

UK referendums – technical and legal aspects

Previous UK referendums

There has only been one UK-wide referendum held in 1975 to help determine whether the UK should remain a member of the European Community. More recently, several referendums have been held on issues of governance and devolution; in 1998 in Northern Ireland and London; and in both 1979 and 1997 in Scotland and Wales. Additionally, a border poll was held in Northern Ireland in 1973 to determine whether it should remain part of the UK.

New legislation

In 2000 the Government introduced legislation that for the first time set out rules under which all future UK, national and regional referendums will be held. Local mayoral referendums are not covered by this legislation.

The Political Parties, Elections and Referendums Act (PPERA) 2000 gives the Electoral Commission responsibilities for:

- commenting on the intelligibility of the wording of the referendum question
- registration of campaigners
- designating lead campaign organisations for yes and no
- monitoring referendum expenditure limits and donations
- the conduct of the poll
- the announcement of the result

The Regional Assemblies (Preparations) Act 2003 provided for the holding of regional referendums in England and, in November 2004, the UK had its first regional referendum. It gave the Commission the following additional responsibilities:

- encouraging voting at regional referendums
- explaining the local government options being presented to those living in two tier areas of a region
- presenting the yes and no arguments if designation is not possible

The North East referendum was conducted by an all-postal ballot. The referendum period (see next section for definition of referendum period) began on 24 July 2004 and polls closed on 4 November 2004 at 10pm. Turnout for the regional assembly referendum across the region was 47.1% with approximately 79.9% of people voting 'No'.

Timetable of the campaign

Before a referendum is held there is a formal campaigning period called the 'referendum period'. During this period restrictions surrounding campaign expenditure and publicity will apply.

The referendum period would typically be between 10 weeks and six months.

From the first day of the referendum period the Commission will start to register those interested in campaigning, who will be known as 'permitted participants'.

A permitted participant

A political party, other group or individual wanting to campaign in relation to a referendum, and which intends to spend £10,000 or more on their campaign. The Electoral Commission will hold a register of permitted participants.

A permitted participant can also apply to become the lead campaigner, known as the designated organisation, for one side of the debate. The Commission will accept applications to become the designated organisation for the first four weeks of the campaign, after which a decision on whether to designate will be made. It is not possible for the Commission to appoint a designated organisation for only one proposition.

A designated organisation

A permitted participant that the Electoral Commission has chosen to be the lead campaign group for one of the possible outcomes to the referendum. Benefits associated with this are explained below.

Referendum expenditure

The amount that can be spent on campaigning at a referendum is limited by the PPERA. For a UK-wide referendum, the level of expenditure for political parties is based on the proportion of the electorate who voted for the party at the previous UK Parliamentary general election.

If a UK-wide referendum were to be held based on the 2005 UK Parliamentary general election results, the Labour and Conservative parties would be entitled to spend up to £5 million each and the Liberal Democrats could spend up to £3 million. No other political parties would qualify for additional spending limits and so each could spend up to £500,000, the limit for other permitted participants.

Permitted participants would be required to submit expense returns to the Commission following the referendum.

For a national or regional referendum the expenditure limits would be set out in further legislation.

Benefits for designated organisations

Designated organisations qualify for certain publicly funded assistance:

- expenditure limit of £5 million
- free postal distribution of one piece of referendum literature to each household
- eligible for referendum TV campaign broadcasts
- equal grants of public money of up to £600,000 (amount to be determined by the Commission)
- free use of public rooms for meetings (except in Northern Ireland)

The referendum question

The Government is responsible for proposing the wording of any referendum question and the Commission is required to consider whether any question (and any preamble) is intelligible.

The Commission has developed a set of question assessment guidelines to help assess a question once it is published. These guidelines are available on the Commission's website.

Publicity

Ministers, the Government and other bodies that are mainly publicly funded are prohibited from issuing any publicity material relating to a referendum in the 28 days immediately prior to the poll. However, this does not relate to material specifically sought by a member of the public, factual information relating to the conduct of the poll or the issue of press notices.

The BBC and S4C are exempt from the restriction, as is the Commission.

Any individuals or groups publishing material relating to a referendum must include their name and address on their material. This is so that the originator of the material is clearly identifiable and to assist the Commission to monitor compliance with the campaign expenditure limits.

Counting the votes

The Chairman of the Commission, or another person appointed by the Chairman, would be the Chief Counting Officer for any referendum held under the PPERA.

As such, the Chief Counting Officer is required to certify the number of ballot papers that have been submitted and to certify the final result. To assist in this task the Chief Counting Officer will appoint Counting Officers at local authority level in Great Britain with the Chief Electoral Officer for Northern Ireland taking on this role in Northern Ireland.

Referendum legislation

Although the PPERA provides a standard framework, specific primary legislation is required to trigger any particular referendum.

Publications

The Political Parties, Elections and Referendums Act 2000
www.hmso.gov.uk/acts/acts2000/20000041.htm

The Regional Assemblies (Preparations) Act 2003
www.legislation.hmso.gov.uk/acts/acts2003/20030010.htm

Report of the Commission on the Conduct of Referendums (Chairman Sir Patrick Nairne), The Constitution Unit and Electoral Reform Society 1996

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