



## Scottish referendum- the campaign rules

Standard Note: SN/PC/06604

Last updated: 13 May 2014

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General background on the process leading to the referendum in Scotland to be held on 18 September 2014 is covered in Library Standard Note 6578 [Referendum on independence for Scotland](#). This Note covers the campaign rules which operate for the referendum, as set out in the [Scottish Independence Referendum Act 2013](#).

The main rules are:

The Electoral Commission regulates spending limits, and decides which organisations to designate as lead campaigners.

Designated organisations for Yes and No have spending limits of £1.5m each and were designated on 23 April 2014, before the regulated referendum period of 16 weeks ending with the poll on 18 September 2014. The regulated period begins on 30 May 2014. The main political parties will be able to spend as follows:

Scottish National Party £1,344,000

Scottish Labour £831,000

Scottish Conservative and Unionist Party £399,000

Scottish Liberal Democrats £204,000

Scottish Green Party £150,000.

Other parties and permitted participants (campaign groups) will be able to spend up to £150,000. Donations and non-commercial loans over £7500 will have to be reported to the Electoral Commission before and after the poll. The total of donations and loans over £500 have to be reported after the poll.

Promotional material from the Scottish Government, Scottish local authorities and public bodies is banned for 28 days before the poll as a statutory requirement. The UK Government have a similar non-statutory commitment in the 2012 [Edinburgh Agreement](#), para 29.

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## 1 Introduction

General background on the process leading to the referendum in Scotland to be held on 18 September 2014 is covered in Library Standard Note 6578 [Referendum on independence for Scotland](#). The Library has a webpage entitled [Scotland, the referendum and independence](#) which links to select committee outputs and Scottish Parliament publications. This Note covers the rules which have been set out in the [Scottish Independence Referendum Act 2013](#), described in this Note as the Scottish Act. Separate legislation, the Scottish Independence [Referendum \(Franchise\) Act 2013](#) deals with the franchise to be used.

As Standard Note 6578 sets out, the UK Parliament and the Scottish Parliament agreed a Section 30 Order under the *Scotland Act 1998* to transfer competence to establish the campaign rules for the administration of the referendum to the Scottish Parliament, as well as to hold an independence referendum until 31 December 2014. The UK and Scottish Government signed the Edinburgh Agreement on 15 October 2012 before the Order was passed. This stated that the principles governing the referendum would be based on those used for referendums held under UK legislation, and derived from the *Political Parties, Elections and Referendums Act 2000* (PPERA). Standard Note 5142 [Regulation of Referendums](#), sets out the general rules contained in PPERA to regulate donations.

As well as PPERA, specific legislation is required for each referendum held under those rules, which will set out the question, the franchise for voting, the conduct of the referendum and the length of the regulated period for campaigning.

## 2 Role of Electoral Commission

Under PPERA, the Electoral Commission is the regulator of referendums. The Commission:

- Provides guidance regarding the limits in campaign expenditure for those organisations who register to be permitted participants;
- Registers permitted participants (expenditure over £10,000, registered political party, company or association etc) and decline requests from prohibited organisations or those not complying with the statutory requirements;<sup>1</sup>
- Maintains a register of donations over £7500 to permitted participants;
- Decides which organisations are to be designated as lead campaign organisations for each side;
- Publishes details of donations and permitted expenditure;
- Monitors compliance with the regulatory framework;
- Investigates when there are alleged breaches of the PPERA rules, such as acceptance of donations from impermissible sources;
- Advises on whether the referendum question meets the test of intelligibility;
- Its chair or nominee is the Chief Counting Officer, who coordinates the administration of the referendum and declares the result.

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<sup>1</sup> PPERA Sch.4 paras 2 and 3

These duties and powers are set out in more detail in Library Standard Note 5142 [Regulation of Referendums](#).

## 2.1 The Electoral Commission and the Scottish independence referendum

There are some differences in the Electoral Commission role for the Scottish independence referendum. The main change is that the Chief Counting Officer will be the Convener of the Electoral Management Board for Scotland (instead of the Chair of the Electoral Commission), and so takes the lead in the planning of the poll. Her name is Mary Pitcaithly. The Board was created by the *Local Electoral Administration (Scotland) Act 2011*.

The Electoral Commission is given authority under the [Scottish Independence Referendum Act 2013](#) to secure compliance with the regulation of campaign spending and donations and to investigate where there is suspected abuse. The Commission also must issue guidance to campaigning organisations and to provide a report on the conduct of the referendum.<sup>2</sup>

The Commission previously assessed the question to be asked, publishing a [report](#) in January 2013.<sup>3</sup> Their recommendation was accepted by the Scottish Government. The Commission also recommended appropriate spending limits in a [report](#) in January 2013, which was accepted by the Scottish Government.<sup>4</sup>

The Commission issued a [Scottish Independence Referendum Media Handbook](#) in March 2014, which contains detailed information about the operation of the referendum

## 3 Spending Limits for permitted participants in referendums

PPERA established maximum expenditure limits for national referendums and gave the Electoral Commission the power to advise on limits for regional referendums.<sup>5</sup> Expenditure limits apply only during the 'referendum period' – a time period set out in the legislation authorising a particular referendum. The referendum on the Alternative Vote was the first nationwide referendum to be held under the PPERA provisions and the referendum period began with royal assent on 16 February 2011 and lasted 11 weeks.

Groups (including political parties, campaign groups and other bodies) must register with the Electoral Commission if they plan to spend more than £10,000 during the referendum period. These are called permitted participants. The maximum expenditure is £0.5m, for political parties, the limit is related to share of the vote at the last general election, ranging up to £5m. These limits are set out in Schedule 14 of PPERA.

Permitted participants must submit returns of expenditure to the Electoral Commission, within 6 months of the poll. An auditor's report is required where participants have spent over £250,000. This means that full details of expenditure is not known until the referendum has taken place. The Electoral Commission has expressed concern in the past about the difficulty

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<sup>2</sup> SIRA section 27(1)

<sup>3</sup> [Referendum on independence for Scotland: Advice of the Electoral Commission on the proposed question](#) 13 January 2013 Electoral Commission

<sup>4</sup> [The Electoral Commission advice on spending limits for the referendum on independence for Scotland](#) Electoral Commission January 2013

<sup>5</sup> This was contrary to the recommendations of the Neill Committee in 1998. Its [report](#) argued that controls would be impractical and might be considered an unwarranted restriction on freedom of speech.

of regulating expenditure during the regulated referendum period, when accounts will not be submitted until after the poll.<sup>6</sup>

There has been concern that since there is no one overall spending limit, permitted participants could proliferate, causing difficulties in assessing whether expenditure limits had been breached. Additional regulation requiring separate permitted participants to account for the total spending by all those concerned was added by the *Parliamentary Voting System and Constituencies Act 2011* (PVSC) for the AV referendum.

Section 6 of the PVSC Act 2011 also applies the new controls on non commercial loans to referendums. These new rules were applied to political parties in respect of election funding in the *Electoral Administration Act 2006*.

### **3.1 Spending Limits for the Scottish Independence Referendum**

The Scottish Act provides for the following limits:

The maximum spend for a designated organisation is £1.5m.

The maximum spend for a permitted participant not a registered political party is £150,000.

The maximum for a party is according to share of the vote (with a floor of £150,000) and are as follows:

Scottish National Party £1,344,000

Scottish Labour £831,000

Scottish Conservative and Unionist Party £399,000

Scottish Liberal Democrats £204,000

Scottish Green Party £150,000.

The Scottish Act requires the total spend to be attributed to separate permitted participants (PP) spending totals or in the case of a PP working with a lead body all the spend is attributed to the leads expenditure total. To prevent permitted participants from acting in concert. These 'acting in concert provisions' were amended during the passage of the legislation to make the provision less onerous for PPs.<sup>7</sup> The Electoral Commission has the role of offering guidance on distinguishing permitted expenditure, and Schedule 4 sets out various definitions which are very similar to those set out in PPERA.

The Electoral Commission has a register of permitted participants, which can be found on their website.<sup>8</sup>

Following the apparent decision of the CBI to register as a permitted participant, 18 organisations, including several Scottish universities, Scottish Enterprise, the Law Society of Scotland, the BBC and STV, considered either resignation or suspension of membership of

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<sup>6</sup> [Evidence from Sam Younger](#), former Chairman of the Electoral Commission, to the Treasury Select Committee, 18 March 2003, HC 187-II, Session 2002-03, Q1327

<sup>7</sup> Schedule 4, [Scottish Independence Referendum Act 2013](#)

<sup>88</sup> See <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/scottish-referendum/register-of-campaigners-at-the-scottish-independence-referendum>

the CBI. The organisation informed the Commission that it believed its declaration for permitted participant status was invalid, the Commission agreed, and it has now been removed from the register.<sup>9</sup> There has been some media comment about the number of permitted participants being registered<sup>10</sup>

## 4 Regulation of donations

Donations made to permitted participants in UK elections are also controlled by PPERA. Permitted participants have to register donations received over £7,500 with the Commission, and refuse donations over £500 if they are from donors not on the UK electoral register, from non UK companies, from blind trusts, or from unknown sources.<sup>11</sup> Information on donations is not available until after the result of the poll is known, since section 120 of PPERA does not require the return to be made on referendum expenses and donations until after the end of the referendum period. The Electoral Commission issued [guidance for permitted participants](#) on the acceptance of donations for the AV referendum.<sup>12</sup>

The *Parliamentary Voting System and Constituencies Act 2011* contained provisions making clear that non-commercial loans were also regulated for the purposes of the AV campaign only.<sup>13</sup>

### 4.1 Regulation of donations for the Scottish Independence Referendum

The Act adopts the PPERA regulation scheme. Donations over £500 are regulated as are non-commercial loans (regulated transactions). They must not be from impermissible sources. The *Policy Memorandum to the Bill* discussed the possibility of limiting donations from outside Scotland but noted that this policy was not practical:

95. Furthermore, in practice, registered political parties are the main organisations that individuals are likely to donate money to. The PPERA rules apply to registered political parties on a UK-wide basis. It is not possible for the Scottish Parliament to legislate to regulate the donations that registered political parties receive from voters in other parts of the UK and then use in the referendum. In any case, political parties can receive donations at any time and they are not normally specifically earmarked for a particular use. There would be no practicable way to determine whether or not those donations were intended to be used for referendum campaigning. To restrict minor parties and other permitted participants to donations from voters and organisations registered only in Scotland would be unfair to them when the largest political parties can legitimately use money from elsewhere. For these reasons, the Bill adopts the UK wide definition of permissible donors set out in PPERA.

The Scottish Act requires that information on donations is made public before the poll. This is a new requirement not in PPERA and based on Electoral Commission advice following the AV referendum. Registered campaigners must complete four pre-poll donation and loan reports setting out what donations and loans they have received over £7,500 between Royal Assent (17 December 2013) and 5 September 2014.<sup>14</sup>

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<sup>9</sup> "CBI Scotland chief to take early retirement" 26 April 2014 *Scotsman*

<sup>10</sup> "Watchdog under pressure on Yes camp spending" 30 April 2014 *Herald*; "Scottish independence 'Third way a minefield'" 22 April 2014 *Scotsman*

<sup>11</sup> These limits were set out in Section 20 of the *Political Parties and Elections Act 2009*, brought into force by [SI 2009/3084](#); the Act also introduced new restrictions on donations for non domiciled UK nationals, but these have not yet been brought into force

<sup>12</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/105618/sp-referendum-pvs-rc.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/105618/sp-referendum-pvs-rc.pdf)

<sup>13</sup> Section 6 and Schedule 9 PVSC Act 2011

<sup>14</sup> Schedule 4 Part 5, See [Scottish Independence Referendum Media Briefing](#) March 2014 Electoral Commission

In 2013, the Yes and No campaigns offered to make voluntary releases of details of donations received. In the event, the Act was amended during its passage to require campaigners to report donations received between the Act being passed and the start of the referendum period<sup>15</sup>. This will include donations made to campaigners before registration with the Electoral Commission.<sup>16</sup> Full details on the regulation of donations are given in the *Scottish Independence Referendum Media Handbook* issued by the Electoral Commission.

## 5 Designated organisations

PPERA allots the Electoral Commission to designate one lead organisation for each side and not to designate, if it does not consider that there are suitable organisations which represent the body of opinion on one side. PPERA does not allow the Commission to designate one side only. The first 28 days of a referendum period allows organisations to apply for designation. The Commission then has up to 2 weeks in which to make a decision. In practice, there is a minimum period of 10 weeks for the referendum period, which leaves 4 weeks for the designated organisations to campaign. The AV referendum period was 11 weeks, and the No campaign had felt forced to commit funds towards the official free mailing before it received its official designation, due to the short campaign period.<sup>17</sup>

The Commission was unable to designate for the referendum on further devolution in Wales, held on 3 March 2011, since the only applicant for the 'No' campaign did not meet a statutory test of adequately representing those campaigning for a 'No' vote<sup>18</sup>. This denied the benefits of designation to the Yes campaign and gave them a limit of just £100,000. There was also no opportunity to take advantage of referendum broadcasts and free mailings.<sup>19</sup> The main No campaign had decided against applying for designation.<sup>20</sup>

There were media reports that the No campaign in the AV referendum had also considered not applying for designation, which would have prevented the Yes campaign from accessing grants and increased expenditure limits.<sup>21</sup> The question as to whether it should be possible to designate one side only has been the subject of some discussion.<sup>22</sup> The Electoral Commission warned in its report on the AV referendum in 2011 that if it had not been able to designate, the anti-acting in concert provisions might have artificially constrained campaigners. It recommended relaxing these provisions in circumstances where no designation was made.<sup>23</sup>

Designated organisations benefit from maximum grants of £600,000 for a UK wide referendum to each organisation, combined with a free referendum address to every

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<sup>15</sup> [SIRA Schedule 4, Part 4](#)

<sup>16</sup> See Electoral Commission briefing on the Bill [Stage 2 Amendments Briefing, Schedule 4](#)

<sup>17</sup> [Written evidence to the Scottish Affairs Committee by No Campaign Ltd](#) para 2.18, March 2012

<sup>18</sup> [No lead campaigners for National Assembly referendum](#) 25 January 2011 *Electoral Commission*

<sup>19</sup> Instead all registered campaigners were given an opportunity to put a short statement on an Electoral Commission webpage. See *Report on the referendum on the law-making powers for the National Assembly for Wales July 2011* Electoral Commission

[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0017/118601/Wales-ref-summary-web.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0017/118601/Wales-ref-summary-web.pdf)

<sup>20</sup> [Lack of official campaigns for referendum 'sad day'](#) 20 January 2011 *BBC News*

<sup>21</sup> [Referendum on the Voting System for UK Parliamentary Election May 2011](#) Para 5.49

<sup>22</sup> Oral evidence to Scottish Affairs Committee 14 March 2012

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmscotaf/1608/120314.htm> and written

evidence <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmscotaf/writewv/referendum/rs27.htm>

<sup>23</sup> 2011 referendum report - parliamentary voting system:

[http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0019/141328/Final-PVS-report.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0019/141328/Final-PVS-report.pdf) paras 5.75-5.83



household and referendum campaign broadcasts.<sup>24</sup> The Commission decided to award £380,000 to each side for the AV referendum. Designated organisations have a maximum spending limit of £5 million for UK wide referendums.

### 5.1 Designated organisations for the Scottish independence referendum

The Scottish Act adopts a slightly different approach. The Electoral Commission still has the role of making the designations, but is allowed to make a designation on one side only, if there is only one suitable organisation.<sup>25</sup> During the passage of the legislation, amendments were made to make designation occur at an earlier stage, and decouple it from the referendum period calculation. In the event, both sides were designated on 23 April 2014..<sup>26</sup>

Designated organisations have a higher expenditure limit (£1.5m) than other permitted participants but there is no public funding available. The Section 30 Order applied the provisions of PPERA in relation to referendum broadcasts and free mailings to the independence referendum, so these provisions do not appear in the Scottish Act. Both sides have access to these provisions.<sup>27</sup>

## 6 Campaigning and the 28 day relevant period

PPERA provided for a 28 day period before the poll in which information provided by public bodies is restricted, so that no promotional material is published. Section 125 applies to central and local government and “any other person or body whose expenses are defrayed wholly or mainly out of public funds or by any local authority.” This has caused some difficulties, according to the Commission, in alerting voters to the issues. The role of the Electoral Commission in promoting awareness about the referendum and providing information about registering to vote has been specifically provided for in individual referendum legislation.<sup>28</sup>

The Commission issued a booklet to each household in the UK for the referendum in Wales in March 2011 and the AV referendum in May 2011. Content included different ways to vote (at a polling station, postal, proxy etc.) and a brief guide to AV and First Past the Post. Drafts of the leaflets are available on the [Commission website](#).<sup>29</sup>

Campaign material is subject to statutory regulation in terms of defamation, incitement to hatred etc, but there is no equivalent to the electoral law provision on false statements about candidates which led to the election petition in Oldham East and Saddleworth in November in 2010.<sup>30</sup>

Only designated organisations can have referendum campaign broadcasts.<sup>31</sup> This is to ensure that, in any referendum, each side of the campaign will have equal access to free airtime for campaigning.<sup>32</sup> Section 127 of PPERA prevents the main purpose of any broadcast, other than a referendum campaign broadcast, from being to procure or promote a

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<sup>24</sup> [Referendum on the parliamentary voting system in the UK](#) 17 February 2011 *Electoral Commission*

<sup>25</sup> Schedule 4, para 5

<sup>26</sup> The provision is now to be found in [Schedule 4, para 7\(6\) Electoral Commission designates ‘Yes Scotland’ and ‘Better Together’ as lead campaigners at Scottish Independence Referendum](#) 23 April 2014

<sup>27</sup> *Scotland Act (Modification of Schedule 5) Order 2013*, para 4

<sup>28</sup> See for example, PSVC Schedule 1, paras 8 and 9

<sup>29</sup> <http://www.electoralcommission.org.uk/news-and-media/public-awareness-campaigns/public-information-on-5-May-2011-elections-and-proposed-referendum>

<sup>30</sup> See [Standard Note 5751 Election Petition: Oldham East and Saddleworth](#)

<sup>31</sup> Section 127

<sup>32</sup> *Explanatory Notes*, paragraph 223



referendum's outcome. The broadcasters are responsible for interpreting this provision, subject to legal challenge. The Broadcaster's Liaison Group has a role in the allocation and regulation of party political broadcasts and has issued [production guidelines](#) for referendum broadcasts. The BBC Trust has consulted on these and referendum guidelines were adopted by the BBC in December 2010.<sup>33</sup>

## 6.1 Campaigning and the regulated period in Scottish independence referendum

One focus of debate in Scotland is the ability of the Scottish Government to promote the benefits of independence for an extended period before the 28 day regulated period. In addition the UK Government has also commented on the potential dangers of independence. There has already been considerable media and broadcasting activity on the subject of the referendum and the benefits or otherwise of independence.

In its report on the AV referendum, the Electoral Commission expressed its view that the regulated period should be extended beyond 28 days to the whole referendum period following the passage of the legislation. It repeated this view in its response to the Scottish Government consultation on the holding of a referendum in March 2012.<sup>34</sup> The [Policy Memorandum](#) to the Scottish Independence Referendum Bill justified the restriction to 28 days as follows:

103. In its consultation response in March 2012, the Electoral Commission expressed a view that the period should be extended from 28 days to cover the whole referendum period. However, PPERA applies a 28 day period for UK elections and referendums and the Scottish Government has concluded that in this matter the Bill should remain consistent with UK law. This approach was endorsed in the Edinburgh Agreement.<sup>35</sup>

The Scottish Act applies restrictions on promotional material to the Scottish government, the Scottish Parliamentary Corporate Body and any Scottish public authority with mixed functions or no reserved functions under the *Scotland Act 1998*.<sup>36</sup> The restrictions do not apply to UK publicly funded bodies or the UK Government. However, in the Edinburgh Agreement, the UK Government committed to act according to the same PPERA-based rules during the 28-day period.<sup>37</sup> There does not appear to be a clear mechanism for investigating breaches of these restrictions.<sup>38</sup> The Electoral Commission does not have a power to refer alleged breaches to the courts. The Commission has published a factsheet on the issue with contact information for each Government.<sup>39</sup>

The *Edinburgh Agreement* set out the regulation of campaign broadcasts as follows:

20. The Order makes provision applying the provisions in PPERA relating to referendum campaign broadcasts to an independence referendum. This will mean that Ofcom, the BBC and the Electoral Commission will have the same role in relation to an independence referendum as they would in relation to a PPERA referendum.

*Ensuring impartiality of broadcasters*

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<sup>33</sup> *Referendum campaign broadcasts- give us your views December 2010* BBC Trust

<sup>34</sup> [Scottish referendum: response to consultation](#) March 2012 Electoral Commission

<sup>35</sup> [http://www.scottish.parliament.uk/S4\\_Bills/Scottish%20Independence%20Referendum%20Bill/b25s4-introd-pm-rev.pdf](http://www.scottish.parliament.uk/S4_Bills/Scottish%20Independence%20Referendum%20Bill/b25s4-introd-pm-rev.pdf)

<sup>36</sup> Schedule 4, para 25

<sup>37</sup> Edinburgh Agreement 15 October 2012

<sup>38</sup> See [written evidence from No Campaign Ltd to Scottish Affairs Committee March 2012](#), para 1.8

<sup>39</sup> [Publicly funded bodies and the referendum on independence for Scotland](#) Electoral Commission

21. The governments agree that it will be important to ensure that broadcast coverage of the Referendum is impartial. Broadcasters, Ofcom and the Electoral Commission will discuss the best way to achieve this.<sup>40</sup>

The BBC Trust has issued its final determination about the allocation of referendum campaign broadcasts, which announced that each designated organisation will be offered at least one RCB.<sup>41</sup>

The Section 30 Order also enabled the designated campaign organisations to send out one mail-shot free of charge to every elector or household and for the Royal Mail to recover the cost of postage from the Scottish budget.

## **6.2 Media comment not regulated as expenditure**

During the passage of the *Parliamentary Voting System and Constituencies Act 2010* (PVSC) an opportunity was taken to clarify the position on media comment. Section 5 of the PVSC Act set out that press or media comment is not to be treated as referendum expenditure. Newspaper advertisements would count as campaign expenditure. There are no specific guidelines on accuracy, beyond the usual Advertising Standards Authority guidance which notes that it has no remit over non-broadcast ads where the purpose of the ad is to persuade voters in a local, national or international election or referendum. Complaints of political bias in radio or TV advertisement are made to Ofcom. The Scottish Act contains similar wording in [Schedule 4, para 11\(2\)d](#).

The *Scottish Independence Referendum Media Handbook* sets out the responsibilities of the main broadcasters as follows:

Political impartiality in broadcast media is covered by the editorial guidelines relevant to that particular broadcaster:

- The BBC's editorial guidelines on broadcasting during the Scottish independence referendum can be found at

<http://downloads.bbc.co.uk/rmhttp/guidelines/editorialguidelines/pdfs/2014ReferendumGuidelinesFinal130314.pdf>

- Commercial broadcasters are subject to the Ofcom Broadcasting Code, which can be found at

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code><sup>42</sup>

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<sup>40</sup> Edinburgh Agreement 15 October 2012

<sup>41</sup> [Final allocation criteria for Referendum Campaign Broadcasts and Party Election Broadcasts 2014](#) 15 April 2014 BBC Trust

<sup>42</sup> [Scottish Independence Referendum Media Handbook](#) March 2014 Electoral Commission