



## BRIEFING PAPER

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# Referendums

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## Summary

There were no nationwide referendums in the United Kingdom until 1975 when a referendum on the UK's membership of the then European Economic Community was held on 5 June 1975. There have been two national referendums since then; one in 2011 on the proposal to change the voting system used in UK Parliamentary elections and the referendum this year on the UK's continued membership of the European Union.

This Briefing Paper provides background to the increasing use of referendums worldwide to settle constitutional issues and to the holding of referendums in the UK; a table of all referendums held in the UK to date is provided. The use of thresholds in referendums is discussed and information provided on the administration of referendums and regulation of the referendum campaigns.

### Referendums or referenda?

The *Oxford English Dictionary* defines a referendum as a process or principle of referring an important political question (e.g. a proposed constitutional change) to be decided by a general vote of the entire electorate; a vote taken by referendum.

Both forms of the plural 'referendums' and 'referenda' are acceptable. The OED notes that 'referenda' follows the form of other Latin plurals, such as 'memoranda'. It goes on to note that a Latin plural gerundive 'referenda', meaning 'things to be referred', would denote a plurality of issues being referred rather than a plurality of plebiscites. However it also comments that 'this view is unlikely to affect actual usage'.

# 1. Background

Referendums have been an increasingly popular political tool in recent years, both worldwide and in the UK. A steady growth in their use in the twentieth century peaked in the last decade of the century when nearly 600 referendums were conducted worldwide. Between 2001 and 2010 that figure fell to 440.<sup>1</sup>

Today referendums are generally viewed as positive ways of engaging with the electorate and have become an established mechanism for validating constitutional initiatives in the UK. Their use is not universally accepted though. In a report on referendums in 2009-10, the House of Lords Constitution Committee concluded that:

The balance of the evidence that we have heard leads us to the conclusion that there are significant drawbacks to the use of referendums. In particular, we regret the *ad hoc* manner in which referendums have been used, often as a tactical device, by the government of the day. Referendums may become a part of the UK's political and constitutional practice. Where possible, cross-party agreement should be sought as to the circumstances in which it is appropriate for referendums to be used.<sup>2</sup>

The use of referendums has had a mixed history. In the nineteenth and early twentieth centuries the abuse of referendums by authoritarian or totalitarian regimes led to criticism from many commentators. However, even then, Winston Churchill suggested holding a referendum to gain approval for extending the term of the War time coalition government.

Attlee, the Leader of the Labour Party, responded to Winston Churchill's proposal to extend the wartime coalition and delay a general election until the war against Japan had been completed. Churchill had suggested that a referendum should be held to approve the extension.

Attlee's letter to Churchill stated:

I could not consent to the introduction of our national life of a device so alien to all of our traditions as the referendum, which has only too often been the instrument of Nazism and Fascism.

Hitler's practices in the field of referenda and plebiscites can hardly have endeared these expedients to the British heart.<sup>3</sup>

In 1975, Margaret Thatcher famously quoted Clement Attlee during a debate on the proposed referendum on the UK's continuing membership of the EEC when she said that the referendum "was a device of dictators and demagogues."

The civil servant who ran the 1975 referendum, Sir Patrick Nairne, questioned the holding of referendums some years later:

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<sup>1</sup> Matt Qvortrup, *Referendums Around the World*, 2014, pp246-7

<sup>2</sup> House of Lords Constitution Committee, *Referendums in the United Kingdom*, HL 99 2009-10

<sup>3</sup> *The Times*, 'July Election Nearer', 22 May 1945.

If Members of Parliament are elected to settle national issues of major policy brought before them by the Government, is it right to throw such issues back to the voters to settle?<sup>4</sup>

Following the Labour Party's election victory of 1997 legislation was introduced to allow for referendums to ask the voters of Scotland and Wales whether they approved of the proposals for devolved government. The referendums were held to gain popular support for the principle before detailed legislation was drafted.

The Conservative Party argued that although it was right to conduct a referendum on such an important constitutional change it should be done only after the legislation had been drafted. Michael Howard, then Shadow Home Secretary, speaking in the Second Reading debate of the *Referendums (Scotland and Wales) Bill* said:

It is right that the electorate should be consulted before changes of such magnitude are implemented, but they should be asked for their opinion when all our questions have been answered, when all the details are known, when the legislation has been finally tempered and scrutinised in the House, and when Parliament has debated and decided...The people of Scotland and Wales will be asked to give their consent to devolution in principle and to trust Ministers to sort out the details afterwards.

Indeed, things are even worse than that. The Government intend to curtail Parliament's ability to perform its proper function. A pre-legislative referendum is designed to pre-empt parliamentary debate. It is not a new device. The device was the hallmark of continental dictatorships between the wars.<sup>5</sup>

In the referendum on the UK's membership of the European Union in 2016 the situation was somewhat different. The general principle of the UK's membership of the EU was the subject of the vote with the resulting detail of the Brexit decision to be dealt with afterwards.

## 1.1 Why hold referendums?

Referendums have been seen as a means of enhancing democracy by giving voters greater opportunities for involvement in the political process. In evidence to the House of Lords Constitution Committee in 2009, Vernon Bogdanor thought that it was "illusory" in the modern world "to believe that you can confine legislative matters solely to parliamentarians".<sup>6</sup> Professor Robert Hazell, of the Constitution Unit, University College London, gave evidence to the same Committee and argued that referendums could be "an important legitimising mechanism", by demonstrating that a policy has the specific support of the public.<sup>7</sup> The House of Lords Constitution Committee's report considered positive and negative features of referendums:

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<sup>4</sup> From unpublished papers of Sir Patrick Nairne (1998) quoted in Matt Qvortrup's book, *A comparative study of referendums*, 2005, p23

<sup>5</sup> [HC Deb 21 May 1997, cc735-6](#)

<sup>6</sup> House of Lords Constitution Committee, *Referendums in the United Kingdom*, HL 99 2009-10

<sup>7</sup> *ibid*

### **Claimed positive features of referendums:**

- enhance the democratic process
- can be a “weapon of entrenchment”
- can “settle” an issue
- can be a “protective device”
- enhance citizen engagement
- promote voter education
- voters are able to make reasoned judgments
- are popular with voters
- complement representative democracy

### **Claimed negative features of referendums:**

- are a tactical device
- are dominated by elite groups
- can have a damaging effect on minority groups
- are a conservative device
- do not “settle” an issue
- fail to deal with complex issues
- tend not to be about the issue in question
- voters show little desire to participate in referendums
- are costly
- undermine representative democracy<sup>8</sup>

The Committee concluded that:

The balance of the evidence that we have heard leads us to the conclusion that there are significant drawbacks to the use of referendums. In particular, we regret the *ad hoc* manner in which referendums have been used, often as a tactical device, by the government of the day. Referendums may become a part of the UK’s political and constitutional practice. Where possible, cross-party agreement should be sought as to the circumstances in which it is appropriate for referendums to be used.<sup>9</sup>

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<sup>8</sup> House of Lords Constitution Committee, *Referendums in the United Kingdom*, HL 99 2009-10, Chapter 2

<sup>9</sup> *ibid*

## 2. Referendums in the UK

In the UK there were no nationwide referendums until 1975. There have been a number of other referendums, mainly on devolution, in parts of the UK. The first UK-wide referendum was on the UK's membership of the then European Economic Community (EEC) on 5 June 1975. The only other two nationwide referendums have been in 2011, the vote on the proposal to switch Westminster elections from First Past the Post to the Alternative Vote, and the 2016 vote on the UK's membership of the European Union.

Although there has been a regulatory framework for referendums since 2000 (see below) each referendum held subsequently still requires primary legislation to set the terms of the question and the franchise to be used, amongst other provisions.

At the time of the 1975 referendum there was no regulatory framework for referendums. The *Referendum Act 1975* made provisions for the poll.

The *Parliamentary Voting System and Constituencies Act 2011* set the provisions for the AV referendum. An order under Section 30 of the *Scotland Act 1998* allowed the Scottish Government to hold a referendum in 2014 on the question of Scottish independence.<sup>10</sup>

The Edinburgh Agreement committed the Scottish Government to take account of PPERA rules when conducting the referendum. The legislation for the detailed provisions of the referendum were then passed by the Scottish Parliament. The franchise for the Scottish referendum, including the provisions to allow for 16 and 17 year olds to vote, were included in the *Scottish Independence Referendum (Franchise) Act*. The *Scottish Independence Referendum Act 2013* covered the technical aspects of the conduct of the referendum, including the question to be asked.

The 2016 referendum on the UK's membership of the European Union was enabled by the *European Union Referendum Act 2015*.

### **Northern Ireland Border Poll 1973**

In March 1973 voters in Northern Ireland had voted on whether it should remain part of the United Kingdom or join the Republic of Ireland.

Referendums in divided societies can prove divisive and political parties representing the nationalist community argued that the 1973 Border Poll was a propaganda exercise by the British Government. Politicians representing the Catholic community recommended that their supporters should boycott the poll. The result indicated that the nationalist community had indeed boycotted the poll as the proposal that Northern Ireland remained part of the UK was passed with almost 99% voting in favour of remaining in the UK on a turnout of 59%.

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<sup>10</sup> See Standard Note 6478 [Referendum on independence for Scotland](#) for details of the agreement

### Referendums held in the UK

	Poll	Location	Referendum Question	"Yes" vote	"No" vote	Turnout	Result
8 March 1973	"Border poll"	Northern Ireland	Do you want Northern Ireland to remain part of the United Kingdom?  Or Do you want Northern Ireland to be joined with the Republic of Ireland outside the United Kingdom?	Remain part of the United Kingdom  98.9%	Be joined with the Republic of Ireland:  1.1%	58.7%	Northern Ireland remained part of the United Kingdom (the poll was subject to a widespread boycott by the Nationalist community).
5 June 1975	UK membership of the European	UK	Do you think that the United Kingdom should stay in the European Community (the Common	67.2%	32.8%	64.0%	The UK remained in the European Community.
1 March 1979	Devolution	Scotland	Do you want the provisions of the Scotland Act 1978 to be put into effect?	51.6%	48.4%	63.6%	Devolution did not proceed as the threshold requirement that not less than 40 per cent of the total electorate had to vote "yes" for devolution was not met—only 32.8 per cent voted "yes".
1 March 1979	Devolution	Wales	Do you want the provisions of the Wales Act 1978 to be put into effect?	20.3%	79.7%	58.8%	Devolution did not proceed.
11 September 1997	Devolution	Scotland	I agree that there should be a Scottish Parliament <i>or</i> I do not agree that there should be a Scottish Parliament.  I agree that a Scottish Parliament should have tax-varying powers <i>or</i> I do not agree that a Scottish Parliament should have tax-varying powers.	Agree: 74.3%	Do not agree: 25.7%	60.2%	The Scottish Parliament was established.
11 September 1997	Devolution	Wales	I agree that there should be a Welsh Assembly <i>or</i> I do not agree that there should be a Welsh Assembly.	Agree: 50.3%	Do not agree: 49.7%	50.1%	The Welsh Assembly was established.
7 May 1998	Greater London Authority	London	Are you in favour of the Government's proposals for a Greater London Authority, made up of an elected mayor and a separately elected assembly?	72.0%	28.0%	34.0%	The Greater London Authority was established.
22 May 1998	Belfast Agreement Northern Ireland	Northern Ireland	Do you support the Agreement reached at the Multi-Party Talks in Northern Ireland and set out in Command Paper 3883?	71.1%	28.9%	81.0%	Community consent for continuation of the Northern Ireland peace process on the basis of the Belfast Agreement was given.

4 November 2004	Elected Regional Assembly North East of England	NE England	Should there be an elected assembly for the North East region?	22.1%	77.9%	47.1%	The Elected Regional Assembly for the North East was not established.
3 March 2011	Law-making powers for the National Assembly for Wales	Wales	Do you want the Assembly now to be able to make laws on <i>all</i> matters in the 20 subject areas it has powers for?	63.5%	36.5%	35.6%	The vote gave the NAW direct law-making power in 20 devolved areas, such as health and education.
5 May 2011	Parliamentary voting system	UK	At present, the UK uses the 'first past the post' system to elect MPs to the House of Commons. Should the 'alternative vote' system be used instead?	32.1%	67.9%	42.2%	The voting system for UK Parliamentary elections was not changed
18 September 2014	Scottish Independence	Scotland	Should Scotland be an independent country?	44.7%	55.3%	84.6%	Scotland remained part of the UK
23 June 2016	UK membership of the EU membership	UK	Should the United Kingdom remain a member of the European Union or leave the European Union?	Remain: 48.1%	Leave: 51.9%	72.2%	

Sources:  
House of Lords Constitution Committee, *Referendums in the United Kingdom*, HL Paper 99, 2009-10  
Electoral Commission website - Past elections and referendums

## EU Treaty referendums

In 2011 the Coalition Government passed the *European Union Act 2011*. The Act provides for a referendum throughout the UK on any proposed EU treaty or Treaty change which would transfer powers from the UK to the EU, the so-called 'referendum lock'.

Research Paper 10/79, *European Union Bill (HC Bill 106 2010-11)* gives more detail on the background to the Act.

The Act did not make provision for the 2016 referendum on the UK's membership of the European Union. As noted above, the June 2016 vote was enabled by the *European Union Referendum Act 2015*.

Following the UK-wide vote to leave the EU in June, some commentators have argued that because of the way the 2011 Act is worded that it could be used to force a second referendum before the UK leaves the EU. Others argue that any Brexit agreement will not itself be an EU Treaty-amending treaty, and furthermore, it will not require EU Treaty change before a UK withdrawal.<sup>11</sup>

The 2011 Act specifies that decisions made under 12 specific Treaty Articles would require both an Act of Parliament and a referendum meeting the referendum condition before the Government could support them. The referendum condition is that:

<sup>11</sup> See the BBC article: *Reality Check: Does there have to be a second referendum?*, July 2016

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- The Act providing for the approval of the treaty states that the provision approving the treaty is not to come into force until a referendum about whether the treaty should be ratified has been held throughout the United Kingdom (and Gibraltar if relevant); and
- The referendum has been held throughout the UK (and Gibraltar if relevant); and
- The decision has been approved by the majority of those voting.

The list of Treaty Articles does not include Article 50 TEU.

Parliament could also chose to repeal the *European Union Act 2011* before any Brexit deal is finalised.

### 3. Thresholds

A threshold in a referendum is where the result is not simply based on a majority of votes, but where a specific hurdle is set in order for the referendum to be passed. These usually come in two forms:

- Turnout threshold – where general turnout must be above a certain level, or the option for change must be agreed by a certain percentage of registered voters as well as winning the vote overall.
- Supermajority threshold – where the option for change must be agreed by a certain majority, for example by two thirds of votes being cast in favour.

The arguments put forward for such thresholds are that major constitutional change is something more important than the result of ordinary elections, and therefore should be the result of something more than a simple plurality of the votes. By meeting such a requirement the decision is given greater legitimacy.

The House of Lords Constitution Committee examined the use of thresholds and supermajorities in its report on referendums in 2009-10.<sup>12</sup> In general, the evidence received by the Committee was against the use of thresholds. Arguments against highlighted in the report included that setting a threshold for a certain level of turnout could lead to those who oppose the proposition being voted on encouraging people to stay at home and not vote, rather than engaging with the debate. Some argue that this sets a dangerous precedent for democratic engagement.

David Butler has made the point that turnout thresholds are problematic because the “no” side can defeat a proposal simply by encouraging people to stay at home.

In their evidence to the Committee, Unlock Democracy, an organisation set up in in November 2007 following the merger of Charter 88 and the New Politics Network to encourage democracy, argued that:

There is also a risk that people who have participated in the campaign and secure a majority but do not meet the turnout threshold will feel cheated and that political engagement is ineffectual.<sup>13</sup>

Another academic, Professor Michael Seaward, commented that he thought that specifying a certain threshold renders the process undemocratic. If one side of a referendum needs to reach 60% of votes cast, for example, for the measure to pass, it makes ballots cast unequal in value and compromises the principle of a person having a vote of equal value to another person. The referendum would be biased towards the status quo over the option for change.<sup>14</sup>

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<sup>12</sup> House of Lords Select Committee on the Constitution, *Referendums in the United Kingdom*, HL 99 2009-10

<sup>13</sup> Ibid, p43.

<sup>14</sup> House of Lords Constitution Committee, evidence session, 6 January 2010, Q38. (Appended to *Referendums in the United Kingdom*)

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David Butler also raised one of the practical issues about introducing turnout thresholds in referendums. In an age when there is concern about the completeness of the electoral registers, he suggested that uncertainty about how many people were actually registered was a further argument against thresholds. This caused problems in the 1979 devolution referendums (see below).

The Committee recommended that that:

There should be a general presumption against the use of voter turnout thresholds and supermajorities. We recognise however that there may be exceptional circumstances in which they may be deemed appropriate.<sup>15</sup>

The examples it considered when considering thresholds was the use of referendums in divided societies. Professor Vernon Bogdanor explained in his evidence to the Committee that in the example of Northern Ireland:

a simple majority, if composed almost entirely of the majority, Unionist community, might not be thought sufficient” and that “therefore a qualified majority large enough to ensure that at least a substantial proportion, if not a majority, of the minority community, as well as of the majority community, would be needed.<sup>16</sup>

In some countries, particularly those with a written constitution, there is a requirement that a specific threshold needs to be met for a constitutional change to be approved. The UK has an uncodified constitution; the constitution is not codified in a single document or piece of legislation. To allow for a referendum enabling legislation has to be passed.

### 3.1 EU referendum 2016

The Government response to [the e-petition](#) which retrospectively calls for a threshold to be applied to the June referendum states:

The EU Referendum Act received Royal Assent in December 2015. The Act was scrutinised and debated in Parliament during its passage and agreed by both the House of Commons and the House of Lords. The Act set out the terms under which the referendum would take place, including provisions for setting the date, franchise and the question that would appear on the ballot paper. The Act did not set a threshold for the result or for minimum turnout.

During the passage of the legislation to allow for the EU referendum the issue of thresholds were discussed. The SNP argued that there should be a double majority threshold to ensure that there had to be a majority in each of the four countries of the UK, as well as in the UK as a whole, so that a nation of the UK could not be taken out of the EU against its will. The amendment was rejected.

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<sup>15</sup> House of Lords Select Committee on the Constitution, *Referendums in the United Kingdom*, 12 report of Session 2009-10, HL 99, p44

<sup>16</sup> Ibid, see paragraph 188, p44

The issue of turnout thresholds was raised at Second Reading of the *European Union Referendum Bill 2015-16* in the House of Lords. Lord Norton of Louth said:

Other issues to be addressed, in my view, are whether there should be a threshold requirement, similar to that imposed in the 1979 referendums, and whether it should be a binding referendum, as with the 2011 referendum on the electoral system, or whether it should be advisory, as has been the norm. There is clearly a case for considering a threshold, given the significance of the issue, and especially so should we decide that the outcome should be binding.<sup>17</sup>

Later in the debate Lord Wallace of Saltaire commented:

The noble Lord, Lord Norton, and other noble Lords raised the question of threshold, which clearly we will have to explore a little, although it is a very difficult issue. Whatever happens at the end of it, if we have a narrow majority, either with a low or a high turnout, it will not settle the issue. However, we all know that referendums do not settle the issue. Six months after the 1975 referendum, the Labour Party was still arguing against staying in the European Union, and look at what happened in Scotland, where the referendum did not settle the future of that country.<sup>18</sup>

The EU referendum on 23 June is only the third UK-wide referendum. Neither the 1975 referendum on the UK's membership of the European Communities nor the 2011 referendum on the system of elections to be used for the House of Commons, included a threshold. In both cases the issue of thresholds was discussed and rejected by the House of Commons during the passage of the legislation required for holding the referendum.

In 1975 the Labour Government's White Paper on the referendum stated that:

The Government are concerned that the size of the poll should be adequate, and they are confident that it will be so. They also consider it to be of great importance that the verdict of the poll should be clear and conclusive. In the circumstances they believe that it will be best to follow the normal electoral practice and accept that the referendum result should rest on a simple majority - without qualifications or conditions of any kind.<sup>19</sup>

The Bill allowing for the 2011 AV referendum was amended by the House of Lords to include a threshold that a turnout of at least 40% was needed in order for the vote to be valid. This was rejected and overturned by the Commons. The Coalition Government view was that introducing such a threshold encouraged those who disagreed with the proposed reform to stay at home. The then Minister, Mark Harper, said:

The Government oppose the inclusion of this amendment in the Bill on two key grounds. First, it goes against our view that people should get what they vote for, and, secondly, it introduces the perverse consequences associated with thresholds<sup>20</sup>

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<sup>17</sup> HL Deb [13 October 2015](#) c147

<sup>18</sup> HL Deb [13 October 2015](#) c212

<sup>19</sup> Cmnd 5925, Para 8

<sup>20</sup> HC Deb 15 February 2011 c897

## 3.2 Thresholds for the 1979 devolution referendums

In 1979 there were referendums on devolution in Wales and Scotland. Initially the legislation to allow for devolved administrations in Scotland and Wales introduced by the Labour Government did not contain provisions for referendums at all. Following resistance from Labour backbenchers to the principle of devolution, provisions for consultative referendums were introduced.

The referendums were required to be approved by 40% of those 'entitled to vote'. This was less to do with a principled approach to gaining legitimacy and more to do with securing the support of Labour backbench MPs to avoid losing the Bill at a time when the loss of the Bill could have led to the fall of the Callaghan Government.

This was complex as the number of those entitled to vote was not the same as those number on the electoral register. This was a time before rolling registration and during the course of a year the electoral registers became less accurate as people died or moved house. It was also possible, as it is now, to be registered in more than one area and even in the 1970s there was evidence of under-registration.

The Government rejected the idea of bringing the electoral registers up to date specifically for the referendums so the Secretaries of State were required to make an assessment of how many on the electoral register were entitled to vote.

According to a leading study, in Scotland the following calculations were made:

In the end, the Secretary of State went for a minimalist strategy, deducting from the register a figure to take account of deaths (26,400) those under age on polling day (49,802) convicted prisoners (2,000) and only two categories of double registered voters (11,800). This then produced an 'adjusted' electorate. The official figure did not, however, state in advance any estimate for others who were double-registered who could not legally have voted twice) for the 'recent sick' or for other inaccuracies. Bogdanor compares Secretary of State Millan's deductions (90,002) with the "maximum possible number which he could have made if he had taken account of all the main categories of unavoidable non-voting" on which he puts a figure of 587,226.<sup>21</sup>

The Scottish devolution referendum was narrowly agreed to by the voters of Scotland but fell short of the required 40% threshold. The 'Yes' vote was just under 52% but with a 64% turnout the 'Yes' vote was the equivalent of about 33% of those entitled to vote, seven points short of the threshold.

In Wales the result was a resounding 'no', with only 20% of votes cast in favour of devolution, so the issue of a threshold was negated.

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<sup>21</sup> *The Referendum Experience Scotland 1979* ed John Bochel, David Denver and Allan Maccartney 1981 p7. The work by Vernon Bogdanor cited is "The 40 per cent rule" *Parliamentary Affairs* Vol 33(3)1980

## 4. Conduct of referendums in the UK

The *Political Parties, Elections and Referendums Act 2000*, often referred to as PPERA, gives the Electoral Commission certain responsibilities in relation to referendums held under the terms of PPERA. It was PPERA that created the Electoral Commission.

PPERA designates the Chair of the Electoral Commission as the Chief Counting Officer for any referendum regulated by the Act. The Chief Counting Officer has the power to delegate their responsibilities.

The individual legislation allowing for each referendum applies the required elements of electoral law for the poll and count to occur.

The delivery of the poll and count is the responsibility of the local counting officers and their electoral administrators in each counting area, working with the Chief Counting Officer and regional counting officers.

Unlike in elections, the Chief Counting Officer in a PPERA regulated referendum has the power to **direct** local counting officers (the equivalent of a Returning Officer). In elections the Electoral Commission can only provide guidance and performance standards, Returning Officers are responsible for the conduct of any election in their area.

For the 2016 EU referendum the Electoral Commission made a number of directions to counting officers. These included:

- Ballot papers for the referendum must be white
- A polling station must have no more than 2,000 registered voters allocated unless permission had been received from the regional counting officer
- Poll card and postal ballot despatch were delivered within specified time limits
- Verification and counting of the votes started at the close of the poll to allow for an overnight count
- Count areas were broken down into smaller areas.<sup>22</sup>

The Library briefing, [EU referendum: how the result will be declared](#), gives more detail about the mechanics of a referendum count.

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<sup>22</sup> Electoral Commission, *Management of the referendum on the UK's membership of the European Union: Response to consultations on the proposed scope of the Chief Counting Officer's directions and the timing of the counting of the votes at the referendum*, November 2015.

## 5. Campaign regulation

PPERA sets out a scheme to regulate expenditure by political parties and campaigning groups in both elections and referendums, following recommendations from the (Neill) Committee on Standards in Public Life in 1998.<sup>23</sup>

Part VII of PERA introduces generic provisions designed to ensure the fair conduct of referendums. It provides for the designation of campaign bodies which will be entitled to particular forms of assistance, including a grant from public funds of up to £600,000, the free mailing of referendum addresses and free air time for referendum campaign broadcasts.

Part VII also provides for restrictions on the publication of promotional material by central and local government in the 28 days prior to the holding of a referendum and restrictions on referendum campaign expenditure by political parties and by other campaigning individuals and organisations. This is known as the pre-referendum period, or 'purdah'. For more details on purdah see the Library briefing *'Purdah' before elections and referendums*

The designation of lead campaigners and the monitoring of the campaign spending and donations is undertaken by the Electoral Commission.

### 5.1 Expenditure limits

Before a referendum is held, there is a formal campaigning period called the 'referendum period'. During this period, certain rules on campaigning and spending apply.

Referendum campaign spending is defined as spending on certain campaign activities that are intended to, or are otherwise in connection with, promote or bring about a particular outcome in the referendum.

The Electoral Commission's guidance for the referendum on the UK's membership of the EU indicated what sort of campaign expenditure was covered by the limits:

- Campaign broadcasts
- Advertising of any kind. Examples include street banners, websites, YouTube videos
- Unsolicited materials sent to voters. For example, letters or leaflets that are not sent in response to specific queries
- Other material about the referendum, such as material setting out the campaign arguments or encouraging people to vote for one side of the argument
- Market research
- Press conferences or other dealings with the media

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<sup>23</sup> *The Funding of Political Parties in the United Kingdom*, Cm 4057

- Rallies and events including services or facilities provided
- Transport in connection with publicising the campaign

The Commission also gives advice on the sort of expenditure that **does not count** to the spending limit:

- Volunteer time
- Permanent, fixed term or temporary staff costs where the staff member has a direct contract with the registered campaigner
- People's, food travel and accommodation costs while they campaign unless the registered campaigner reimburses people or pays directly
- Costs incurred in providing security at public events
- Expenses (except adverts) in respect of publication in a newspaper or periodical
- Designated lead campaigners' use of public rooms or free mailing<sup>24</sup>

Anyone can spend up to £10,000 on campaigning during a referendum. Anyone wishing to spend more than £10,000 must register with the Electoral Commission. These are referred to in PPERA as 'permitted participants' but they are also known as 'registered campaigners'.

There are restrictions on who can register as a permitted participant. Individuals must be resident in the UK or on the electoral register somewhere in the UK and organisations must be based in the UK. Charities may register as campaigners but are also regulated by charity law in relation to political campaigning.

Registered campaigners can spend a maximum of £700,000. PPERA had originally set out a spending limit of £500,000 but this was increased in 2015 by the *European Union Referendum Act 2015*.<sup>25</sup>

### **Designated lead campaigners**

Any registered campaigner can apply to the Electoral Commission to be designated the lead campaign for one side of the subject of the referendum.

Under the terms of PPERA as amended by the European Union Referendum Act 2015, the Electoral Commission can appoint lead campaign groups for each side of a referendum campaign or for one side only.

The Commission applies statutory tests to ensure any campaign designated as the lead campaign group adequately represent those campaigning for that outcome.

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<sup>24</sup> Electoral Commission, [Guidance for campaigners for the referendum on the United Kingdom's membership of the European Union](#), *Overview: spending for EU referendum campaigners*

<sup>25</sup> Schedule 1, Section 25 of the *European Union Referendum Act 2015* updated the amounts contained in PPERA

Lead campaign groups designated as such are entitled to certain benefits. These include:

- A higher spending limit of £7 million (see below)
- One free distribution of information to voters
- The use of certain public rooms
- Referendum campaign broadcasts
- A grant of £600,000 to be used for certain spending associated with administration costs of setting up and running a lead campaign group.

In addition to the statutory benefits, lead campaign groups can have: •

- a dedicated page in the public information booklet that the Commission is required to distribute to all households in the UK
- the inclusion in the booklet of a link to a page on the campaigner's website, which should include their opinion on what will happen in the event of either referendum result

If a lead campaign is designated for only one side (either because there is no application on the other side or none of the applicants meet the statutory requirements) then the sole lead campaign does **not** receive the £600,000 grant, referendum broadcasts or a presence in the Commission's public awareness booklet.

Full guidance on designation of lead campaign groups for the 2016 EU referendum was [made available](#) on the Electoral Commission website.<sup>26</sup>

### **Political parties**

Political parties may register as permitted participants if they wish to spend more than £10,000 on the referendum campaign.

If a registered party campaigns as a permitted participant under sections 105 and 106 of PPERA, it needs to indicate the policy it intends to adopt. S106(7) defines 'outcome' as 'a particular outcome in relation to any question asked in the referendum. The declaration must be signed by the 'responsible officers of the party', defined in s64(7) as the 'registered leader', the 'registered nominating officer' and any other registered officer. Under s106, it is necessary to make the declaration in order to become a permitted participant.

The spending limit for political parties for a UK-wide referendum is based on their vote share at the previous general election. The spending limits for political parties during the EU referendum period in 2016 are shown below.

The Conservative Party was unable to spend its allocation during the EU referendum period because the party was unable to certify which outcome it would campaign for.

Spending limits for referendums held in one part of the UK are based on recommendations made by the Electoral Commission.

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<sup>26</sup> Electoral Commission, *The designation process*, 3 MARCH 2016

### Campaign spending limits for the 2016 EU referendum

<b>Campaigner</b>	<b>Spending limit</b>	<b>2015 UK Parliamentary General Election vote share</b>
Designated lead campaigner	£7,000,000	-
>30% vote share	£7,000,000	Conservative Party (36.8%)
>20-30% vote share	£5,500,000	Labour Party (29%)
>10-20% vote share	£4,000,000	UKIP (12.6%)
>5-10% vote share	£3,000,000	Liberal Democrats (7.9%)
<5% vote share	£700,000	SNP (4.7%)
		Green (3.8%)
		DUP (0.6%)
		Plaid Cymru (0.6%)
		Sinn Féin (0.6%)
		SDLP (0.3%)
		UUP (0.4%)
		Plus all other registered parties that stood at least one candidate
Other registered campaigner	£700,000	

**Note:**

The Labour Party vote share figure is adjusted because votes cast for joint candidates are divided by the number of parties the candidate is standing for, i.e. Labour / Co-op candidates, as required by Schedule 14 of PPERA. The vote share of all Labour and Labour/Co-op candidates at the 2015 General election was 30.4%

## 5.2 Donations and loans

There is no limit on the amount of donations and loans campaigners can accept. However they must come from permitted sources and regardless of how much money is raised the campaigns must keep within the expenditure limits mentioned above.

Donations do not need to be cash. For example, free use of property or a free supply of leaflets counts as a donation.

Donations and loans must be reported on a regular basis leading up to and after the poll.

Donations or loans of £500 or less are not regulated. However it is an offence to evade the rules on donations. Campaigners accepting donations should be alert to situations where it appears that a donor is attempting to evade the rules by making a series of small donations from the same source in similar circumstances.

A permissible donor may be an individual on the electoral register in the UK or UK registered companies and organisations. Donations must be turned down if from non UK companies, from blind trusts, or from unknown sources. There are slightly different arrangements for registered political parties in Northern Ireland, which can accept donations from Irish sources.

The *European Union Referendum Act 2015* amended the provisions of PPERA to allow for the permissibility of other organisations for that referendum.

All donations over £500 must be recorded during the referendum period. Donations or loans over £7,500 in the referendum period must be declared in pre-poll reports, even if they are subsequently returned.

Campaigners are required to provide a final report to the Electoral Commission after the poll which details the total value of all recorded donations and loans over £500 and all donations over £7,500. The final report must include all donations and loans over £7,500 already provided in the pre-poll reports.

UK registered political parties who are not minor parties do not submit pre-poll reports or report donations after the referendum but instead report these in their normal quarterly reporting.

The Electoral Commission provided updated [guidance for campaigners](#) in the EU referendum.<sup>27</sup>

### 5.3 Campaign material and broadcasts

The regulatory role of the Electoral Commission does not extend to monitoring the content of campaign material. There is very little regulation of election or referendum campaign literature in the United Kingdom. Political parties, candidates and referendum campaigners are responsible for the content of their own campaigns and they are subject to the general restrictions of criminal and civil law.

There are two areas where campaign material is specifically regulated:

- Section 106 of the *Representation of the People Act 1983* prohibits the making or publishing a false statement of fact about the personal character or conduct of a candidate at an election (this does not apply at a referendum).
- There is a legal requirement that campaign material should include an imprint of who has published the material to ensure voters can identify the source of the campaign literature.

The purpose of the imprint is to enable the Electoral Commission and the public identify who is publishing the material, and therefore who has incurred referendum expenses.

Party political, election and referendum broadcasts must adhere to editorial guidelines in relation to taste and decency but broadcasters have no control over the content of the message being conveyed.

There is more detail in the Library briefing [Referendum campaign literature](#).

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<sup>27</sup> Electoral Commission, [Pre-poll reporting for EU referendum campaigners](#)

## 6. Further Reading

House of Lords Constitution Committee, *Referendums in the United Kingdom*, HL 99 2009-10

*Representation*, Vol 42, No. 1 April 2006, Special issue: Direct Democracy and Representation

David Butler and Austin Ranney, *Referendums around the World: The growing use of direct democracy*, 1994

Matt Qvortrup, *Referendums around the World: The continued Growth of Direct Democracy*. 2014

Matt Qvortrup, *A comparative study of referendums*, 2<sup>nd</sup> edition, 2005

Maija Setälä and Theo Schiller, *Referendums and Representative Democracy: Responsiveness, accountability and deliberation*, 2009

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