

Business and Regulatory Impact Assessment

Referendums (Scotland) Bill

May 2019

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Title of Proposal

Referendums (Scotland) Bill

Purpose and intended effect

1. This Bill provides a legal framework for the holding of referendums on matters which are within the competence of the Scottish Parliament.
2. The framework prescribed in the Bill covers technical aspects of holding referendums covering the franchise, rules for voting and how a poll should be conducted. It also provides for permitted participants and designation of official campaigns, campaign rules and for the administration of spending by participant, including limits upon that spending and donations to campaign participants. The rules are largely based on existing UK and Scottish legislation covering elections and referendums.
3. The Bill provides for the date, question(s), referendum period and the form of ballot paper for a referendum to be enacted in regulations, following consultation with the Electoral Commission.
4. In establishing a standing framework for referendums held under the authority of the Scottish Parliament, the Bill follows the precedent of Part 7 of the Political Parties, Elections and Referendums Act 2000 (“PPERA”) which provides a standing framework for referendums held under Acts of the UK Parliament.

Objectives

5. Setting out the way on how future referendums will be run provides clarity about what the process will be for campaign participants and those administering the referendum process. It also helps to ensure that the debate around any future referendum can concentrate on the merits, or otherwise, of the particular referendum itself.
6. The policy will affect everyone in Scotland who is entitled to vote.
7. Evidence on the business impact of the proposals was collected during the public consultation on a draft referendum Bill, which was undertaken between October 2016 and January 2017 and the findings are discussed below.
8. The analysis of consultation responses was taken into account in developing the policy and refining the proposals set out in the Bill. The policy is not considered to have a negative impact on any of the protected equality groups. The policy promotes equality through the specific provisions made to ensure that any eligible person who wishes to vote is able to do so.

Background

9. The Scottish Government held a consultation on a draft Referendum Bill in October 2016-January 2017. It was clear that respondents were interested in the mechanisms of such a referendum and the technical arrangements for polling and other matters.
10. The main policy objective of the present Bill is for a referendums to be (and to be seen to be) a fair, open and truly democratic process which is conducted and regulated to the highest international standards. There must also be public confidence in the result on a par with that for national elections, which can be achieved by ensuring:
 - That entitlement to vote is determined in a fair and consistent manner;
 - That the voting and counting processes operate smoothly and effectively, and are subject to sufficient controls and audit to ensure certainty over the legitimacy of the result; and
 - That the campaign leading up to a referendum is well regulated by the Electoral Commission, independent of Parliament and Government, has rules in place so that spending by those campaigning is limited to reasonable levels, and that all sides in the campaigns are operating on a level playing field in terms of resources spent on campaigning.
11. The Bill covers a range of issues, with much of the detail set out in schedules, as follows:
 - Provision for a referendum;
 - Provision about voting etc.;
 - Rules concerning the conduct of the poll;
 - Campaign rules and enforcement;
 - Referendum agents and observers;
 - Other functions and funding of the Electoral Commission;
 - Offences;
 - Power to make supplementary, incidental or consequential provision;
 - Legal proceedings; and
 - Final provisions and interpretation.
12. The Bill allows for Scottish Ministers to make regulations to provide for a referendum. Such regulations require the approval of the Scottish Parliament. The regulations must specify:
 - The date on which the referendum will be held;
 - The form of the ballot paper to be used, including the working of the question or questions and the possible answers to them.
 - The referendum period.
13. The Scottish Government wants to ensure that all referendums are run to the highest possible international standards and that the results are accepted by all parties. It is therefore essential that adherence to referendum campaign

rules is properly monitored and policed. For this reason officials have worked closely with those responsible for co-ordinating elections in Scotland, including the Electoral Management Board, registration officers, representatives of the Electoral Commission and political parties.

Rationale for Government intervention

14. While the Political Parties, Elections and Referendums Act 2000 (PPERA) provides for referendums held under UK Parliament legislation, there is currently no legislation governing the conduct of referendums held under Scottish Parliament legislation. The Bill is therefore required to put in place the procedures for the running of referendum campaigns, polls, counts, and eventual declarations and certification of the results.

Public Consultation

15. The Scottish Government published a Consultation on a Draft Referendum Bill¹ on 20 October 2016. The consultation paper (which also included a copy of the draft Bill) invited responses to a series of questions on proposed technical changes to the 2013 Act, following a number of changes in wider elections law.
16. The consultation closed on 11 January 2017. A report on the analysis of the responses² is available on the Scottish Government website.

Business

17. The Bill has no direct or specific impact on business. Therefore there was no need to consult specifically with businesses, but some businesses did respond to the public consultation.

Public Sector

18. The referendum will be conducted by counting officers, led by the Chief Counting Officer who will be appointed under the Bill. It is essential that adherence to referendum campaign rules is properly monitored and policed therefore Scottish Government officials have worked closely with electoral professionals to ensure the proposals in the Bill enable referendums to be run to the highest possible international standards and that the results are accepted by all parties.
19. Scottish Ministers may lay regulations to provide for a specific referendum. The Electoral Commission must be consulted on these regulations before they are laid in the Parliament. In particular, the Electoral Commission must consider the wording of the question and publish a statement on the intelligibility of the question.

¹ <https://www.gov.scot/publications/consultation-draft-referendum-bill/>

² <https://www.gov.scot/publications/consultation-draft-referendum-bill-analysis-responses/>

Options

20. There is currently no legislation governing the conduct of referendums held under Scottish Parliament legislation. There is therefore no alternative to bringing forward a Bill to the Scottish Parliament to put in place the necessary procedures.

Sectors and groups affected

21. A referendum affects all members of the voting public. In particular, a referendum will affect local authorities and the electoral community, whose staff will run the poll and count. The core regulatory burden will therefore fall on them, alongside the Electoral Commission who will be given statutory responsibility to oversee the running of the referendum and to provide information for voters. There should be no specific and discrete impact on the business community, or other organisations, unless they decide to take part in the referendum campaign, in which case they will be subject to the same rules and regulations as others taking part in a campaign.

Benefits

22. Whilst PPERA provides for referendums held under Acts of the UK Parliament, there is currently no legislation covering the conduct of referendums held under Scottish Parliament legislation. The Bill is therefore required to put in place the procedures for the running of referendum campaigns, polls, counts and declarations and certification of results.
23. An alternative approach would be for the UK Parliament to legislate. This would not be an effective option. The Scottish Parliament should set the rules for referendums within its legislative competence, as this is the only legislative approach that respects the rights and role of the Parliament. It would also ensure that the rules for such referendums would be decided upon in accordance with Scottish circumstances and requirements.
24. The only other alternative would be for the legislation for individual referendums to include the rules for the conduct of the poll and the campaign at the referendum. This is a less effective option as it requires Parliament to consider similar procedural provisions for each separate referendum, and is out of step with recent development in electoral administration and good practice elsewhere in the UK. In providing a generic framework the Bill will provide certainty for campaigners and electoral officials and enable parliamentary scrutiny of any future proposal for a referendum to focus on the merits of a referendum itself, particularly the question to be asked and the timing of the poll.

Costs

25. The costs associated with the provisions of the Bill can be separated into four broad categories:
 - costs of running the referendum – incurred by the Chief Counting Officer, local counting officers and electoral registration officers;
 - costs of funding the Electoral Commission for overseeing and regulating the referendum campaigns and reporting on the conduct of the referendum;
 - publicity costs incurred by the Electoral Commission in the fulfilment of its duty to provide information to the electorate on how to cast their vote; and
 - the costs of allowing each of the main campaign organisations a free mailshot to every elector or household in Scotland.
26. The majority of the costs of running the referendum will fall on the CCO and counting officers in the first instance. The Scottish Ministers will reimburse the CCO and the counting officers for the costs incurred in the course of their role in running the referendum. This will ensure that there is no extra pressure on local authority budgets as a result of the Bill.
27. There are other costs associated with running the referendum, such as regulation and public awareness. This includes the costs of the campaign mailshot, which the mail service provider will be able to recover from the Scottish Ministers. It also includes the costs associated with the Electoral Commission's role, for which they will be funded by the Scottish Parliament Corporate Body. The Scottish Government will reimburse the SPCB by means of a budget transfer for any costs incurred between the commencement of the Act and the start of the following financial year. Further annual adjustments will be made as required.
28. There are no obligations imposed on other bodies, individuals or businesses by this Bill which would result in costs being incurred. However, any person or organisation may voluntarily decide to campaign for a particular outcome in the referendum, and may incur costs in that way. The Bill limits the amount of money that can be spent on campaigning to ensure a level playing field for the campaigns for different outcomes and to ensure that spending is not excessive.

Scottish Firms Impact Test

- **Competition Assessment**
The referendum will be run by Scottish local authorities and the Electoral Commission. There is no direct impact on Scottish firms.
- **Test run of business forms**
The Bill has no direct impact on businesses.

Legal Aid Impact Test

29. The Bill will have a minimal impact on the legal aid fund.

Enforcement, sanctions and monitoring

30. The Bill provides for referendums to be conducted and regulated to the highest international standards, with referendum campaigns being run in a demonstrably fair and transparent manner.

31. The referendum polls and counts will be conducted under the direction of a Chief Counting Officer, who will be the Convener of the Electoral Management Board for Scotland. Counting officers will be appointed by, and report to, the Chief Counting Officer. Behaviour which would constitute an offence in an election will also constitute an offence in the referendum, and will be dealt with in a similar way.

32. The referendum will be preceded by a fully regulated formal campaign period. The Bill sets limits on the amount of money any organisation may spend on campaigning in the period prior to the referendum. Breach of the campaign spending limits will be treated as an offence in the same way as PPERA treats such breaches. The Bill sets out the offences and the relevant sanctions.

33. In addition, to ensure that the referendum campaign is conducted openly, it is crucial that the campaign expenditure incurred is properly accounted for and reported. Those running campaigns must demonstrate that they have maintained control over what they have spent on their campaigns so that their spending can be reported and made public. The Bill therefore puts in place detailed rules, based on the provisions of PPERA, to ensure that each participant is required to authorise and account for its expenses.

34. The referendum will be supervised by the Electoral Commission. The Commission will have a regulatory role with regard to the campaign spending rules and informing the public about the referendum, and will be able to implement civil sanctions for breaches of the campaign rules.

Implementation and delivery plan

35. The Bill sets out the detailed rules relating to the arrangements for voting and the conduct of the poll and the count, which are all in line with the procedures for local government or Scottish Parliament elections. The Scottish Government wants to ensure that all referendums are run to the highest possible international standards and that the results are accepted by all parties. It is therefore essential that adherence to referendum campaign rules is properly monitored and policed. For this reason the Scottish Government has consulted extensively with electoral professionals.

36. In particular, the Bill establishes the office of the Chief Counting Officer (CCO), who will oversee the referendum process and be responsible for the running of the vote on the day of the poll, for the count, and for the eventual declaration and certification of the result. The CCO will usually be the convener of the Electoral Management Board, and will operate entirely independently of Government.
37. The Electoral Commission will have a number of functions and roles, including the following:
- reporting on the conduct of the referendum, including a summary of the exercise of the Commission's functions and its expenditure
 - publishing guidance on the campaign rules
 - publishing guidance for the CCO, counting officers (with the CCO's permission), and permitted participants
 - promoting public awareness on the referendum, the referendum question, and voting in the referendum
 - maintaining a register of permitted participant declarations
 - processing applications for designation of campaigns
 - monitoring and securing compliance with the campaign rules
 - preparing referendum expense returns for public inspection

Post-implementation review

38. As indicated above, the Electoral Commission will publish a report on the conduct and administration of any future referendum.

Summary and recommendation

39. The Bill sets out the way on how future referendums will be run, provides clarity around what the process will be for both participants and those administering the referendum process. The provisions in the Bill rely heavily on existing procedures for other elections and referendums within Scotland and the UK and therefore do not create any significant new regulatory burden.
40. The referendum poll and count will be conducted by local authority staff who take on the roles of the Chief Counting Officer and counting officers under the Bill. Any core regulatory burden will therefore fall on them, and the Scottish Government has consulted them extensively on the provisions of this Bill to ensure the proposals contained in the Bill are workable and consistent with current practice.
41. There is no regulatory impact on business, other organisations or individuals, unless they wish to participate in the referendum campaign.

Declaration and publication

42. I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed:

A handwritten signature consisting of several dark, slanted strokes forming a stylized, abstract shape.

Date: 28 May 2019



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