franchise based on residence was appropriate since they believed only people living in Scotland would be affected by the outcome of the vote.

16. However, the issue raised most often by respondents who commented on eligibility to vote was whether people who had been born and raised in Scotland, but who were now living outside of Scotland (i.e. elsewhere in the UK or abroad) should have the right to vote. Among those who raised this issue, the more common view was that Scottish expatriates should be able to vote in the referendum. Those who put forward this argument often commented that they themselves were currently living outside of Scotland (usually ‘temporarily’), but that they still considered themselves to be Scottish and wanted to vote in the referendum. An alternative, less common view was that Scottish people living outside of Scotland should not be permitted to vote in the referendum.

17. Some respondents also expressed views about the eligibility to vote of other groups mentioned in the consultation paper. There was, for example, frequent comment about whether 16- and 17-year olds should be able to vote.

#### *Other aspects of the referendum arrangements*

18. The introduction to the consultation paper set out the Scottish Government’s proposals for the use of a section 30 order to allow the Scottish Parliament to legislate for a referendum; the question to be used on the ballot paper; and turnout and threshold requirements for the referendum. Although the consultation paper did not include questions on these issues, some respondents nevertheless offered comments on them. In relation to the need for a section 30 order, some endorsed this process while others felt it should not be required. In relation to the referendum question, there were conflicting views about whether the question used in the 2014 referendum should be used again – while some thought this was appropriate, respondents more often favoured using a revised question either because they thought the original question was ‘biased’, or because they thought the question was no longer appropriate due to the significantly changed circumstances. Finally, in relation to the turnout and approval threshold, those who made comments usually did so because they did not think a ‘simple majority’ should be used.

#### **Campaign rules**

19. The consultation sought views about specific technical issues related to: (i) proposed changes in the rules on permitted participants; (ii) the campaign rules and rules on spending; and (iii) proposed changes to the rules on permitted participants’ expenses and transactions between (a) permitted participants and (b) qualifying / non-qualifying individuals and bodies.

20. Very few respondents engaged with the technical aspects of these questions, and those who did largely focused on broad topics rather than the detail of the proposals. Among the small number who did engage with the technical detail of the changes proposed in the consultation paper, there was general support for the changes proposed, with respondents suggesting that the changes were ‘sensible’ and would support fairness and transparency. The main themes in the other responses are summarised below.

#### *Eligibility to register as a permitted participant*

21. The predominant view was that only individuals / organisations based in Scotland should be able to register as permitted participants. An alternative view was that individuals / organisations based anywhere in the UK should be able to register, but that all members of a permitted participant campaign group must be exclusively domiciled in the UK.

### *Campaign spending*

22. The main view was that there should be defined limits on campaign spending, and that this limit should apply to the campaign overall, rather than to separate campaign groups. The alternative view, expressed less often, was that there should be no limits on spending.

### *Campaign donations*

23. Comments in relation to campaign donations and donors tended to focus on: (i) prohibiting or restricting campaign donations from specific sources, individuals or groups; (ii) setting a financial limit on donations; and (iii) the desire for full transparency in relation to donations and donors. The desire for greater transparency was shared by all respondents who commented on the issue of campaign donations.

### *Use of public funds and the role of Government in the referendum*

24. The predominant view – expressed by the overwhelming majority of those who commented on this issue – was that no public funds should be used for any future referendum campaign. Among those who commented on this issue, some also suggested that ‘public funds for the referendum campaign’ should be taken to include all the expenditure incurred as a consequence of any work undertaken by civil servants in relation to the referendum. Others argued that civil servants should not be involved in producing documents that could be perceived as making the case for one side or other of the campaign.

### *Quality of campaign information and potential for bias*

25. Respondents repeatedly commented that it was important for people to have access to fair, honest and accurate information to allow them to decide how to vote. There were also concerns expressed about the role of the media in any future campaign. In particular, respondents wished media coverage in any future campaign to be either ‘balanced’ or ‘impartial’.

### **Other comments**

26. Respondents made a wide range of other comments which were not directly related to the consultation questions or any of the issues discussed in the consultation paper. It was not within the scope of this project to conduct an analysis of these comments. However, the main theme within these comments was in relation to the principle of holding another referendum on Scottish independence. Other out-of-scope themes discussed by respondents concerned enhancing voter registration procedures to improve voter turnout, and the modernisation of voting procedures.

# 1. Introduction and background

1.1 On 20 October 2016, the Scottish Government published a consultation on a draft Referendum Bill.<sup>2</sup> The consultation paper set out the Scottish Government's proposals for legislation for a possible referendum on independence for Scotland. The consultation ran for three months, and closed on 11 January 2017.

## Policy context

1.2 In June 2016, a UK-wide referendum resulted in a narrow majority (52%) voting in favour of leaving the European Union (EU). However, the results of the EU referendum in Scotland were very different – with 62% voting to remain.

1.3 In response to this result, and given the support expressed for EU membership by people in Scotland, the Scottish Government announced that it would explore how Scotland's place in, and relationship with, Europe might continue to be protected. A standing council of experts on Europe was established by the Scottish Government in autumn 2016 to consider all possible options, including that of becoming an independent country.

1.4 At the same time, the Scottish Government also made it clear that the UK's withdrawal from the EU represents a 'significant material change in circumstances' since 2014, thus meeting one of its key criteria for holding a referendum on Scottish independence, as set out in its 2016 Scottish Parliament election manifesto. Therefore, following the announcement made in *The Scottish Government's Programme for Scotland* in September 2016,<sup>3</sup> a draft Referendum Bill was published for consultation in October 2016 with the aim of having legislation ready to introduce to Parliament should the Scottish Government conclude that seeking the views of the Scottish people on independence is the best, or only, way to protect Scotland's interests.

## The consultation

1.5 The consultation paper proposed a number of changes to the procedures followed in the 2014 Scottish independence referendum. Some of these related to legislative changes implemented after 2014, and some were intended to address specific issues raised following the 2014 referendum. The consultation paper contained two substantive chapters. These: (i) set out proposals for the management and regulation of a future referendum (including technical changes to polling and count arrangements) and the franchise (rules governing the eligibility to vote); and (ii) described the proposed rules for ensuring that a referendum campaign is run in a fair and transparent manner.

1.6 The consultation contained five open questions which all took the form: 'What are your views on...?' These addressed:

- **Question 1:** Arrangements for managing the referendum
- **Question 2:** Technical changes to polling and count arrangements (since the 2014 referendum)

---

<sup>2</sup> <https://consult.scotland.gov.uk/elections-and-constitutional-development-division/draft-referendum-bill/>

<sup>3</sup> A Plan for Scotland: The Scottish Government's Programme for Scotland 2016-17, September 2016.

- **Question 3:** Changes to rules on permitted participants (in the referendum campaign)
- **Question 4:** Campaign rules and rules on spending
- **Question 5:** Changes to the rules on permitted participants' expenses and transactions between qualifying and non-qualifying persons.

1.7 There were no closed (tick-box) questions in the consultation.

## About the analysis

1.8 Since all the responses to this consultation took the form of free-text comments, the analysis was primarily qualitative in nature. The aim was to identify the main themes in the responses submitted.

1.9 All five of the consultation questions covered multiple and / or complex issues. For example, in Question 1 respondents were asked for their views on arrangements for managing the referendum. These 'arrangements' collectively related to: (i) the regulation and oversight of the referendum; (ii) the conduct of the poll and the count; and (iii) the role of the Electoral Commission. Similarly, in Question 2 respondents were asked for their views on the proposed technical changes to polling and count arrangements. These 'proposed technical changes' related to: (i) rules regarding the eligibility to vote, (ii) provisions for absent voting, (iii) the appointment of polling and count staff, and (iv) provision of the verification statement by the counting officer. Questions 3, 4 and 5 likewise addressed multiple issues. Thus, the responses to any specific question often included comments about one or more of a wide range of topics.

1.10 In a consultation such as this one, respondents are likely to comment about the issues that are of greatest importance – or of greatest concern – to them, and they are less likely to comment on issues that they do not see as important, that they are largely satisfied with, or which they do not fully understand. Thus, the content of people's responses – in terms of volume – tends to focus on changes that they feel are needed in the proposals. The analysis, though, provides a balanced account of the views submitted, and reports both on levels of agreement and disagreement where this can be robustly inferred.

1.11 Note that this analysis focused on responses which were relevant to the consultation questions asked. It was not within the scope of this project to analyse comments not directly related to the consultation. In addition, given the self-selecting nature of the sample, the findings presented in this report should not be taken as representing the views of the wider population.

## Structure of this report

1.12 This report contains six chapters as follows:

- **Chapter 2** provides a description of the respondents and the responses to the consultation.
- **Chapter 3** contains a summary of the main points made in responses submitted by five key organisational stakeholders: the Electoral Commission; the Electoral Management Board for Scotland; the Scottish Assessors Association Electoral

Registration Committee; the Law Society of Scotland; and the Broadcasters' Liaison Group. These organisations all have knowledge and expertise relevant to the main focus of the consultation.

- **Chapters 4 and 5** present findings from a thematic analysis of the responses submitted by all other respondents. These findings have been organised on a question-by-question basis with Chapter 4 focusing on views in relation to consultation questions 1 and 2, and Chapter 5 focusing on views in relation to questions 3, 4 and 5.
- **Chapter 6** contains a list of issues raised by respondents which were not directly related to the consultation questions. This chapter focuses on the main themes only as it was not within the scope of this project to conduct an analysis of these comments or to identify the views within them.

## 2. About the respondents and responses

2.1 This chapter presents information about the respondents and types of responses received in the consultation.

### Number of responses received and number included in the analysis

2.2 Altogether, 7,667 consultation responses were received. Of these, 80 were received by email or post; the remainder were submitted electronically using the online response form available via the Scottish Government's Consultation Hub webpage.

2.3 Of the 7,667 responses received, 469 were removed prior to analysis for the following reasons:

- 199 did not contain both a valid name **and** valid contact address. To be included as a valid response, a respondent had to give both his / her name – a first name or first initial **and** a surname – and a postal address or email address. Responses submitted using obviously fictional names were also removed.
- 70 responses were entirely blank. These responses were submitted via the online response form and contained no comments in relation to any of the consultation questions.
- 188 respondents submitted more than one response to the consultation. In some cases, this was because the respondent wished to amend or expand a response they had submitted earlier. In most cases, respondents submitted two different responses, although in a small number of cases the second response was an exact duplicate of the first response. A few respondents submitted three responses and one individual submitted four responses. All duplicate responses were removed, and multiple different responses from a single individual were combined to form a single composite response. This resulted in the removal of a further 200 responses.

2.4 **Thus the analysis was based on 7,198 responses.** (See Table 2.1.)

**Table 2.1: Responses included in the analysis**

Number of <b>responses</b> received:	7,667
Number of responses removed:	
• Missing a valid name or a valid contact address	- 199
• Blank responses	- 70
• Duplicate / multiples responses removed	- 200
<b>Total VALID responses:</b>	<b>7,198</b>

### Types of respondent

2.5 Respondents were asked to specify whether they were submitting their response as an individual, or on behalf of an organisation or group. The vast majority of respondents (n=7,157; 99%) were individuals. (See Table 2.2.)

**Table 2.2: Types of respondent**

Respondent type	n	%
Individuals	7,157	99%
Organisations or groups	41	1%
Total respondents	7,198	100%

2.6 The 41 organisations / groups who took part in the consultation included bodies with responsibility for overseeing elections and voter registration (the Electoral Commission, the Electoral Management Board for Scotland, Scottish Assessors Association Electoral Registration Committee); those with expertise in law (Law Society of Scotland); those responsible for liaising with the media in relation to campaign broadcasts (the Broadcasters' Liaison Group); and a range of third sector bodies, campaign groups and political groups. In addition, four Facebook groups submitted responses to the consultation. A complete list of the organisational / group respondents is attached at Annex 1 of this report, and Chapter 3 summarises the comments submitted by the five key organisational respondents named above.

## Types of response

2.7 Analysis indicated that there were three main types of response to the consultation:

- **Type 1 (63% of responses):** These responses engaged with the consultation questions, and contained a range of comments on the proposals in the consultation paper including, in some cases, agreement or disagreement.
- **Type 2 (15% of responses):** These responses engaged with the consultation questions, but simply contained expressions of general satisfaction, agreement with, or acceptance of the proposals set out in the consultation paper – either overall or in relation to individual questions. In general, these responses contained no further comments that were directly related to the consultation, and the respondents gave no substantive explanation of why they agreed with the proposals. Rather they tended to make statements such as 'I am happy with this', 'No objections', 'This seems fair', or 'This is a reasonable approach'.
- **Type 3 (22% of responses):** These responses contained comments which were not directly related to the consultation. The respondents who submitted these responses did not engage with the consultation questions or with any of the specific issues discussed in the consultation document. Rather, this group usually made statements about the need for a referendum, views on Scottish independence, views about Brexit, or other topics not directly related to the consultation.

2.8 The analysis presented in Chapters 3 to 5 of this report relates to Type 1 and Type 2 responses. A list of common themes in Type 3 responses is given in Chapter 6, together with other topics raised by respondents that were not directly related to the consultation. (See Annex 2 for a graphical representation of the different types of responses received in the consultation.)

## Responses to individual questions

2.9 In responding to the consultation, people did not necessarily follow the questionnaire structure as set out in the consultation paper. Rather, they offered their comments in a more holistic topic-based way, using the space provided in the questionnaire across all five questions to say what they wanted, and often not engaging with the technical details set out in the text. Some respondents used only the space provided by the first two questions to say everything they wanted to say (both about the mechanics of the referendum and the referendum campaign rules), while others repeated the same comments across multiple questions.

2.10 Annex 3 contains details of the number of comments made at each question. However, given the points made above, the figures shown in Annex 3 should not be seen as representing 'response rates' for individual questions.

## 3. Summary of responses from key organisational stakeholders

3.1 This chapter summarises the responses of key organisational stakeholders who responded to the consultation. The key organisational stakeholders in this context are organisations with (statutory or non-statutory) responsibility in relation to the regulation and oversight of elections, those with expertise in the law, and the organisation with responsibility for liaising with UK broadcasters in relation to campaign broadcasts. These are a small subset of the (41) organisational responses received in the consultation (see Chapter 2, paragraph 2.6 and Annex 1). The views of all other respondents are discussed in Chapters 4 and 5, with the analysis presented on a question-by-question basis.

3.2 The organisations whose responses are summarised in this chapter are:

- Electoral Commission
- Electoral Management Board for Scotland
- Scottish Assessors Association Electoral Registration Committee
- Law Society of Scotland
- Broadcasters' Liaison Group.

### **Electoral Commission**

3.3 The Electoral Commission is an independent body established in 2000 to regulate party and election finance and to set standards for the conduct of elections and referendums. The submission from the Electoral Commission addresses the specific questions asked in the consultation paper in some detail and also makes additional recommendations that they would want the Scottish Government to reflect in any referendum bill.

3.4 In particular, the Electoral Commission in its submission:

- Confirmed that it supports the proposed allocation of roles performed by the Convenor of the Electoral Management Board for Scotland as Chief Counting Officer, the Electoral Commission, Counting Officers and Electoral Registration Officers
- Stated that it should be asked to review the intelligibility of any proposed referendum question (whether the wording is the same or different to that used in 2014)
- Was content with its responsibilities relating to the accreditation of observers and public awareness, and for the proposed provisions for the reimbursement of the Commission's costs
- Confirmed that the franchise for any future referendum is a matter for the relevant parliament to decide
- Was pleased to note that the draft bill addresses many of the regulatory recommendations made following the 2014 referendum
- Supported the proposed changes to rules on permissible participants and on transactions between qualifying and non-qualifying persons.

3.5 The Electoral Commission also suggested that further dialogue with the Scottish Government would be useful in relation to a wide range of detailed issues including: (i) the timetable for designating lead campaigners, (ii) rules on imprints on non-printed material, (iii) late claims and payments processes, (iv) the Electoral Commission's sanctioning powers, (v) limiting donations to political parties from certain sources, (vi) restricting the ability for a political party campaigns officer to be the responsible person for more than one campaigner, (vii) the registration requirements for unincorporated associations, (viii) rules for reporting the sources of funding before the poll, (ix) reporting requirements when campaigners work together, (x) restrictions on the publication of promotional material by central and local government, (xi) the relevance of any changes (e.g. the distribution of the share of the vote in the Parliamentary election in 2016) to factors that informed the basis of the 2014 spending limits, (xii) the benefits available in the case of designation of only one lead campaigner, (xiii) access to all the necessary registers to comply with the campaign rules, (xiv) timing of any referendum / referendum date, and (xv) timing of legislation for future referenda.

3.6 Note that many of the detailed issues discussed by the Electoral Commission were also touched upon by individual respondents. (See Chapter 5 in particular.)

### **Electoral Management Board for Scotland**

3.7 The Electoral Management Board for Scotland (EMB) was created by the Local Electoral Administration (Scotland) Act 2011, which gave the Board 'the general function of co-ordinating the administration of Local Government elections in Scotland'. In its response to the consultation, the EMB addressed a range of issues relating to the specific questions and also made some broader comments on the management of a future referendum.

3.8 In particular, the EMB confirmed its support for the proposed management arrangements in relation to the appointment of a Chief Counting Officer and the specific role for the Electoral Commission in monitoring, regulating and reporting on the referendum.

3.9 The EMB noted that adequate resource and sufficient time would be required to plan for and procure the various elements which are needed for such a major event. The response described the approach adopted by the CCO in 2014 which the EMB argued had been crucial in ensuring the integrity of the referendum process and confirmed that a similar approach would be adopted by the CCO in any future referendum.

3.10 The EMB referred to and endorsed the comments made in the Electoral Commission response and confirmed that it agreed with the views expressed by the Electoral Commission in relation to:

- The timing of any referendum (i.e. ensuring that the referendum would not be held on the same day as other significant scheduled polls and that legislation is clear at least six months before it will be implemented)
- The statement that 'the rules for the conduct of the referendum poll and count should be based on those applying to the conduct of elections...should be updated to reflect changes to the conduct of election which have been made since the 2014 referendum'
- The changes to the rules on permissible participants and on transactions between qualifying and non-qualifying persons. The EMB response highlighted the

importance of clarity in respect of the designation of permissible participants in order that counting officers are easily able to engage with them as appropriate during the campaign and at the count.

3.11 The EMB also referred to and endorsed the Scottish Assessors Association proposals (see below) in relation to voter registration.

### **Scottish Assessors Association Electoral Registration Committee**

3.12 The Scottish Assessors Association (SAA) Electoral Registration Committee, a voluntary organisation, aims to facilitate a consistency of approach in relation to the administration of electoral registration across Scotland. As would be expected, their response focused mainly on issues relating to voter registration.

3.13 The SAA welcomed the overall approach to the management of the referendum proposed in the consultation document, and much of the response simply described the content of the Bill, especially in relation to issues of franchise. The SAA response also included the following substantive points:

- Any legislation should be enacted a full six months prior to the publication of any notice of the referendum.
- The specific provision in relation to registration officers' expenses was welcomed. The arrangements for recovery of expenses will need to be sufficiently flexible to cater for the unpredictable nature of resource demands placed on registration officers.
- The reference in Schedule 2 paragraph 51 to 'dates of birth' should be amended to refer to the 'dates on which electors attain the age of 16'.
- The move to align the absent voting provisions with those that apply in local government and parliamentary elections was welcomed.
- The application deadlines set out in Schedule 2 paragraph 19 should be replaced with standard application deadlines for postal and proxy voting.
- In the interests of consistency, consideration should be given to replacing the 2013 Act provisions for absent voting with those that are provided in the Scottish Parliamentary (Elections etc.) Order 2015.
- The Committee would welcome a move towards consolidation and further standardisation of legislation that concerns electoral administration as a whole.

### **Law Society of Scotland**

3.14 The Law Society is the professional body for Scottish solicitors, with an overarching objective to 'lead legal excellence'. The response to the consultation was prepared by members of the Constitutional Law Sub-Committee. It focused on legal and constitutional issues, and did not specifically address the questions set out in the consultation document.

3.15 The Law Society response stated that any Section 30 Order that might be agreed between the United Kingdom Government and the Scottish Government to hold a referendum should be in similar terms to the agreement concluded in Edinburgh on 15 October 2012, and the response goes on to describe the main features of that agreement.

The response affirms that provided the Section 30 Order is passed by both Parliaments there would be ‘no doubt it would be competent to introduce such a Bill into the Scottish Parliament’.

3.16 The Law Society response also recommended that before introduction of the Bill the Scottish Government should publish a formal paper detailing ‘the key milestones and general approach upon which it will proceed from the result of any referendum in the event of a yes vote to completion of independence’. Moreover, according to the Law Society, it would be necessary for the United Kingdom Government to detail ‘how it would intend to facilitate the achievement of Scottish independence in the event of a yes vote’.

### **Broadcasters’ Liaison Group**

3.17 The Broadcasters’ Liaison Group (BLG) represents all the UK broadcasters carrying party political and referendum campaign broadcasts. (The Electoral Commission attends BLG meetings with observer status.)

3.18 The BLG’s sole concern with the proposals for any future referendum is in relation to ‘one-sided designation’, which, according to the consultation document would remain unchanged from the provisions set out for the 2014 referendum.<sup>4</sup> According to BLG, one-sided designation would mean ‘impartiality in respect of Referendum Campaign Broadcasts would be impossible to achieve without breaching the applicable legislation’. BLG would like to see entitlement to Referendum Campaign Broadcasts specifically withdrawn in the event of one-sided designation.

3.19 This matter was discussed previously with the Scottish Government in the run-up to the 2014 election. In the event, there was designation on both sides, so the issue did not arise, but broadcasters are still concerned about the precedent.

3.20 BLG makes a range of arguments in support of their view that one-sided designation would not be viable, including that:

- Balancing a Referendum Campaign Broadcast with the broadcaster’s own editorial output is ‘fundamentally flawed as the two are not comparable’. Even if they were, this would ‘still leave broadcasters vulnerable to complaints that coverage was not impartial, but more fundamentally would be an unacceptable interference with broadcasters’ editorial control over their output and Article 10 rights on freedom of expression’

3.21 The Electoral Commission report following the 2014 referendum recommended in respect of future referendums ‘we would not expect campaign broadcasts to be included in the package of benefits available in the event of one-sided designation’. This position was further elaborated in the Electoral Commission’s briefing to the House of Lords at Third Reading of the European Union Referendum Bill (1 December 2015) where it was recommended that ‘steps should be taken to reduce the potential advantages of the current PPERA designation model for a prospective lead campaigner to decide against applying for designation – for example if a campaigner sees a tactical advantage in not seeking

---

<sup>4</sup> ‘One sided designation’ refers to a situation in which a lead campaign group is appointed on only one side of the referendum. This could occur if there are no applicants to be lead campaigners for an outcome, or if the Electoral Commission are not satisfied that any of the applicants adequately represent those supporting a particular outcome.

designation to frustrate the other side's access to the additional campaigning benefits. Etc. Etc.' This amendment was accepted, and so in the event of one-sided designation in the 2016 EU referendum there would have been no Referendum Campaign Broadcasts for either side.

# 4. Management and mechanics of the referendum

## Introduction

4.1 The previous chapter provided a summary of the main points in the responses of key stakeholder organisations. This chapter and Chapter 5 discuss the views of all other respondents in relation to the five consultation questions.

4.2 This chapter focuses on views about the proposals for the management and mechanics of holding a referendum – that is, respondents' views in relation to the first two consultation questions. This chapter also includes comments made by respondents in relation to issues discussed in the first chapter of the consultation paper.

4.3 Chapter 1 of the consultation paper set out the context for a possible second independence referendum and discussed the expectation that a section 30 order would be sought from the UK Parliament.<sup>5</sup> It also stated an intention to use the same question used in the 2014 referendum, and for the outcome of the referendum to be decided on the basis of a simple majority. None of the consultation questions specifically asked for views on these topics.

4.4 Chapter 2 of the consultation paper set out the Scottish Government's proposals for managing and regulating the referendum. These covered:

- The proposed role of the Electoral Commission in regulating and overseeing the referendum.
- Arrangements for conducting the poll including the role of the Chief Counting Officer and local counting officers; issue of polling cards for absent and proxy voting; designation and management of polling stations; publishing notice of the referendum; ballot security; counting the votes; and declaring the result.

4.5 Chapter 2 also set out a number of proposed technical changes from the 2014 referendum procedures in relation to:

- The eligibility to vote: The franchise for the referendum would be the same as for Scottish local government and Scottish Parliament elections.
- Absent voting (postal and proxy voting): Proposed changes would require proxy voters to be registered voters themselves; would restrict access to emergency proxy votes; and would require that personal identifiers are checked on 100% of postal voting statements.
- Polling and count staff: There would be a duty on counting officers to not knowingly appoint or employ polling or count staff who have been involved in campaigning during the referendum.

---

<sup>5</sup> Section 30 of the Scotland Act 1998 makes provision for an Order in Council to temporarily transfer reserved powers from the UK Parliament to the Scottish Parliament to hold a referendum on independence. The Order needs to be approved by both the UK Parliament and the Scottish Parliament.

- Verification statements: Counting officers would be required to supply a copy of the verification statement (which confirms the number of ballots counted equals the number recorded) to any counting agent upon request.

4.6 Questions 1 and 2 were as follows.

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

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

4.7 In responding to these questions, however, respondents offered comments about the full range of issues raised across both Chapters 1 and 2 of the consultation paper. The predominant themes in the comments related to: the franchise for the referendum, concerns about the security of voting, and the prevention of voter fraud (as part of a wider discussion about arrangements for conducting the poll and the count). These and other themes will be discussed further below, under the general headings of: (i) arrangements for managing the referendum; (ii) proposed technical changes to polling and count arrangements, and (iii) comments on other aspects of the referendum arrangements. (This third section covers respondents' views about the issues discussed in Chapter 1 of the consultation paper.)

4.8 Respondents to the consultation expressed a range of views on the Scottish Government's proposals for managing a future referendum. On the one hand, some endorsed the proposals. On the other, there were concerns expressed (particularly in relation to security issues), as well as disagreement with certain proposals (particularly in relation to the franchise).

## Arrangements for managing the referendum

4.9 In setting out their views on the management of the referendum, respondents often commented on the significance of a referendum on Scottish independence, which was seen to be entirely different from an ordinary election where elected politicians could be voted out after five years. Thus, they repeatedly called for additional, more stringent measures to be put in place to ensure confidence in the outcome of the vote.

### Role of the Electoral Commission

4.10 There was a range of views expressed in relation to the role of the Electoral Commission in overseeing and regulating the referendum.

4.11 On the one hand, there was support for the Electoral Commission and its role in providing an important, useful and independent role in overseeing and regulating the referendum. In particular, respondents thought the Electoral Commission had a valuable role to play in setting the referendum question, in overseeing any campaign activity, and in regulating the registration of permitted participants and recording expenses. There were also positive comments about the Electoral Commission's work in reviewing the conduct of the previous referendum, and endorsement of their recommendations. Some also wished to see the Electoral Commission have a greater role in overseeing electoral procedures, or thought

that the powers of the Electoral Commission might be extended and strengthened, for example, with regard to ensuring the security of the ballot, following up apparent breaches of rules, or providing or scrutinising campaign information.

4.12 On the other hand, some respondents expressed dissatisfaction with the role played by the Electoral Commission in the 2014 referendum. This group was particularly critical of what they considered to be the lack of action taken by the Commission in the face of perceived breaches of electoral rules. At a general level, these respondents said they did not 'trust' the Electoral Commission, did not see it as impartial, or did not think it was sufficiently independent of the UK Government. Some also suggested that the Electoral Commission could not be truly impartial, given its existing links and contacts with different individuals and organisations in Scotland (i.e. local authority staff and government officials).

4.13 There were repeated calls among those in this group for an alternative organisation (often an international organisation) to take on the role of independent scrutiny and oversight of the referendum – either in lieu of, or in addition to, the role of the Electoral Commission. Most of those advocating this did so because they were critical of the Electoral Commission. Some, however, had no issue with the Electoral Commission but nevertheless thought that external oversight would help protect the integrity of any future referendum.

4.14 On the specific issue of reporting and accountability, there were differing views on who the Electoral Commission should report to with regard to a Scottish independence referendum. Although some agreed that the Commission should report to the Scottish Parliament, there were two other less common views: that the Commission should report to the Scottish **and** UK Governments; and that the Commission should report to the UK Government and **not** to the Scottish Government. A few respondents queried the principle of the Electoral Commission reporting to Parliament at all, and suggested that this compromised its independence. This group wanted to see an entirely independent body established.

4.15 There was also a small number of comments about the relationship between the Electoral Management Board for Scotland and the Electoral Commission. Some argued that the Electoral Management Board could fulfil the functions of the Electoral Commission, while others argued, conversely, that the Electoral Management Board was not needed and that the Electoral Commission could carry out any relevant duties. There was also a view that there should be a separate Scottish Electoral Commission.

### **Concerns about security in relation to the conduct of the poll and the count**

4.16 In relation to the conduct of the poll and the count, as mentioned above, one of the most prevalent themes in respondents' comments was a concern about security and the possibility of electoral fraud. These concerns were reportedly based on respondents' own experiences from the 2014 referendum, or on media reports or videos which respondents said were circulated on social media after the referendum. Among those who raised such concerns, there was a widespread view that a range of actions should be taken to tighten up security arrangements for any future referendum.

4.17 In relation to any future referendum, the main concerns raised by this group of respondents related to the:

- Potential for fraudulent use of postal and proxy voting

- Receipt, handling, counting, and ‘sampling’ of postal votes
- Handling and transportation of ballot boxes
- Neutrality of the polling and count staff
- Printing of ballot papers
- Scrutiny of voter registration
- Confirmation of identification at polling stations.

4.18 Each of these concerns – some of which are linked – is discussed in greater detail below, together with suggestions offered by respondents for how they could be addressed. However, the main suggestion respondents made to address all the concerns about security and the potential for fraud, was the introduction of independent oversight of the poll and the count. This perceived need for independent oversight has already been mentioned above (at paragraph 4.13), and is covered in more detail below in paragraphs 4.38 to 4.41.

#### *Postal and proxy voting*

4.19 Among those who expressed concerns about security issues, there was, in particular, a lack of confidence about whether postal voting, and the rules governing the use of postal voting, were properly applied in the 2014 referendum. Although the proposed technical changes to proxy and postal voting noted in the consultation paper were often welcomed, there was also continuing concern about the use of absent voting, and postal voting in particular, in any future referendum. This group of respondents highlighted the large numbers of postal votes received in 2014 (approximately 800,000). They thought the postal vote system was open to abuse in general and were specifically concerned about: (i) those who were not normally resident in Scotland claiming a postal vote and (ii) ‘mass completion’ being organised by campaigners for residents of care homes / nursing homes.

4.20 Some respondents also suggested that the opening and counting of postal votes had not been done correctly. There were frequent allegations that, in 2014, postal votes had been ‘sampled’, and ‘opened early’ and that politicians had got early sight of the results of the postal ballot. Respondents repeatedly emphasised that postal votes should not be opened in any circumstances before the main poll closed. They also wanted assurance that postal votes would not be taken outside Scotland to be counted.

4.21 In general, and irrespective of whether they expressed concerns about postal voting, respondents supported the proposal set out in the consultation paper to require 100% checking of personal identifiers on all postal voting statements. However, some of those who had concerns wanted to see postal voting restricted to those who were clearly unable to attend the polling station in person (e.g. those who were disabled, unwell, serving overseas in armed forces, etc.) and some respondents went further and called for postal voting to be disallowed altogether.

4.22 Proxy voting was also mentioned by respondents concerned with fraud, but to a much lesser degree than postal voting. Some respondents wished proxy voting – and especially emergency proxy voting – to be more carefully scrutinised. This group believed there was scope to reduce proxy voting. The large increase in the numbers of emergency proxy votes recorded in the 2014 referendum was highlighted and these respondents thought the reasons for this increase should be examined.

### *Handling and transportation of ballot boxes*

4.23 Some respondents expressed concerns about the handling and transportation of ballot boxes. Among this group, it was generally thought that security of these operations needed to be tightened up. Respondents described scenarios from the 2014 referendum which they thought indicated that ballot boxes had been interfered or tampered with.

4.24 Suggestions made by respondents to improve security included: (i) opening and counting boxes at the polling station rather than transporting boxes to counting stations; (ii) ensuring that boxes are sealed securely, numbered, and the details recorded and signed off before boxes are moved; (iii) providing for representatives from both sides of the campaign to travel with ballot boxes when they were moved to counting stations; (iv) providing for ballot boxes to be escorted by security staff / police when being transported; (v) ensuring that no ballot boxes are opened before the official count; and (vi) not allowing any boxes to be transported outwith Scotland.

4.25 More generally, respondents with concerns about security highlighted the importance of having a comprehensive audit trail for the sealing, handling, transporting and opening of ballot boxes.

### *Polling and count staff*

4.26 Among those who made comments about security issues, there was widespread agreement with the proposal in the consultation paper that the counting officer must not knowingly appoint or employ anyone who has been involved in campaigning during the referendum. However, there was also a view that this change did not go far enough in ensuring the neutrality of polling and count staff.

4.27 Some respondents argued that anyone who was to be involved in these roles should be subject to full background checks before they could be appointed, and that it was not just the counting officer, but also local returning officers and election administrators more generally who had a responsibility in this regard. Moreover, given that the use of social media to express views is widespread, some respondents also questioned how 'involvement in campaigning' was to be defined. They also asked for further detail about: (i) how 'knowingly' would be assessed and (ii) how this would be enforced in practice.

4.28 An alternative view, expressed less often, was that there should be no restriction on appointing campaigners as polling and count staff, as security would improve if individuals from both sides of the campaign were knowingly appointed in these roles.

### *Printing of ballot papers*

4.29 Another specific issue which was raised by some respondents concerned the printing of ballot papers. These individuals claimed that in 2014, some ballot papers had been printed without a barcode. This, it was suggested, was an example of potentially fraudulent practice as ballot papers could then not be uniquely linked to an entry on the electoral register.

### *Scrutiny of voter registration*

4.30 Respondents who expressed concerns about security issues also often raised queries about whether the voter registration system was sufficiently robust. Some expressed the view that individual entries on the electoral register were not always fully verified. This point was raised particularly in the context of the 2014 referendum, with some respondents believing

that inadequate scrutiny had resulted in individuals whose main domicile was outside Scotland being allowed a vote (usually by post). This is discussed further in relation to the eligibility to vote (paragraph 4.45 below). More generally, some respondents were concerned that requests for a postal vote were not adequately scrutinised.

#### *Voter identification*

4.31 Among those who voiced security concerns, there were repeated requests for voters to produce identification at polling stations. Most commonly, these respondents thought that anyone voting at a polling station should not only be required to present their polling card, but also to present some form of photo identification (e.g. driving licence, passport). Others argued that voters at polling stations should, in addition, be expected to provide proof of residency (in the form of a National Insurance number, utility bill, or bank statement).

#### *Other suggestions for improving security*

4.32 Five further suggestions for improving security and guaranteeing the integrity of the exercise were made on a relatively frequent basis. These were: (i) making more – and better – use of new technologies; (ii) retaining ballot papers for a period following the declaration of the result; (iii) introducing a verification process so that individual respondents could ‘check’ that their vote had been registered and counted correctly; (iv) introducing exit polls; and (v) using pens rather than pencils to mark ballot papers. These are discussed in turn below.

4.33 Some respondents thought that there was scope to use new technologies to improve the security arrangements for any future referendum. In particular, they suggested that (i) video cameras and CCTV should be introduced on a wide basis and (ii) the introduction of online voting would allow more robust scrutiny and verification procedures to be put in place. Note however, that other respondents also questioned whether online voting would allow voter anonymity to be preserved.

4.34 As far as the retention of ballot papers was concerned, some respondents were in favour of keeping these for a period following the declaration of the result. According to those who suggested this, it would then be possible to conduct a full audit at a later stage if questions were raised about the integrity of the conduct of the poll and the count.<sup>6</sup>

4.35 Occasionally, respondents requested that a verification process be introduced to enable individuals to check how their own vote had been recorded. This was mentioned in the context of introducing new technology which would allow voters to log on to a secure site where they could ‘track’ and audit their own details and vote.

4.36 There was also some support for the introduction of exit polls. It was thought that this would enable a check to be made of whether the result from a particular polling station was in line with that predicted by the exit poll.

4.37 There were also some concerns that the use of pencils to mark ballot papers introduced the possibility of tampering and fraud. Respondents who raised these concerns preferred a system which required ballot papers to be marked in pen.

---

<sup>6</sup> Note that ballot papers were retained by Counting Officers for 12 months after the 2014 Referendum.

### *Need for independent oversight*

4.38 The most common suggestion made for improving the security of the poll and the count was the introduction of independent oversight.

4.39 Those who called for this argued that some form of independent oversight was necessary to build confidence in all aspects of the conduct of the poll and the count (and indeed the campaign more widely). Various respondents discussed the need for independent oversight in relation to: the formulation of rules and procedures for the poll and count; all activities at polling stations; the transportation of ballot boxes; and the conduct of the count, including the count of the postal votes and adjudication of spoilt ballot papers.

4.40 Most commonly, there was a desire for this oversight to be provided by an organisation from outside the UK. Respondents emphasised the importance of impartiality and neutrality, and so believed that this meant using an international body. The organisations mentioned most frequently were the EU and the United Nations. Other organisations, mentioned less often, included the European Council, the Organisation for Security and Co-operation in Europe (OSCE), and the Office for Democratic Institutions and Human Rights (ODIHR).

4.41 Occasionally, respondents asked that the independent oversight should substitute for the current management arrangements involving the Chief Counting Officer and counting officers. More commonly, respondents wished the independent oversight to provide a scrutiny and review function rather than management per se. (See also comments in relation to the role of the Electoral Commission – paragraphs 4.10 to 4.15.)

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

4.42 As discussed in paragraph 4.5 above, the proposed technical changes concerned: (i) eligibility to vote; (ii) absent voting; (iii) polling and count staff; and (iv) verification statements.

4.43 Respondents' comments about absent voting and polling and count staff were generally made in the context of a wider discussion of security issues which have been covered above. This section therefore focuses on comments made in relation to the proposed technical changes regarding verification statements and the eligibility to vote.

#### **Verification statements**

4.44 A small minority of respondents offered comments on the proposal for '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 proposal was welcomed, with these respondents agreeing that this would improve the transparency, security and fairness of the referendum arrangements. Occasionally respondents commented that the proposal did not go far enough; they wished verification statements to be supplied in all cases, not just on request by the counting agent.

#### **Eligibility to vote**

4.45 One of the most dominant themes arising across all consultation responses was in relation to the eligibility to vote – or the franchise for the referendum, and there was much discussion about who should and should not have a vote. In many cases, if respondents made a comment in relation to the franchise, they did so because they disagreed with some aspect of what was proposed in the consultation paper.

### *Views in relation to the principle of a franchise based on residence*

4.46 There were conflicting views about having a franchise based primarily on residence. Some agreed with the consultation paper that a franchise based on residence was appropriate since only people living in Scotland would be affected by the outcome of the vote. This group agreed that voter eligibility for any future referendum should be the same as Scottish local government and Scottish Parliament elections, and they also believed it should be the same as it was for the 2014 referendum. Some also commented that it was appropriate that EU citizens resident in Scotland should be able to vote in a Scottish independence referendum; these respondents believed it was not right that EU citizens resident in the UK had **not** been permitted to vote in the UK referendum on EU membership.

4.47 Among those who were generally supportive of a franchise based on residence, however, the main concern was about the possibility of individuals claiming residence who were not truly resident, or who were only resident for a temporary or short period of time. This would include, for example, people who own holiday homes in Scotland, but who do not live there; students from England or other countries who would return to their own countries when they finished their course; members of the armed services based in Scotland on a temporary basis; and recently arrived migrant workers. In general, respondents who commented on this issue wanted the franchise to be given only to **permanent** residents of Scotland, and they usually defined permanent status in terms of length of residence, or proven economic or social contribution to Scotland.

4.48 Specifically, some argued that residence should be based on a minimum period of time, and that only those who met this threshold should be eligible to vote. Suggestions ranged from 3 months to 15 years, with the most common suggestion being a period of 5 years. Others argued that ‘proof’ of residence should be required to be able to vote in the referendum. Such proofs could include, for example, evidence of employment, payment of council tax, having a Scottish tax code, or being in receipt of child allowance or welfare benefits in Scotland.

4.49 Given these types of arguments, some respondents suggested that if the eligibility to vote is to be based on residence, then that should include **all** residents of Scotland. This group thought that the definition of residency should be expanded to include everyone living permanently (for a specified number of years) in Scotland. This would include, for example, citizens of non-EU non-Commonwealth countries (e.g. the United States, Norway, Iceland, Japan, etc.) who had indefinite leave to remain. They also made the point that the eligibility to vote as described in the consultation paper was, in fact, not based on residence at all, but rather on citizenship – i.e. citizens of some countries would be eligible to vote, while citizens of other countries would not. These respondents thought that the franchise for the referendum should include all permanent residents of Scotland, regardless of their citizenship.

### *Voting by Scottish expatriates*

4.50 However, the issue raised most often by respondents in relation to eligibility to vote was about whether people who had been born and raised in Scotland, but who were now living outside of Scotland (i.e. elsewhere in the UK or abroad) should have the right to vote.<sup>7</sup>

---

<sup>7</sup> Respondents frequently made statements such as ‘Scottish citizens living in Europe should have the right to vote’, or ‘Scots living abroad should also be able to vote’ – without defining the terms ‘Scottish citizens’ and ‘Scots’. However, others

Among those who raised this issue, the more common view was that Scottish expatriates should be able to vote in the referendum. This group questioned the fairness of EU citizens living in Scotland being able to vote, while Scottish people living in Europe could not. Those who put forward these arguments often commented that they themselves were currently living outside of Scotland (usually 'temporarily'), but that they still considered themselves to be Scottish and wanted to vote in the referendum.

4.51 The alternative, less common view was that Scottish people living outside of Scotland should not be permitted to vote in the referendum. Some highlighted the practical and administrative difficulties of allowing Scottish people living outside of Scotland to register to vote in the referendum, while others suggested that expatriates should only be able to vote if they could prove a long-standing connection to Scotland. Respondents were not always specific about how this long-standing connection should be proved, with some simply suggesting that eligible voters living temporarily outside of Scotland must 'pass a test of permanent residency in Scotland'. However, some of the more specific criteria mentioned were:

- Having a Scottish-registered birth certificate
- Continuing to own property in Scotland
- Having a valid UK passport and evidence of permanent residence in Scotland within the past 10 (or 15) years.

4.52 Regarding the latter point, some respondents noted that current election rules allowed British citizens living abroad to vote in UK parliamentary elections for up to 15 years after moving to another country. This group argued that, given the possible implications of the Scottish independence referendum for the UK constitution, this same rule should apply to UK citizens born and raised in Scotland who were currently living overseas.

#### *Views about the eligibility to vote by specific groups*

4.53 Respondents who expressed views in relation to the franchise sometimes commented on the proposed eligibility of certain groups mentioned in the consultation paper. Within these comments, the main focus was on the eligibility of EU and Commonwealth citizens and of 16- and 17-year olds:

- **EU citizens and Commonwealth citizens living in Scotland:** There were conflicting views about whether EU and Commonwealth citizens living in Scotland should be able to vote. Some respondents agreed that if the franchise is to be based on residence, then these groups should have a vote. However, others thought that it was unacceptable that any non-UK citizen should participate in a vote which could result in the break-up of the United Kingdom. Others were ambivalent, believing that EU citizens should only be able to vote if they had passed the 'permanent residence' threshold.
- **16- and 17-year olds:** There were also conflicting views about whether 16- and 17-year olds should be able to vote in the referendum. Those in favour emphasised that people aged 16 and above were the future of Scotland and more affected by the outcome of the referendum than any other age group. These respondents also

---

explicitly stated that people with UK citizenship who had been born and raised in Scotland but who were now living outside of Scotland should be eligible to vote in the referendum.

pointed out that the 2014 referendum had demonstrated the value of including this age group in the franchise. By contrast, those who were opposed, perceived under-18s as not having the knowledge, experience or maturity to participate 'in a decision of such gravity'.

4.54 Some respondents also referred to other groups mentioned in the consultation paper, including members of the House of Lords and Armed Forces personnel. Regarding members of the House of Lords, the predominant view was that this group should only be able to vote in the referendum if they met the criteria of permanent residence – as any other voter. Regarding Armed Forces personnel, there were conflicting views: on the one hand, there was agreement that any individual serving in the Armed Forces and registered to vote in Scotland should have a vote in the referendum; on the other, there was a view that eligibility to vote by members of the Armed Forces should depend on certain conditions – for example, whether they were born in Scotland, whether they were permanently or temporarily based in Scotland, whether their family was based in Scotland.

4.55 One group which was not specifically discussed in the consultation paper, but which respondents frequently discussed in their comments about voter eligibility were 'holiday home owners'. Respondents were particularly concerned about non-resident property owners registering to vote in the referendum using their holiday home as their address. As discussed above in relation to concerns about postal voting (paragraph 4.19), some respondents claimed they personally knew of cases where this had happened in the 2014 referendum and they alleged that the large number of postal votes cast in the 2014 referendum were at least partly due to non-resident property owners registering to vote in this way. The general view among those who raised this issue was that holiday home owners, who were not otherwise resident in Scotland, should not be eligible to vote in the referendum.

#### *Views on prisoner eligibility to vote*

4.56 Finally, a small number of respondents raised the issue of voting by prisoners. Among this group, which includes the Howard League, there was support for prisoners in general, or certain classes of prisoners, to be able to vote in the referendum. There was also a slightly different view that, while the time may not be right to allow convicted prisoners to vote, persons held on remand, who are already eligible to vote, should be given every assistance and support to register to vote.

#### *Other views about the franchise*

4.57 Very occasionally, respondents suggested other groups who should not be permitted to vote in the referendum. These included, for example, certain groups of older people (those over 80 were mentioned) or people who 'lack capacity'.

## **Comments on other aspects of the referendum arrangements**

4.58 The introduction to the consultation paper ('Section 1 Introduction and Context') covered three issues relevant to holding a referendum: the use of a section 30 order to allow the Scottish Parliament to legislate for a referendum; the question to be used on the ballot paper; and turnout and threshold requirements for the referendum. Although the consultation paper did not include questions on these issues, some respondents nevertheless offered comments on them, as discussed below.

## **Use of a section 30 order**

4.59 The consultation paper stated that it would be expected that a section 30 order would be sought and agreed, as in 2014. This proposition and the relative powers and roles of the UK and Scottish parliaments in authorising and running a referendum attracted limited comment and some conflicting views.

4.60 On the one hand, some respondents were positive about there being a role for the UK Parliament. However, some within this group felt that a section 30 order should not – or would not – be granted in the current circumstances (e.g. so soon after the 2014 referendum, without evidence of clear demand from people in Scotland). These respondents also sometimes argued for the UK Government to have a greater role in organising and overseeing any referendum which went ahead (e.g. in setting the question to be used, in setting the campaign rules etc.).

4.61 In contrast, other respondents argued that a section 30 order should not be required in order for the Scottish Parliament to proceed with legislation. Some within this group expressed concern about perceived UK government / UK establishment ‘interference’ in the referendum, saying that they did not trust the UK Government.

## **The referendum question**

4.62 Comments regarding a possible future referendum question touched on several issues. Although some agreed that the same question should be used, others argued for a redesigned question.

4.63 Those who favoured retaining the same question as used in the 2014 referendum did not always offer reasons for their views. However, those that did argued that the question was simple and easily understood; they also noted that people were familiar with the question, and that retaining it offered an important degree of consistency in the process.

4.64 Those favouring a revised question did so for two main reasons: (i) they thought the question used in the 2014 referendum was ‘biased’; or (ii) they thought the previous question was no longer appropriate due to the significantly changed circumstances.

## **Turnout and approval threshold**

4.65 A significant minority of respondents offered comments on the proposal to use a simple majority in a future referendum. Those who raised this issue referred to two sub-issues: an approval threshold and a minimum turnout.

4.66 Some endorsed the government’s proposal to use a system based on a ‘simple majority’ (50%+1 of the votes cast), noting that the use of a simple majority was ‘standard practice’, and highlighting that this approach had also been used in other recent UK referenda. They also thought that a minimum turnout / approval threshold would disadvantage those campaigning for change (i.e. independence).

4.67 However, if respondents raised this issue, it was more common for them to argue against using a simple majority. Within this group, the main argument put forward was that major constitutional change should not be taken forward on the basis of a simple majority, particularly when this might be combined with low voter turnout.

4.68 Those arguing for turnout and / or threshold requirements put forward a range of specific suggestions which included the following:

- A winning threshold of between 55% and 70%
- A winning 'differential' of between 10% and 20%
- A minimum turnout of between 66% and 85%.

4.69 Moreover, it was common for respondents to seek a combination of turnout and threshold requirements.

4.70 Other respondents emphasised the importance of the outcome of any vote attracting strong support and thought that consideration should be given to steps which might maximise turnout (e.g. introducing compulsory voting, holding the poll at the weekend, or introducing online voting, etc.).

4.71 Respondents also made a number of suggestions regarding other 'conditions' which they thought should be attached to any referendum (all put forward by a small number of respondents only). These included restrictions on holding further future referenda; the need for a majority vote for independence across all geographic or council areas in Scotland for the result to be acted upon; and the use of a two stage process with a first referendum establishing support / opposition 'in principle' with respect to independence, and a second referendum (if appropriate) on the terms of any agreed settlement.

## 5. Campaign rules

5.1 This chapter presents respondents' views in relation to the campaign rules for a referendum. Note, however, the comments submitted by key organisations (including the Electoral Commission and the Electoral Management Board for Scotland) have been discussed separately in Chapter 3, together with the responses of a small number of other key stakeholder organisations.

5.2 The consultation paper discussed:

- The need for campaign rules
- Proposals regarding campaign participants (including technical changes from the 2014 referendum procedures)
- The fact that no grants of public money would be given to those wishing to campaign
- Spending limits for participants in the referendum campaign
- The types of activities that would constitute 'campaign expenditure' and count towards permitted participants' spending limits.
- Proposed technical changes in the way expenses for permitted participants would be calculated, and in relation to financial transactions between permitted participants and qualifying / non-qualifying individuals or bodies.

5.3 The consultation included three questions which asked about technical issues related to: (i) proposed changes in the rules on permitted participants; (ii) the campaign rules and rules on spending; and (iii) proposed changes to the rules on permitted participants' expenses and transactions between (a) permitted participants and (b) qualifying / non-qualifying individuals and bodies.

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

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

**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?

5.4 This chapter will first consider the views of the very small number of respondents who commented on the specific technical proposals discussed in the consultation paper. Then it will go on to discuss the more dominant themes in respondents' comments about the conduct of the campaign.

5.5 Note that very few respondents engaged with the technical aspects of these questions. Comments at Questions 3 and 5, in particular, tended to take one of two forms: (i) either the respondent said they agreed with the proposed changes without offering further comment or an explanation for their agreement, or (ii) they said they could not comment because they did not understand the question.

5.6 There was a great deal of consistency in the brief comments made by those respondents indicating general agreement with the proposals. These respondents said that they thought the proposals covered by Questions 3 to 5 were ‘sensible’, ‘adequate’ or ‘proportionate’. Respondents thought the proposals were necessary to address previous concerns and that they would introduce greater transparency and robustness to the oversight of campaigning. With respect to campaign spending in particular, respondents thought the proposals would ensure a ‘fair’ referendum and a ‘level playing field’.

5.7 Most of the more substantive comments made by respondents focused on broad topics relating to the campaign rules or conduct of the campaign. The principle of fairness was a recurring theme in these comments; and, related to this, respondents repeatedly emphasised the need for: (i) increased and ongoing scrutiny (particularly in relation to campaign spending and donations), and (ii) enforcement (of campaign rules and rules on spending). These three themes of fairness, scrutiny and enforcement occurred frequently, regardless of whether respondents were discussing their views about campaign participants, issues to do with campaign spending and donations, or the role of the media in the campaign. Respondents offered a wide range of suggestions about how fairness might be achieved, how scrutiny should be improved, and what forms enforcement should take.

## Views on proposed technical changes

5.8 Fewer than 50 respondents commented on any of proposed technical changes discussed in the consultation paper. In general, there was support for the changes proposed, with respondents suggesting that the changes were ‘sensible’ and would support fairness and transparency. Some also referred to recommendations made by the Electoral Commission following the 2014 referendum. The following points were made by this group in relation to the proposed technical changes.

### Spending threshold for registering as a permitted participant

5.9 Respondents who commented in any detail on the proposed £10,000 threshold for registering as a permitted participant generally did so because they disagreed with the threshold. The most common view was that the threshold for registering should be lower than £10,000. Some respondents simply made a general comment that ‘the limit should be set at less than £10,000’, while others made specific suggestions – £500, £1,000 and £5,000 were all suggested by multiple respondents.

5.10 Those who wanted a lower threshold for registration did so because they wanted to see increased scrutiny of the sources of campaign donations, and they believed that by requiring campaigners to register at a lower level of spending, this would lead to greater scrutiny of donations at a lower level too. (It should be noted, however, that there may have been some misunderstanding among respondents about the distinction between campaign spending by a permitted participant and campaign donations.)

5.11 Those who wanted a higher threshold for registration (£25,000 was mentioned) thought that £10,000 was a small amount of money in the context of the likely overall spending on a referendum campaign. The point was made that £10,000 is less than the annual salary of an individual on minimum wage, while £25,000 is a more typical salary.

5.12 A few respondents called for clarification about what would happen if an individual or organisation not registered as a permitted participant incrementally exceeded the amount for registration by giving small sums to different campaign groups; and what the implication of this threshold would be for small local campaign groups and donations sought through crowd-funding.

### **Appointment of responsible person for permitted participants**

5.13 There was support for the proposal to require the person appointed as the responsible person for a permitted participant to sign the application for declaration (to register as a permitted participant). There was agreement that any individual named as a responsible person for a permitted participant should be required to indicate that they are aware of that fact, to prevent being named as a responsible person unknowingly, and to ensure that they can be held accountable for the actions of the permitted participant during the campaign. There was also a view that any individual signing a declaration as the responsible person for a campaign group should be required to have the formal approval of the members of that group (endorsement by a two-thirds majority was suggested).

### **Registering obscene or offensive names**

5.14 Among those respondents who discussed the issue of registering campaign names, there was general agreement that the Electoral Commission should be able to reject the registration of any name proposed by a campaigner which is obscene or offensive. Respondents considered this proposal to be 'sensible', 'reasonable' and 'a good idea', and they commented that this would help in setting an appropriate tone for the campaign.

5.15 However, some respondents noted that the term 'offensive' is 'vague' and 'subjective', and they called for a clear definition of this term to be included in the Bill so that campaign names were not rejected for arbitrary reasons. Alternatively, it was suggested that any decisions taken by the Electoral Commission in rejecting 'offensive' names should be open to public scrutiny to help ensure that any such action is reasonable.

5.16 A less common view on this topic was that it was unnecessary to spend time addressing offensive language as there are already laws in place which allow this to be dealt with. Concern was also expressed about the potential for restricting freedom of speech.

### **Calculation of expenses for permitted participants**

5.17 Fewer than 30 respondents made a comment in relation to the changes proposed in the calculation of permitted participants' expenses. Among these, there was general agreement with the changes proposed. This group endorsed the recommendation made by the Electoral Commission, and suggested that the change would improve the accuracy of the calculation of expenses.

### **Transactions between permitted participants and qualifying and non-qualifying persons**

5.18 Respondents supported the proposal to make it an offence for a permitted participant to knowingly receive money under a loan or other regulated transaction from an individual (or organisation) who has ceased to be a qualifying person, or to fail to repay a loan or other regulated transaction from such a person. Respondents welcomed the increased

transparency associated with this proposal and generally endorsed the principle that money to fund campaigning in the referendum should not come from ineligible sources.

5.19 However, some also asked for clarification about the timeframe for repaying any money received from non-qualifying persons and about the enforcement of this rule. In particular, some wanted to know what would happen if a permitted participant simply denied all knowledge of the change in a qualifying person's status – and for this reason, there was a suggestion that the offence should relate to 'unknowingly' (as well as 'knowingly') receiving money from a non-qualifying person. Respondents also asked for details about: (i) who would ensure the money was repaid; (ii) what safeguards could be put in place to prevent donations being channelled into the campaign through a qualifying person by a non-qualifying person; and (iii) what sanctions there would be for those who had committed the offence. There was a view that a fine was unlikely to act as a sufficient deterrent in the context of a referendum on Scottish independence, and there were calls for custodial sentences to be considered.

5.20 The main concern voiced by this group in relation to this point was that the rule could only be enforced 'after the fact' – which would inevitably be after the referendum – by which point any illegal transactions will have contributed to the outcome.

## **Views on the conduct of the campaign**

5.21 As noted above in paragraphs 5.5 and 5.7, most respondents did not engage with the technical detail of the proposals set out in the consultation paper, but rather focused their comments on more general issues relating to the campaign rules and the conduct of the campaign. The main themes in these responses were in relation to the eligibility of permitted campaign participants; spending limits and expenses; donations and donors; the use of public funds and the role of Government in the referendum; and the quality of campaign information (including the role of the media). Other themes, raised less often, are discussed at the end of this chapter.

5.22 It was clear that people's views were influenced by their perceptions of the campaigns leading up to the 2014 Scottish independence referendum and the 2016 EU referendum. These respondents frequently alleged that campaign rules had been broken in both these campaigns but that no legal (or other) consequences had followed. Respondents wanted to see any breaches in campaign rules dealt with swiftly and in an ongoing way throughout the campaign before they could affect the outcome of the referendum.

### **Eligibility to register as a permitted participant**

5.23 One of the main themes in respondents' comments about the referendum campaign rules related to the eligibility to register as a campaign group. The predominant view was that only individuals living in Scotland and organisations based in Scotland should be eligible to register as permitted participants. Some said that only those who would be eligible to vote in the referendum should be able to campaign.

5.24 However, an alternative view was that individuals / organisations based anywhere in the UK should be able to register as a permitted participant, but that all members of a permitted participant campaign group must be exclusively domiciled in the UK.

5.25 Respondents commenting on this issue frequently alleged that during the 2014 referendum, multiple groups had registered as campaign participants (on both sides of the campaign), but that these separate groups were all controlled, co-ordinated and funded by one or other of the two main campaign groups. Furthermore, this was perceived to have been done deliberately to avoid breaching campaign spending limits.

#### *Need for improved information on rules for campaign groups*

5.26 Occasionally, respondents voiced concerns about whether small, local grassroots campaigners would have the necessary knowledge or administrative capacity to be able to avoid falling foul of the proposed campaign rules. This group of respondents wanted to see more information available to local activists and campaigners about the rules. There was also a view that it would be beneficial to provide information about campaign rules to members of the public more widely so that there is an increased awareness of when the rules are being broken. Various respondents called for a plain English guide to campaigning for small campaign groups and more support / training materials for groups in relation to handling donations, and the proper use and management of campaign funding.

### **Campaign spending**

5.27 There was a range of views about whether – and at what point – campaign spending should be capped. The predominant view was that there should be defined limits on campaign spending, and that this limit should apply to the campaign overall, rather than to separate campaign groups. Respondents who commented on this issue generally thought that both sides of the campaign should have the same overall limit – thus dealing with the concern (mentioned in paragraph 5.25 above) about multiple campaign groups being created and controlled by a central campaign organisation in order to achieve a greater spend, and so have an advantage over the other side.

5.28 Respondents did not usually give a view on what the spending limit should be; rather they made more general statements such as ‘the less spending the better’, ‘there should be a slight increase over the 2014 spending limits’, or ‘as long as all parties agree to the limits’.

5.29 However, some did make more specific suggestions, ranging from £200 in total to £2 million. Limits of £500k and £1 million were suggested by multiple respondents. It was clear that the most common view was that overall spending on a second referendum should be less than it was on the 2014 referendum. Others suggested applying limits to particular items of spending, such as advertising (e.g. ‘should be cut by 90%’).

5.30 The alternative view, expressed less often, was that there should be no limits on spending. Those who held this view gave two main reasons: (i) it is not possible to enforce campaign spending limits and, since the ‘other side’ would undoubtedly break the rules, it would be best simply to let everyone spend whatever it took to win; (ii) no amount of money is too much to spend on a campaign with such high stakes.

5.31 However, among the respondents who discussed campaign spending, the main concern related to how breaches of spending limits would be identified and enforced. They emphasised that reporting expenditure after the outcome of the referendum was known was too late. They wanted participants’ expenses to be reported and published regularly (some suggested daily, others weekly) throughout the campaign.

## *Campaign expenses*

5.32 In relation to the specific issue of what items should constitute campaign spending, there were suggestions that the following should be included:

- Salaries, travel and accommodation costs for hired campaigners working under the direction of a campaign participant
- Cost of any time spent by civil servants in preparing reports for either campaign
- Cost of media coverage
- Cost of cleaning services to deal with the large amount of campaign leaflets, posters and other printed publicity discarded or left displayed in public places at the end of the campaign.

5.33 Occasionally, there were also comments that so-called ‘notional expenses’ (i.e. cost savings associated with property, facilities or services provided free of charge) should be costed in full (at a commercial rate) and included as ordinary expenses.

## **Campaign donations and donors**

5.34 Respondents’ views about campaign donations and donors were closely linked to their views on permitted participants and campaign spending. Thus, many of the themes arising in relation to donations and donors overlap with those discussed above. These themes focused on: (i) prohibiting or restricting campaign donations from specific sources, individuals or groups; (ii) setting a financial limit on donations; and (iii) ensuring full transparency in relation to donations and donors.

### *Prohibiting or restricting campaign donations from specific sources, individuals or groups*

5.35 Respondents who commented on this issue thought that campaign donations and / or donors should be prohibited or restricted from specific sources, individuals or groups. In particular, there was a view that campaign donations should come only from sources based within Scotland and that any campaign donor (including individual donors, parties, and organisational donors) should be resident in and / or eligible to vote in the referendum and / or paying taxes within Scotland.

5.36 Some respondents specifically said that donations from other parts of the UK or from the EU or further afield should not be allowed; these respondents thought that it was inappropriate for people, parties or organisations based outside of Scotland – who, according to them would not be affected by the result – to exert undue influence on the campaign.

5.37 Occasionally, respondents said that a complete prohibition on these donations was not required, but that donations from any one source should be ‘nominal’ or ‘limited’ or restricted to a small proportion of the overall total expenditure (10% was suggested). There was specific comment about the perceived inappropriateness of campaigns being bankrolled by very large donations from wealthy private individuals (including ‘unionist millionaires’ and / or ‘lottery winners’).

5.38 Other sources, individuals or groups each mentioned by a small number of respondents as candidates for prohibition or restriction in relation to donations were:

- Commercial / corporate organisations

- Pro-unionist organisations
- Any non-qualifying person
- MPs and Lords
- Political parties
- Banned political parties
- Tax avoiding companies / individuals.

5.39 Less commonly, respondents said that no donations / and or donors should be allowed. These individuals thought that any expenditure should come from public funds only.

#### *Setting a financial limit on donations*

5.40 Some respondents emphasised the importance of placing limits on the amount that could be donated by an individual and / or a corporation. Some within this group expressed this in general terms (e.g. 'the amount given by individuals should be significantly reduced', 'there should be a maximum cap'), while others mentioned specific sums ranging from £100 to £ 500,000 (for an individual) and up to £100,000 for a political party.

#### *Ensuring full transparency in relation to donations and donors*

5.41 Respondents who commented on the issue of campaign donations and / or donors were overwhelmingly in favour of greater transparency, and so supported proposals in the consultation document to enhance this.

5.42 This group offered a range of suggestions elaborating the proposals to enhance transparency. They were generally in favour of all donations and donors being itemised and named, and they wanted this information – including the source of each donation, and the affiliation of the donor – to be published (and made publicly accessible) at regular intervals throughout the campaign, and in full at the end of the campaign. While some respondents specified a lower limit for declaration (sums between £179 and £1,000 were mentioned) others requested that ALL donations, however small, should be declared and made available for public scrutiny.

5.43 Some respondents also thought that:

- Multiple donations by organisations / individuals should be investigated
- In-kind contributions where a tangible cost may be applied should be declared
- There should be more transparency on the sources of funding for individual leaflets, adverts, videos, etc.
- Steps should be taken to ensure that donations are not being made in return for a favour or privilege
- All donations should be traceable and audited and there should be independent confirmation about the eligibility of donors (as 'permissible donors')
- All donations should cease at a specified period before polling day (ranging from four weeks to six months).

5.44 Just one individual spoke in favour of allowing anonymous donations.

### *Other issues in relation to donations and donors*

5.45 Other specific suggestions made by respondents included that: (i) no loans should be allowed and no one campaign group should be allowed to ‘bail out’ another; and (ii) there should be strict enforcement of the rules and heavy penalties for non-compliance.

### **The use of public funds and the role of Government in the referendum campaign**

5.46 One of the main themes in respondents’ comments on the campaign related to the use of public funds for the referendum campaign. The predominant view – expressed by the overwhelming majority of those who commented on this issue – was that no public funds (often described as ‘taxpayers’ money’) should be used for any future referendum campaign. Thus, respondents endorsed the statement made in the consultation paper in relation to this issue.

5.47 However, among those who commented on this issue, some also suggested that ‘public funds for the referendum campaign’ should be taken to include all the expenditure incurred as a consequence of any work undertaken by civil servants (e.g. drafting papers, engaging in correspondence, holding meetings) in relation to the referendum, both north and south of the border. As discussed above (paragraph 5.32), some respondents wanted all of this work to be costed and to be included as part of the calculation of campaign expenses for the relevant campaign position.

5.48 Other respondents argued that civil servants and officials from all parts of the civil service should not be involved in producing documents that could be perceived as making the case for one side or other of the campaign. The publication of the Scottish Government’s ‘White Paper for Independence’ and the Westminster Government’s ‘Better Together’ document were cited as examples by such respondents.

5.49 A contrasting view, expressed much less often, was that, for fairness, both positions in the campaign should receive equal amounts of public funding, or that equal amounts of money should be available for each side to promote their views through the media. There was also a view that public monies should only be spent on ‘neutral’ activities to promote voter registration or to encourage people to vote.

### **The quality of campaign information and the potential for bias**

5.50 A dominant theme in the responses was that of the quality of campaign information and the potential for bias. There were frequent requests for people to have access to fair, honest and accurate information (‘facts’ rather than ‘opinions’) to allow them to decide how to vote, and there was a recurring view that this had not been the case in the 2014 independence referendum, or the 2016 EU referendum. In both cases respondents thought these campaigns had been marred by a lack of reliable information, false and / or biased information, ‘scaremongering’, and biased media reporting.

### *Campaign information*

5.51 Respondents put forward a range of suggestions as to how the quality, accuracy and integrity of information might be addressed. These included:

- The requirement for all information used in campaigns to be independently verified (or to be marked as ‘unverified’) or for information sources to be provided; and for all campaign literature to include a ‘response’ from the other side of the campaign.
- The establishment of an independent fact-checking service or body of some type – this might involve existing bodies such as the Electoral Commission, the Information Commissioner or the Office for National Statistics (ONS); international or overseas bodies or individuals; professionals, individuals of civic standing, experts or academics from different disciplines, etc. A regular fact-checking bulletin was suggested. Several respondents suggested a fact-checking service might be funded via a levy-type arrangement on campaign spending.
- The provision or collation of ‘neutral’ information on relevant issues – it was suggested this could be carried out by experts in relevant areas, a cross-party group of MPs [sic], a judicial committee, civil servants, or the Electoral Commission.

5.52 Respondents stressed the importance of immediate action being taken if inaccurate, misleading or untrue information was used in campaign material or speeches. Some wanted to see an automatic right to reply, the naming of culprits and / or the publication of prominent corrections; it was also suggested that there should be powers to nullify a referendum result should it be found to be linked to false information. There were also calls for criminal prosecutions which might result in substantial fines and / or imprisonment. However, some respondents pointed out that any rules regarding the integrity of campaign information would be difficult to enforce, that there was a clear problem in taking action ‘after the event’ (i.e. once a referendum had taken place), and that some individuals or groups would be willing to break the rules and face the consequences given what was at stake.

5.53 Respondents also noted the challenges of monitoring and regulating information from a range of ‘unofficial sources’: this included information published by think tanks, lobbyists and special interest groups.

#### *The role of the media*

5.54 The role of the media was a key concern for some respondents, with many believing that coverage of the previous campaign had been ‘biased’. This accusation was levelled at ‘mainstream’ print and broadcast media, with the BBC attracting particular criticism because of its publicly funded status and the obligations which that entailed in terms of providing a neutral, UK-wide service. Some respondents supported this claim of bias by referring to the work of academics and research conducted during and after the 2014 referendum campaign.

5.55 There was a view that media coverage, unless it was impartial, amounted to campaigning and should be treated as such. While some thought that media outlets should be required to remain neutral, others argued for measures which would aid transparency in relation to a non-neutral media. They suggested that non-neutral media outlets should be required to declare their position or officially register as campaign participants, or that a cost should be attached to media activity and included within the expenses of the campaign receiving the benefit of the coverage.

5.56 In general, respondents who discussed this issue wished to see ‘impartial’ referendum coverage characterised by, for example, coverage of both sides of the argument in the same broadcast; equality of air-time / column inches for both sides; equal numbers of contributors

from each side to programmes / articles; experts of equal standing representing each side; transparency regarding the affiliations of contributors, etc. It was also suggested that the media (the BBC in particular) might be required to carry out fact-checking and to produce programmes which present both sides of the argument on relevant issues.

5.57 Some thought that impartial media coverage might be achieved by legislative means; others suggested non-legislative approaches such as an agreed 'protocol' on media conduct. Again, there were calls for monitoring by an independent body (as previously discussed) or for the Referendum Bill to include provision for a Broadcasting Commission.

5.58 Reference was also made to approaches adopted in other countries (e.g. France, Italy) with regard to media regulation during election campaigns.

5.59 In terms of sanctions for contravening any rules on impartiality, there were calls for the publication of prominent corrections, for outlets to be banned from further coverage of the campaign, for newspapers to be removed from sale, and for individual journalists to be held to account.

5.60 The fact that much of the mainstream media in Scotland originates outside of Scotland (from England in particular), is owned by non-Scottish organisations, or is produced by organisations with UK-wide remits was seen as a particular factor contributing to the perceived anti-independence bias. It was common for respondents who were concerned about this to refer to 'establishment' or government influence or interference at UK-level. Some respondents also called for specific restrictions on campaign coverage by non-Scottish media, or for measures to be introduced which would help achieve greater overall balance: e.g. a right-to-reply to non-Scottish output; the establishment of a TV channel which supported independence; public funding for a Scottish alternative to the BBC.

5.61 Not all respondents were, however, concerned about the impartiality of the media; a few expressed support for the BBC, or indicated concern about government interference with or criticism of the BBC. In addition, with regard to print media, there was some acceptance that the editorial stance of newspapers was well known and, thus, less of an issue.

#### *The role of social media*

5.62 The increasing significance of social media as a source of information and misinformation was also noted. Some respondents thought that steps should be taken to police social media activity (removing false claims, pursuing internet 'trolls', requiring the 'badging' of information), or to update PPERA to take full account of the role social media plays in the informal dissemination of information.<sup>8</sup> At the same time, however, they acknowledged that this would be difficult to enforce.

#### *Other points made*

5.63 Alongside the criticisms and concerns expressed by most of those who commented on this issue, there were a small number of other points made, each put forward by a small number of respondents. These included the following:

---

<sup>8</sup> PPERA is the Political Parties, Elections and Referendums Act 2000.

- Any steps to regulate campaign information or the role of the media would be difficult to enforce.
- It was important to protect the principles of free speech.
- There should be greater clarification of the role of the Electoral Commission in relation to the regulation of campaign information.
- There should be restrictions on the publication of opinion polls during the campaign period as these were perceived to influence voter behaviour.

## **The campaign period**

5.64 A small number of respondents made a comment about the proposed 16-week campaign period. In general, those who raised this issue thought that a shorter campaign period would be preferable – suggestions ranging from 2 weeks to 10 weeks were made; however, others simply said ‘as short as possible’. Those who wanted a shorter period thought that the 2014 referendum campaign had gone on for too long; that people already knew what the issues were and did not need a long campaign next time; a long campaign period might put people off voting; and that a shorter campaign would have less of a negative impact on the country.

5.65 Occasionally, respondents suggested that the campaign period should be longer than the proposed 16 weeks. This group thought that Brexit would change many of the arguments made in the 2014 campaign; and that the EU referendum campaign (of 10 weeks) had been too short to allow a proper debate to take place.

5.66 There was a view among a wider group of respondents that the campaign period itself had not been well enough policed, particularly in relation to the purdah period as discussed below.

## **Other comments on the campaign**

5.67 Respondents made a variety of other comments in relation to the campaign rules or on the conduct of the campaign. In general, these were offered in the interests of achieving greater fairness in the campaign. The two most common issues raised related to ‘purdah’ (the 28-day restriction period prior to polling day), and the behaviour of campaigners.

### *Purdah*

5.68 Some respondents expressed particular concern about what they believed was a serious breach of campaign rules in the 2014 referendum campaign. In particular, this group of respondents were critical of the so-called ‘Vow’ issued by politicians supporting the ‘Better Together’ campaign, which was published in the media in the final days of the 2014 referendum campaign. This was seen to be a breach of purdah (the rule that the government and other public bodies should not make announcements or publish information relevant to the vote in the period running up to polling day), and respondents were unhappy that no action had been taken in response to this.

5.69 Respondents who raised this concern wanted the rule of purdah to be strengthened and, more importantly, strictly enforced. They thought that the rules relating to purdah for a Scottish independence referendum should cover the whole of the UK, and that this should be clarified in the Referendum Bill. It was also suggested that the media should be covered by

the purdah rule. Some called for the media to adhere to a code of conduct which would include this rule.

5.70 Occasionally respondents also said that purdah rule should be extended to cover other private sector organisations (in addition to the media) and activities. For example, (as already noted above) some suggested there should be no publication or reporting of opinion polls during the purdah period because of the potential these had to influence voting behaviour.

5.71 A few respondents also made comments about the length of purdah, with some suggesting that it should be longer than the current 28 days and some shorter (e.g. 14 days).

### *Behaviour of campaigners*

5.72 Some respondents made allegations of widespread bullying (including cyber bullying) and intimidation taking place of voters during the 2014 referendum campaign, on both sides. This group emphasised that such behaviour undermined the ability to conduct a fair and open debate, and they called for campaign groups to take greater responsibility, and be held accountable for the behaviour of their supporters.

### *Other issues*

5.73 Various other issues were put forward for consideration by a relatively small number of respondents regarding the campaign rules or conduct of the campaign, including that:

- It should not be permitted for campaigners to be transported from one part of the country to another to campaign (a practice referred to as 'astroturfing')
- Political parties should not be permitted to fund or manage campaigns.
- The campaign rules should be the same as for a general election or the same as the 2016 referendum.
- It should be prohibited to use the saltire, union jack or other emotive imagery in campaign literature.
- There should be restrictions (or a complete ban) on unsolicited mail / leaflets posted through doors during the campaign
- There should be no TV broadcasts whatsoever; rather campaigners should be expected to engage in face-to-face debate and discussion only.

5.74 There was also concern about school buildings being used for campaign activities. Some respondents argued that the politicisation of school pupils should be avoided, and that any campaign activities should only be permitted outside of term times.

## 6. Other comments

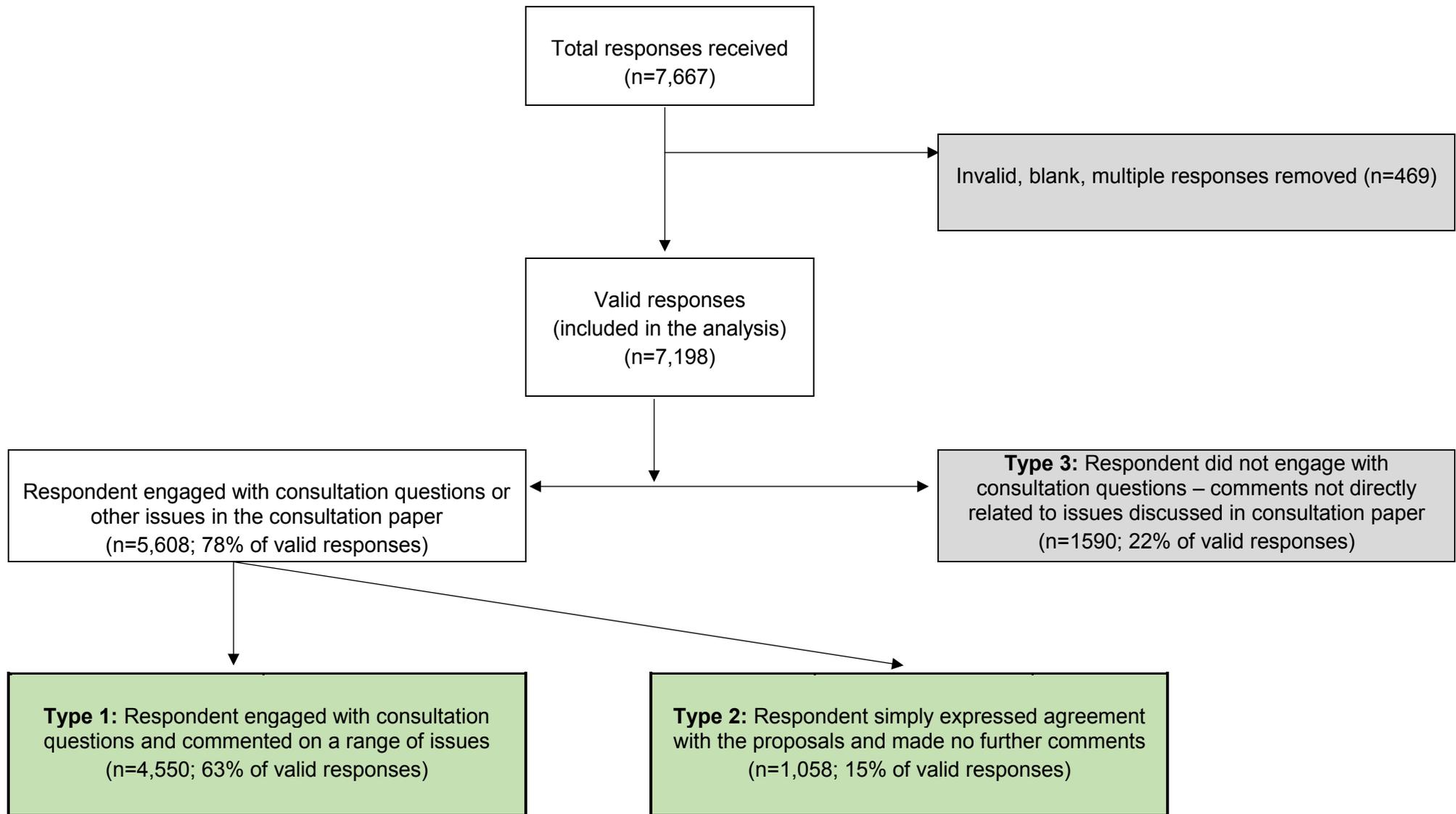
6.1 Respondents to the consultation often made comments which were not directly related to the consultation questions or any of the issues discussed in the consultation paper. It was not part of the scope of the project to conduct an analysis of these other comments or identify the views within them. However, the following themes were frequently discussed in these comments:

- The principle of holding a second referendum on Scottish independence
- Views about Brexit
- Views about Scottish independence
- Voter registration procedures and ways of improving turnout
- Modernisation of voting procedures
- The consultation process, including the consultation paper and the questions set.

# Annex 1: Organisational respondents

Alloa Spiritualist Church  
Am Buidheann Dubh  
ayeMail  
Ballantynes of Walkerburn Ltd  
Broadcasters' Liaison Group  
Capture All Limited  
Children in Scotland  
Cumbernauld for Independence  
Ekklesia  
Electoral Commission  
The Electoral Management Board for Scotland (EMB)  
Howard League Scotland  
JavaJess Emporium  
JR Todds Ltd  
Law Society of Scotland  
letsflyfish  
MACD Electrical Ltd  
McLellan International  
Merlin Freesource Ltd  
Online HR Ltd  
P-ict Training Ltd  
Province of Dalriata & Alba - Reuniting Ulster & Scotland  
Scotech Limited  
Scotland in Union  
Scottish Assessors Association Electoral Registration Committee  
Scottish National Party  
Scottish National Party (SNP) Sutherland Branch  
Scottish Socialist Party  
ScotVote.info  
section51scotland  
Select Wallpaper  
Strathclyde Design Services Ltd  
Training Matters  
Ulster and Scotland as One: Hands Across the Water  
Veterans for Scottish Independence  
Women for Independence National Committee  
Woodcraft Partnership  
Yes Bus Scotland's Dragon for independence  
YES East Kilbride  
YES Ross & Sutherland  
YES Skye & Lochalsh

## Annex 2: Responses received and included in the analysis



## Annex 3: Number of comments made at each question

Table A3.1 below shows the total number of respondents who made some form of comment at each of the consultation questions. Note, however, that respondents did not necessarily follow the question structure as set out in the consultation paper, nor were the comments necessarily related to the question asked. Therefore, the numbers below should not be seen as representing the response rates for individual questions.

**Table A3.1: Number of comments made at each question**

<b>Question</b>	<b>Number of comments</b>
Question 1: What are your views on the proposed arrangements for managing the referendum?	7,006
Question 2: What are your views on the proposed technical changes to polling and count arrangements?	6,336
Question 3: What are your views on the proposed changes to rules on permissible participants?	5,254
Question 4: What are your views on the proposed campaign rules and rules on spending?	5,884
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?	5,041



© Crown copyright 2017

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: [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.

The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.

This document is also available from our website at [www.gov.scot](http://www.gov.scot).  
ISBN: 978-1-78851-084-4

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

Produced for  
the Scottish Government  
by APS Group Scotland  
PPDAS266328 (06/17)  
Published by  
the Scottish Government,  
June 2017



Social Research series  
ISSN 2045 6964  
ISBN 978-1-78851-084-4

Web and Print Publication  
[www.gov.scot/socialresearch](http://www.gov.scot/socialresearch)

PPDAS266328 (06/17)