



Report of the Independent Commission on Referendums

**INDEPENDENT
COMMISSION ON
REFERENDUMS**

July 2018

Executive Summary

Conclusions and
Recommendations

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The rules by which referendums are conducted in the UK are now almost twenty years old. In that time, five large-scale referendums have been held, including votes on matters of fundamental importance that have sparked unprecedented public interest. Much has changed over these two decades, not least through the rise of the internet and, particularly, of social media and the way these developments have transformed political campaigning. The time has come, therefore, for a comprehensive review.

This report addresses the role that referendums play in democracy in the UK and the manner in which referendums are conducted. Its major recommendations stem from three core points:

- First, referendums have an important role to play within the democratic system, but how they interact with other parts of that system is crucial. They must be viewed as co-existing alongside, rather than replacing, representative institutions. They can be useful tools for promoting citizen participation in decision-making, but they are not the only, or necessarily the best, way of doing so.
- Second, referendums should be conducted in a way that is fair and effective. The rules should enable a level playing field between the competing alternatives. Those rules should also empower voters to find the information they want from sources they trust, so that voters feel confident in the decisions they reach.
- Third, the regulation of referendums must keep up with the changing nature of political campaigning, particularly campaigning through social media.

Following a brief introduction to the Commission, the sections below summarise key implications of each of these points. They do not give the Commission's recommendations in full. These are contained in the body of the chapters that follow, and are listed in full at the end of the report.

The Commission and its work

The Independent Commission on Referendums comprised twelve individuals (listed at the front of this report), who worked over nine months,

from October 2017 to June 2018. The Commission held eight meetings, invited written evidence from a wide range of individuals and groups, and held consultative seminars in Belfast, Cardiff, Edinburgh and London. The central point in the Commission's terms of reference was 'to consider the future political, legislative and administrative arrangements for the authorisation and conduct of referendums in the UK'.

The Commission was supported by a secretariat based at the Constitution Unit, School of Public Policy, University College London. The Constitution Unit is a nonpartisan academic body, which conducts research on various aspects of constitutions and constitutional change, prioritising outputs that are useful to policymakers. The Commission's work was informed by evidence that the secretariat gathered about the functioning of referendums historically in the UK, and in contemporary democracies around the world.

Members of the Commission were not paid for their time and contributed to its work purely voluntarily. They propose the conclusions and recommendations in this report on a unanimous basis.

The place of referendums in the democratic system

Referendums have an important role to play within the democratic system. They are particularly suited to resolving fundamental questions of sovereignty and constitutional change.

But referendums also have limits:

- They cannot replace the institutions of representative democracy. Citizens do not have the time or the resources to participate in all the policy decisions necessary for the functioning of a complex modern democracy. Representatives can dedicate time to consider such issues in great detail, engage in deliberation with other representatives and make informed decisions on a wide range of topics. Representative institutions are also needed to provide for 'joined up' thinking across policy areas.

- Referendums encompass one crucial element of democracy: deciding between options through voting. But other equally important dimensions of democracy – discussion, deliberation and compromise – are not intrinsic to referendums.

Given these limits, careful thought should be given to how referendums fit into the wider democratic system:

- Detailed consideration should be given before a referendum is called to what the problems are that policy needs to address, what policy options can be developed for addressing these problems, what the strengths and weaknesses of these options are, and whether a referendum is the best way of making the decision.
- To engage citizens as far as possible in these pre-referendum processes, consideration should be given to using innovative forms of deliberative democratic engagement such as citizens' assemblies, alongside strengthened processes of parliamentary scrutiny.
- Wherever possible, a referendum should come at the end, not the beginning, of the decision-making process. It should be post-legislative, deciding whether legislation that has already passed through the relevant parliament or assembly should be implemented.
- Sometimes a referendum may be needed earlier: for example, to initiate inter-governmental negotiations. In such cases, the government initiating the referendum should set out precise plans for what will be done in the event of a vote for change; the enabling legislation would set out a two-referendum process, for use in the event that the settlement does not deliver what was promised.

The conduct of referendums

Referendums should be conducted in line with two overarching objectives:

- The alternatives should compete on a level playing field.
- Voters should be able to find the

information they want from sources they trust.

These objectives lead to a range of proposals, including the following:

- Current restrictions on government involvement in referendum campaigns should be extended to cover the whole campaign period, but narrowed in scope to target the behaviour that is of concern during referendums – that is, campaigning for or against a proposal.
- Lead campaigners should be designated as early as possible, to give campaigners time to prepare effectively.
- Measures should be taken to enhance the transparency of campaign spending and the accountability of campaigners for that spending. The Electoral Commission and Information Commissioner's Office should work together in regulating spending and the use of personal data in political campaigning.
- The Electoral Commission should review how any space provided to campaigners in the Commission's voter information booklet is best used.
- More should be done to enable the work of broadcasters, universities, fact-checkers and other independent organisations in facilitating access to balanced information.
- Methods for fostering citizen deliberation on referendum issues and disseminating its results should be piloted.

Referendums in a digital age

Even during the nine months of the Commission's inquiry, debate about the regulation of online campaigning has developed considerably. The Commission is not the best body to settle all of these issues, but it does make a range of recommendations, including the following:

- An inquiry should be conducted into the regulation of political advertising across print, broadcast and online media, to consider what form regulation should take

for each medium and whether current divergences of approach remain justified.

- Imprints should be required on digital campaign materials, as on other forms of campaign materials.
- A searchable repository of online political advertising should be developed, including information on when each advertisement was posted, to whom it was targeted, and how much was spent on

Implementing the Commission's recommendations

The Commission hopes that its recommendations will lead to positive and constructive discussion about the future of referendums in the UK, and a strengthening of democratic practice. Some of these recommendations call for action by the UK government or devolved governments. Some propose actions by parliamentary committees, the Electoral Commission, and other official bodies. Others need to be taken up by political parties, campaigners, commentators, and academics. The Commission believes that we require a culture change in how the role of referendums in UK democracy is conceived. The practical implications of this are captured in our checklist of issues to consider before calling for a referendum.

Checklist for those considering calling for a referendum

Many of the recommendations made by the Commission demand a cultural change in terms of how referendums are used and the circumstances in which they are proposed. This checklist is provided as a quick summary of key points that should be considered by those who may wish to call for a future referendum:

- Is the subject matter suitable for a referendum? Can it be considered a major constitutional issue?
- Is a referendum the best way of involving

citizens in the decision in question, or might some other means of public consultation serve at least as well, or better?

- Is interest in the subject adequate to ensure a high level of turnout?
- Has the topic concerned previously been subject to considerable public debate and deliberation?
- Has it been carefully considered by bodies such as parliamentary committees?
- Have there been opportunities for civil society groups to comment and help develop proposals?
- Have there been opportunities for citizens to contribute to the development of the proposals through bodies such as citizens' assemblies?
- Are the alternatives clear, or do they need further consideration and elaboration?
- If there are more than two options for change, has the possibility of holding a multi-option referendum been seriously considered?
- Will it be possible, in advance of a referendum, for detailed proposals for change to be set out in the enabling legislation?
- Will it be clear to legislators after the referendum what to enact, or is there any risk of uncertainty, and conflict with the public vote?

If the answer to any of the questions above is no, then the referendum should not be held at that point.

Additionally, when planning for the referendum itself and the preceding referendum campaign, the following questions should be addressed:

- What can be done to reduce the risk of polarisation and lasting political divisions after the referendum?
- What can be done to maximise the availability of high-quality information, and minimise the risk of misrepresentation and confusion?
- Should a deliberative exercise for citizens be provided during the referendum campaign itself?

Conclusions and Recommendations

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The Use of Referendums Worldwide

1. Referendums now constitute an important part of how democracy functions in numerous countries around the world. They are used with increasing frequency, including to address some of the most fundamental political and constitutional questions. It is essential, therefore, that careful consideration be given to how they operate and how they fit within the rest of the democratic system.

The Use of Referendums in the UK

2. The circumstances in which referendums have been used in the UK have developed over time. Conventions have become established about the use of referendums to decide certain categories of constitutional matters, and, where a referendum has been used once, it often becomes established that this same mechanism should be used again. There are certain decisions, such as Scottish independence, that could not foreseeably be taken without reference to the people. In some instances, the requirement for a referendum has been codified in statute. As such, the use of referendums has by now become established as part of the UK's uncodified constitution. However, it should be recognised that the use of referendums in UK politics has often been driven by political pragmatism, not constitutional principle.
3. When referendums have been used most successfully in UK politics, it has been to legitimise and provide a degree of entrenchment for key decisions, in the absence of a codified constitution. Where a government clearly supports a major constitutional change, and believes that it has widespread public support, it is appropriate to test this through a referendum in order to bring maximum stability and certainty to the new arrangements. This is most clearly seen in the 1998 referendum endorsing the Good Friday Agreement, and the 1997 devolution referendum in Scotland.

4. While referendums have at times been successfully used to entrench constitutional decisions, and to avoid over-hasty or partisan decision-making on these matters by parliament, the lack of a codified constitution in the UK means that decision-making through referendum is itself far less regulated and protected than in many other democracies. This opens up risks, which should be carefully considered and addressed.
5. Evidence on the UK public's attitudes towards referendums is relatively limited. That which exists suggests that at first sight there is broad public support for holding referendums on some topics, particularly those relating to constitutional (and perhaps moral) questions. But there is no consistent majority for increasing the use of referendums. There appears to have been a drop in support for holding referendums following the EU referendum of 2016, particularly among those who voted Remain.

Regulating Referendums: History and Recent Debates

6. Although referendums have become an increasingly common feature of UK democracy, it is a long time since the framework governing them was last comprehensively reviewed. Since legislation was first introduced in 2000, successive referendums and inquiries have raised important issues that remain unaddressed. In addition, international thinking about best practice in referendums has moved on considerably. The need for a wholesale review examining all aspects of the use and conduct of referendums in the UK is evident.

Referendums and Democracy

7. The UK has a long and well-developed history of representative democracy. While demands on democracy are increasing, including pressures for greater citizen participation, representative democracy (through the UK parliament, devolved legislatures and other elected bodies) is likely to remain the primary means of taking most political decisions. **In thinking about the role of referen-**

dums we should therefore consider how these can best coexist with our system of representative democracy, and be mindful of the risks of undermining it. We should also explore other mechanisms of citizen participation that can meet these goals.

8. Democracy involves not just voting, but also deliberation, bargaining, and compromise. Practice around referendums should build upon this basis. Referendums in themselves provide a vote, but this alone is not enough. **Decisions about when to hold referendums and how to conduct them should be taken with a view to ensuring that extensive opportunities for careful deliberation exist:** regarding whether a referendum is the best way forward, what the options should be, and what the strengths and weaknesses of each option are from different perspectives.
9. Referendums can both strengthen and weaken the health of the democratic system as a whole. The recommendations in this report are intended to maximise the benefits that referendums can bring, while minimising the dangers. **Until effective ways of ensuring the democratic quality of referendums have been found, they should be used with caution.**
10. **Referendums are best suited to resolving major constitutional issues, such as those relating to sovereignty. They work best when they are held at the end of a decision-making process to choose between developed alternatives.**
11. There are many ways other than referendums to engage citizens in policy development and decision making. These may often be preferable to referendums, which can be a particularly blunt mechanism of citizen input. **Governments, parliaments, and independent bodies should pilot ways of further strengthening the role of parliamentary deliberation, developing methods of deliberative public engagement, and enhancing connections between the two.**
12. **The franchise for future referendums should be specified in standing legislation.** For UK-wide referendums, the franchise should be the same as for elections to the House of Commons (with the addition of members of the House of Lords who are entitled to vote in local elections). For referendums in Scotland, Wales, or Northern Ireland, the franchise should be the same as for,

respectively, the Scottish Parliament, Welsh Assembly, or Northern Ireland Assembly. For regional or local referendums, the franchise should be the same as for local elections in the corresponding area. The Commission recognises that deviations may exceptionally be necessary, as in the case of the inclusion of Gibraltarians in the 2016 EU referendum.

In stating this recommendation, the Commission does not take a view on what the boundaries of the various election franchises should be. It notes that there are several ongoing debates, for example regarding the voting rights of 16- and 17-year-olds and EU nationals resident in the UK after Brexit.

Calling referendums

13. In the absence of a codified constitution **it would not be possible definitively to limit the circumstances in which referendums are held or to require a supermajority before a referendum can be called.** Parliament would remain free to repeal any restrictions by simple majority or hold ad hoc referendums enabled by new primary legislation.
14. Referendums are already required by law in certain circumstances. However, beyond these specific circumstances, **the Commission does not consider it appropriate to attempt to legislate for all the topics on which referendums should be required.** Although there is broad consensus that referendums should be held on 'constitutional issues', there is a lack of cross-party agreement on what should be considered a 'constitutional issue' and whether all 'constitutional issues' are appropriate to be put to referendum.
15. The Commission understands the importance of public input into policy-making. Recognising the complex process issues around referendums raised in this report, **the Commission recommends that citizen-initiated referendums should not be introduced in the UK at present.** Instead of this mechanism, attention should be directed towards strengthening and improving existing mechanisms for public involvement in decision-making and piloting new methods of public engagement.

16. The Commission does not recommend the extension of the power to call referendums to minority groups of parliamentarian

Legislating for a Referendum?

17. It is of utmost importance for the proposals put to a referendum to be clear and for voters to know what will happen in the event of a vote for change. Hence, **the Commission considers standalone pre-legislative referendums to be highly problematic.**
18. Referendums should be held on proposals that are clear and immediately actionable. This means that, **wherever possible, referendums should be held post-legislatively**: the relevant parliament or assembly should legislate in detail for the change, subject to approval by voters in a referendum. Should the result favour the change, the provisions would then be implemented.
19. The Commission recognises that there are examples of changes for which it is widely agreed approval by a referendum is needed, but for which a standalone post-legislative referendum would be impossible – for example, where implementing the result of a vote for change would require negotiations with other bodies. **Where a pre-legislative referendum is necessary, a detailed White Paper setting out how the government calling the referendum would proceed in the event of a vote for that proposal should be produced.**
20. **Any legislation enabling a pre-legislative referendum should set out a process to be followed in the event of a vote for change.**

If a government does not produce a detailed White Paper on the proposals for change, a second referendum would be triggered when the legislation or treaty implementing the result of the first referendum has passed through the relevant parliament or assembly.

In cases where a government does produce a White Paper detailing what form of change it expects to secure, the second referendum would be triggered only in the event that there is a 'material adverse change' in circumstances: that is, if the expectations set out in the government's paper are not fulfilled. It would be for the parliament or assembly that called the referendum to determine whether such a 'material adverse change' had occurred.

The process to be followed should be specified in the legislation enabling the first referendum, so that the requirement for or possibility of a second referendum, and the reason for it, is clear to the electorate before the first vote takes place. The Commission's recommendation hence applies to future processes of change requiring a referendum, and is not intended to apply retrospectively. **The Commission does not take a view on whether there should be a further referendum on Brexit.**

Preparation for a Referendum

21. Referendums are mechanisms through which final decisions on matters of great importance can be made. They are not in themselves appropriate mechanisms for working out what options should be considered in order to address the widest possible range of concerns and perspectives. Thus, **a referendum should always be seen as part of a wider process of decision-making rather than as a 'quick fix' solution.** In the UK, referendums that were preceded by significant preparation and consideration have proved more likely to settle an issue. The failure to undertake the necessary preparation for a referendum risks significant problems later in the policy process.
22. If a government wishes to hold a referendum, it should demonstrate to the relevant parliament or assembly that it is able to present a viable alternative to the status quo; it should enable civil servants to undertake the preparation necessary to implement a vote for change.
23. **Governments and political parties should avoid making commitments to hold referendums without first undertaking significant preparatory work.** Preparation could be in the form of traditional processes including government consultations, cross-party talks, parliamentary select committee inquiries or the establishment of extra-parliamentary bodies to explore the policy alternatives. Where deeper public involvement would be desirable, deliberative processes such as citizens' assemblies may be appropriate.

The Referendum Question

24. **The Commission believes that the UK's process for assessing referendum questions generally works well.** The impartial analysis of the proposed question by the Electoral Commission

is essential to this. It is right that the Electoral Commission's recommendation should not be binding, as this means the final decision is taken by elected representatives. But it is also right that governments and parliaments normally accept that recommendation.

25. Although they are not appropriate in all circumstances, referendums where voters can choose among multiple options may sometimes be preferable to those which offer a binary choice. Allowing voters to choose between a number of different options can indicate where the broadest possible agreement on change lies and thereby help to promote unity rather than polarisation. **When a referendum is proposed, the possibility of presenting voters with multiple options should be borne in mind.**
26. **The Electoral Commission's remit should be clarified to specify that, if, during the testing of a proposed question, voters express confusion about the omission of a specific option or options, the Commission can recommend to parliament and government that a multi-option referendum be held.** Final decision-making on the number and content of the options to include should remain, however, with elected representatives.
27. The Commission notes that there are a number of models for holding multi-option referendums. If there are only three options, a single referendum using preferential voting may prove most suitable. If there are more than three options, decision-making becomes more complex, and may require other models such as run-off processes. In such cases the Electoral Commission should be fully involved in testing and advising upon the structure of the question process, as most appropriate for the subject matter of the referendum.

Thresholds and Other Safeguards

28. For UK referendums, the default threshold is 50% of total votes cast. It is often argued that this is insufficient to mandate major change, especially if turnout is poor, and that supplementary or varied thresholds should therefore be required. However, a simple majority is considered sufficient for electing MPs and for almost all parliamentary decisions, even those of major constitutional importance. Therefore, the Commission believes it would be inconsistent to require supplementary thresholds for referendums only.
29. The Commission recognises that a significant turnout in a referendum is desirable to ensure that the result has legitimacy. However, **there are a number of problems with the use of turnout and electorate thresholds that mean they are not recommended.** Turnout thresholds can encourage opponents of change to undertake disengagement campaigns, as it is easier to promote abstention than to convince voters to vote against the proposal. This is harmful to democratic culture and debate. Both turnout and electorate thresholds could potentially be compromised by small inaccuracies in the electoral register.
30. The Commission notes that at the last two referendums – the 2014 Scottish independence referendum and the 2016 EU referendum – turnout was higher than at the preceding general elections. An issue that is suitable for a referendum should inspire significant public engagement, rendering turnout thresholds unnecessary. **Parliaments and assemblies should avoid putting issues to a referendum that are unlikely to generate sufficient interest.**
31. Holding referendums on the same day as other elections should not be used as a method of ensuring higher turnout. This practice draws attention away from the referendum issues and inhibits cross-party campaigning on the referendum. The Commission agrees with the Electoral Commission's recommendation that referendums **should not normally be held on the same day as other electoral events**
32. The Commission is sympathetic to the argument that there should be support for major constitutional changes in all parts of the UK. However, the UK is not a federal state and the UK's present constitutional arrangements do not afford the devolved administrations veto powers over decisions on reserved matters. As such, to apply this principle to referendums through **the application of multiple majority thresholds would represent a fundamental shift from the constitutional status quo. It is not the place of the Commission to recommend this.**
33. Supermajority requirements are extremely rare in other mechanisms for political decision making in the UK. To impose them for popular but not parliamentary decisions would challenge legitimacy. **It would therefore be inappropriate to require a supermajority for a referendum.**

34. While it does not recommend the use of special thresholds, the Commission does acknowledge the case for ensuring that the result of a referendum, especially on a decision that would be difficult to reverse, reflects the settled will of a clear majority of voters. The Commission believes this will be best achieved by locating referendums firmly within broader processes of careful policy development and discussion, as set out elsewhere in this report.

The Role of Government in Referendum Campaigns

35. The Commission is concerned that the current restrictions on government during referendum campaigns permit potentially unlimited spending of public money in favour of one side of the debate before the final four weeks of the campaign. To address this problem, the Commission recommends extending section 125 restrictions so that they come into force at the beginning of the regulated referendum period.
36. Prior to the EU referendum, the government argued that the section 125 restrictions, which apply to all publications relating to the referendum topic, were too broad and could hamper the government's ability to conduct day-to-day business. **The Commission recommends that section 125 restrictions be revised so that they apply only to 'campaigning' activity which promotes one side of the debate.** This is the activity which is of concern during referendum campaigns. The Commission notes the Electoral Commission's suggestion that an amended version of schedule 13 of PPERA, which defines a list of regulated activities for which campaigners in a referendum incur expenses, may be a useful way of defining such activities.
37. At present, section 125 restrictions apply to 'any other person or body whose expenses are defrayed wholly or mainly out of public funds or by any local authority.' This has caused concern in some public bodies that have public communication functions. Restricting section 125 to campaigning activities would clarify this somewhat, but some bodies may need a specific exemption to make it clear that certain activity is necessary and/or legitimate during the course of the referendum campaign. **A parliamentary committee should conduct a review of the kinds of public statements by public bodies that may either be necessary, or that could usefully provide information helpful to voters, during the course of referendum**

campaigns. Where general exemptions from section 125 are found to be desirable, these should be made explicit in the standing legislation. Others, relevant to specific referendums, may be appropriate for inclusion in the enabling legislation.

38. The Electoral Commission should be given a clear mandate to seek an injunction for breaches of section 125 to ensure that the restrictions are properly enforced.
39. As is the case during election campaigns, it is important that the civil service should be perceived to act in accordance with the principle of strict neutrality during referendum campaigns. **The Commission supports the recommendations made by PACAC and its predecessor PASC that there should be a new paragraph of the Civil Service Code which clarifies the appropriate role and conduct of civil servants during referendum campaigns.**

Lead Campaigners

40. The Commission considered alternative options for designating lead campaigners, including designating multiple lead campaigners on each side and removing the requirement to designate entirely. It concluded that the current practice of designating one lead campaigner for each outcome in a referendum leads to fewer problems than the alternatives, and should be retained.
41. The Commission recommends that **PPERA be amended so that the Electoral Commission can designate a lead campaigner for one side if no suitable application has been submitted to the other side. In this circumstance, the single lead campaigner should have reduced entitlements to public benefits, as was provided for in the legislation enabling the EU referendum.**
42. If there are multiple credible applications to be lead campaigner for one outcome, but only one for the other outcome, designation too close to the campaign period potentially disadvantages the former. To avoid this, **the Commission recommends that the designation process begin as soon as possible after legislation enabling the referendum is passed and the question is known.**
43. The Commission supports the recommendation made by the Electoral Commission and the Association of Electoral Administrators, on the basis of Ron Gould's 2007 review, that **legislation**

relating to the conduct of a poll be clear at least six months before it is due to be complied with.

The Commission recognises that in some exceptional circumstances this may not be possible.

44. **As lead campaigners receive public money it is important that key individuals associated with them meet certain standards. A 'fit and proper' person test should be required for the board members and the responsible person of groups applying to be lead campaigner.**

Each organisation that applies for designation would have to certify that all its board members are 'fit and proper' according to criteria specified by the Electoral Commission. If the Electoral Commission has reason to believe prior to or during the campaign that a person is not 'fit and proper', it should be required to conduct validity checks. If it is concluded that any member is not a 'fit and proper' person, that person should be removed from the board. If the person is not removed, the organisation should be barred from designation if designation has not yet occurred. If designation has occurred, the Electoral Commission should have the power to withdraw some or all of the public money and public benefits available to the organisation in virtue of designation.

Campaign Finance

45. **The Commission considered alternative ways of distributing spending limits amongst lead and other campaigners and concluded that the current balance should not be altered.**

Lead campaigners play a central role in the referendum debate and therefore it is right that they enjoy higher spending limits than other permitted participants and benefit from public funding. The Commission notes that, if there are more registered campaigners on one side of the argument than the other, current arrangements may permit an imbalance in collective spending. Nonetheless, as long as there are two well-financed lead campaign groups that are well represented in the debate, the Commission does not consider this to be a problem.

46. The Commission supports the Electoral Commission's recommendation that joint spending controls should be clarified by the government and parliament and incorporated into

PPERA. It also agrees that the Electoral Commission should be given statutory Code-making power to clarify any future matters.

47. In order to ascertain the true cost of a referendum campaign, and to ensure that campaign groups do not exceed their spending limits, it is imperative that the costs of goods and services procured prior to the start of the regulated period but used during the regulated period should be included in referendum spending returns. To minimise any uncertainty, **it should be clarified in law that 'referendum expenses' include spending on goods and services purchased prior to the regulated period but used during the regulated period.** This point is of particular importance as it relates to the collection, analysis and use of data, which play an increasingly important role in political campaigning.
48. The increasing usage of personal data in political campaigns means that the regulatory ambitions of the Information Commissioner's Office (in respect of personal data) and the Electoral Commission (in respect of campaign spending) are converging. On the conclusion of the ICO's investigation into data analytics for political purposes, the Electoral Commission and the ICO should consider **how they can work together to ensure the best possible regulation in the future.** This should include an examination of how the financial value of data can be assessed to reflect the true costs of campaigns and a review of the appropriateness of the use in referendum campaigning of data already collected for other purposes.
49. At present, Electoral Commission investigations into the financial conduct of campaigners during referendum campaigns conclude long after the referendum takes place. **In order to improve accountability of campaigners, the time within which large campaign groups must submit their audited accounts should be shortened to three months.**
50. The Commission considered whether donations to registered referendum campaigners should be capped. The general issue of political donations is the subject of longstanding debate, which the Commission is not best placed to resolve. **The Commission does not consider there to be a case for treating donations to referendum campaigners differently from donations to political parties during election campaigns.**

Quality of Discourse

51. The quality of discourse during referendum campaigns matters greatly. Referendums are opportunities for voters to take decisions of great importance into their own hands. It should be possible for voters to find the information that they want from sources that they trust. Mechanisms for promoting high-quality discussion must, however, be designed with great care. **So far as possible, mechanisms should be designed to be 'bottom-up' – giving greater voice and choice to citizens – rather than 'top-down'.**
52. The Commission commends the role of independent fact-checking organisations and broadcasters in challenging the statements and claims made during the course of referendum campaigns. The Commission encourages news providers across all media to consider how they could raise the profile of quality, independent fact-checking and ensure that accuracy is among their highest priorities in all reporting and commentary.
53. While truth is vital, it is also contested. **The Commission does not believe it would be desirable for any official body to make an authoritative and definitive judgement on the objective 'truth' of political claims and statements.**
54. **Publicly funded materials that are intended to fulfil campaign purposes should be clearly labelled as such.** The free referendum address should be required to carry a very visible heading stating, 'This is a communication from the X campaign'.
55. The Electoral Commission's referendum booklet is a service to voters, intended to provide them with information about a forthcoming referendum. **The Electoral Commission should review the content of the booklet so that it best fulfils this purpose,** and in doing so, it should consult widely. It should consider mechanisms for checking the accuracy of claims, as well as other ways of ensuring that the booklet helps voters find the information they want. The Electoral Commission should conduct this review for referendums in general, and should not wait until another referendum is called.
56. The Commission welcomes the work of independent bodies such as universities, research institutes, fact-checkers, broadcasters and neutral democracy organisations in providing impartial information during referendum campaigns. Such bodies and those who can support them should consider what they can do to enrich the information environment for referendums as far as possible.
57. In a number of other democracies, publicly funded independent bodies – such as Ireland's Referendum Commission and New Zealand's Electoral Commission – are specifically tasked with producing and disseminating such information. Whilst this approach may be suitable in some contexts, **the Commission is sceptical that creating a publicly funded information body would be effective at present in the UK:** it is doubtful that anybody would be capable of commanding the necessary levels of public trust and perceived independence.
58. The Commission believes that information provision is best delivered with citizen involvement. A minimal step would be for the Electoral Commission to consider what it could do to publicise further the findings of its research regarding the questions that people want answers to and encourage campaigners and the media to respond to these.
- But it is possible to go further. In Oregon, citizens' assemblies produce statements setting out the issues as members see them, to be included in the official information booklet. Following this model, **the Commission recommends that citizens' assemblies should be piloted during future referendum campaigns, with an assembly held before the regulated referendum period begins.** If the parliament or assembly that calls the referendum agrees to a pilot, this could be sponsored by the Electoral Commission. A pilot citizens' assembly could produce a statement of issues, as in Oregon, and/or set out questions that citizens would like campaigners to answer.

Regulation of Online Campaigning

59. The Commission believes that existing referendum regulation is ineffective in regulating online campaigning. At present, gaps in the regulatory framework mean that there is a lack of openness and transparency of advertising by referendum campaigners on social media.
60. The Commission is concerned about the potentially distorting effects of disinformation in referendum campaigns. It welcomes other inquiries set up to deal specifically with the issue of disinformation, including the Digital, Culture, Media & Sport Committee's inquiry into 'Fake News' and the LSE's Truth, Trust and Technology Commission. It believes that **an effective solution to this problem requires cooperation between the government and technology companies. At the same time, solutions should not oblige or encourage technology companies to make judgements on the boundaries of democratic speech: that is a matter for democratically elected governments and parliaments.** The Commission welcomes existing efforts to this end, including the UK government's Digital Charter.
61. The Commission notes the variation in restrictions on political advertising across different types on media. Taking into consideration the changing nature of political campaigning, it is not convinced that such variation continues to be justified in its current form. **The Commission recommends that a parliamentary committee, or committees working together, should conduct a comprehensive inquiry into the future of political advertising across print, broadcasting and online media.**
62. The Commission welcomes commitments by social media companies to increase the transparency of political advertisements on their platforms. Nevertheless, transparency requires that full information on political advertisements on social media should be available to both citizens and the regulator in an open and accessible format. **The Commission recommends the creation of a publicly available and searchable online repository of political advertisements,** which should include the advertisement itself and information on when it was posted, which groups were targeted, and how much was spent. The Commission urges the

UK government to build on its existing work with the Electoral Commission to establish the best means of operating such a repository.

63. In order to improve the transparency of online campaigning, **the Electoral Commission should do all it can within the existing legislative framework to maximise transparency of spending returns around digital spending. It should also review the spending categories listed in PPERA with a view to advising the minister on changes that would maximise transparency without imposing an undue burden on campaigners. In addition, PPERA should be amended to require more information in spending returns regarding what money has been spent on.**
64. **Imprint laws that apply to printed campaign materials should also be extended to apply to online campaign materials.** This would allow voters to identify the source and legitimacy of political advertisements.

Implementing the Commission's Recommendations

65. The Commission believes that significant changes in the UK's collective political norms and expectations are needed, to ensure that referendums are embedded in decision-making processes that promote careful development and discussion of options, and take place only when they are likely to enhance that decision-making. This will require action from all participants in the democratic process, including governments, legislatures, political parties, campaigners, and commentators.
66. The Commission encourages all those inclined to call for future referendums to be guided by its recommendations and the checklist that it has provided (see Box 15.1)
67. The Commission has made various recommendations that require amendment to the legislative framework for referendums called by the UK parliament. It hence recommends new legislation to amend the Political Parties, Elections and Referendums Act (PPERA) 2000 and bring these changes into effect.

68. The Commission encourages participants in the democratic process in Scotland, Wales and Northern Ireland to consider how its recommendations regarding the standing legislative framework for referendums should best be reflected in their jurisdictions.
69. The Commission calls on all participants in democratic politics in the UK to reflect on what concrete steps can be taken to improve practice around referendums in the UK. Our recommendations include the need for further inquiry into specific issues by bodies such as the Electoral Commission and parliamentary committees. There is also considerable scope for these and other actors to encourage and help pilot new forms of information provision and deliberative engagement in order to enhance the democratic quality of the decision-making process.

The Independent Commission on Referendums is the first comprehensive review of the role and conduct of referendums in the UK since legislation governing referendums was first introduced in 2000. The Commission on Referendums was established in October 2017 by the Constitution Unit, UCL. Its twelve distinguished members were selected to represent a range of political opinions and expertise, with experience of all major UK referendums of recent years.

Over nine months, the Commission has taken evidence, held public seminars in Belfast, Cardiff, Edinburgh and London, and deliberated in depth at monthly meetings. It has been supported by detailed research conducted by the Constitution Unit. Drawing on evidence from past UK referendums as well as referendum practice in other democracies, this report makes detailed recommendations as to how future referendums in the UK could be improved. Its major recommendations stem from three core points:

- First, referendums have an important role to play within the democratic system, but how they interact with other parts of that system is crucial. They must be viewed as co-existing alongside, rather than replacing, representative institutions. They can be useful tools for promoting citizen participation in decision-making, but they are not the only, or necessarily the best, way of doing so.
- Second, referendums should be conducted in a way that is fair and effective. The rules should enable a level playing field between the competing alternatives. Those rules should also empower voters to find the information they want from sources they trust, so that voters feel confident in the decisions they reach.
- Third, the regulation of referendums must keep up with the changing nature of political campaigning, particularly campaigning through social media.

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The Constitution Unit

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