

<b>Committee:</b> Policy and Resources – For Decision	<b>Date:</b> 25 February 2016
<b>Subject:</b> European Union Referendum Act 2015	<b>Public</b>
<b>Report of:</b> The Town Clerk, the City Remembrancer, and the Comptroller and City Solicitor	<b>For Decision</b>
<b>Report author:</b> Michael Johnson, Remembrancer's Office	

### Summary

This report provides an overview of the main provisions of the European Union Referendum Act. The Act provides for an in/out referendum on Britain's membership of the European Union, to be held on 23<sup>rd</sup> June. It also specifies the campaigning rules that will be in place in the lead up to the referendum.

The campaigning rules, overseen by the Electoral Commission, impose spending limits during the 10 weeks leading up to polling day on certain activities, including events, that are likely to influence the outcome of the referendum. Any organisation may spend up to a ceiling of £10,000, but organisations that register with the Electoral Commission as 'permitted participants' may spend up to £700,000.

On the Commission's broad interpretation of the rules, the City's set-piece dinners and other events will be subject to these spending limits if the speakers outline their views in favour of a particular referendum outcome without equal representation for the opposing side. On this basis, it is likely that any set-piece dinners at which members of the Government are likely to outline their views for a 'remain' outcome in the referendum and other events which are likely to attract public attention and do not represent both sides of the argument equally will be subject to the overall £10,000 spending limit if they are held in the 10 weeks preceding the referendum (i.e. from 15<sup>th</sup> April). Events at which both sides of the referendum campaign are equally represented will not be affected, nor will intimate occasions such as private roundtables and dinners. Outside these categories, the Corporation may either limit its expenditure on hospitality and events during this time to £10,000 or register with the Electoral Commission.

A purdah will be imposed during the 28 days immediately preceding the poll (i.e. from 27<sup>th</sup> May) on Ministers, government departments, local authorities and other bodies whose expenses are defrayed wholly or mainly from public funds. Subject to a wide power for the Secretary of State to make exemptions, they will be prohibited from publishing material that addresses any issue raised by the referendum, provides general information about it or encourages voting. The City Corporation will not be subject to the purdah on account of its hybrid nature, with less than half of its expenses met from public money.

## **Recommendations**

- Members are invited to note:
  - a) the requirement for the City Corporation to register with the Electoral Commission as a 'permitted participant' in the referendum on Britain's membership of the EU if more than £10,000 of regulated expenditure is to be incurred in connection with procuring a 'remain' vote; and
  - b) that donations, sponsorship and affiliation fees provided by the City Corporation to organisations that may become participants in the referendum campaign will be published by the Electoral Commission.
- Members are invited to decide whether the City Corporation should apply the 28 day purdah immediately preceding the date of the poll applicable to Ministers, government departments and local authorities.

## **Main Report**

### **Background**

1. In January 2013, David Cameron announced that, if returned to power, the Conservative Party would hold an in/out referendum on the United Kingdom's membership of the European Union. A draft European Union (referendum) Bill was published by the Conservative Party in May 2013. Subsequently, two Private Members' Bills based on this draft were introduced in Parliament but failed to progress in the 2013/14 and 2014/15 sessions.
2. The Conservative Party's manifesto for the 2015 General Election contained a pledge to renegotiate Britain's relationship with the European Union and hold an in/out referendum on the basis of the renegotiated settlement. Following the Conservative Party's success at the polls, the Bill for the present European Union Referendum Act was published on 28<sup>th</sup> May 2015 and received Royal Assent on 17<sup>th</sup> December 2015.
3. Following the agreement on EU reform reached at the February European Council Summit, the Prime Minister announced that the date of the referendum will be 23<sup>rd</sup> June.

### **The Referendum**

4. The Act provides for a referendum on Britain's membership of the European Union. It imposes no thresholds in respect of turnout or the extent of the majority—a simple plurality of votes cast is all that is required for either side to claim victory. Further legislation will be required in the event of a vote to leave the EU to give effect to the decision.
5. The question that will appear on the ballot paper is, "Should the United Kingdom remain a member of the European Union or leave the European Union?" Voters will be presented with the following two options: "Remain a member of the

European Union” and “Leave the European Union”. The Electoral Commission considered this wording to be more neutral than a yes/no question in a report published in September 2015.

6. The referendum will use the same franchise used for UK Parliamentary elections, with the addition of Commonwealth citizens in Gibraltar and Members of the House of Lords registered for local government elections in the UK. Any Peers of Parliament who appear in City ward lists (or the Common Hall Register) are also included.
7. Under the Act, the Government is required to publish a report outlining the outcome of the renegotiation of Britain’s terms of EU membership and the Government’s opinion on the eventual deal. The report, [‘The best of both worlds: the United Kingdom’s special status in a reformed European Union’](#), published on 22<sup>nd</sup> February, confirms the Government’s recommendation that the UK should remain a member of a reformed EU.
8. Another report, about the rights and obligations arising from EU membership, including examples of arrangements that non-member countries have with the EU, must also be published by the Government under the Act at least 10 weeks before the date of the poll.

## **Campaigning Rules**

9. The regulatory framework for referendums held in the UK is set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). The 2015 Act stipulates how the framework contained in PPERA is to be applied to the referendum on EU membership. Broadly speaking, the campaigning rules consist of spending limits on certain activities that are conducted with a view to influencing the outcome of the referendum, restrictions on the types of organisations that are permitted to donate to and sponsor participants in the referendum campaign, and reporting requirements in respect of donations and spending. The campaign will be regulated by the Electoral Commission.

### *Spending Limits and Reporting*

10. A formal campaigning period known as the ‘referendum period’ must be imposed immediately prior to the date of the poll, during which time there will be limits on the amount of money that organisations may spend on campaigning activity. Regulations have been laid but are subject to approval by both Houses of Parliament by the affirmative resolution procedure. They set the referendum period to run for 10 weeks beginning on 15<sup>th</sup> April and ending on 23<sup>rd</sup> June.
11. Spending that is regulated during the formal referendum period includes spending on campaign broadcasts, advertising, published material, polling, market research, press conferences and media activity and public events for purposes in connection with promoting or procuring a particular outcome in relation to the question asked in the referendum. The media (newspapers and broadcasters) is excluded.

12. Any organisation can incur £10,000 of regulated spending during the referendum period. Any body wishing to incur more than £10,000 of regulated spending must register with the Electoral Commission as a 'permitted participant'. Permitted participants that are not political parties may then spend up to £700,000. They must, however, submit a report of spending to the Electoral Commission after the referendum, including any invoices over £200. The report will be made public on the Electoral Commission's website.
13. The Electoral Commission may also appoint a 'lead campaign group' for each side in the referendum. Lead campaign groups have a higher spending limit of £7 million, and are entitled to certain other benefits in addition to those granted to permitted participants. Britain Stronger in Europe is expected to be the designated campaign group for the remain side, while a number of groups are vying to secure the designation for the leave side.

#### *Donations and Sponsorship*

14. Permitted participants must report to the Electoral Commission any donations and sponsorship they receive as from 1st February 2016 greater than £7,500 in value. Permitted participants must reject donations and sponsorship of greater value than £500 if they are from donors not on the UK electoral register, non-UK companies, blind trusts or unknown sources.

#### *Purdah*

15. The Act imposes a purdah period during the 28 days immediately preceding the date of the poll (i.e. from 27<sup>th</sup> May) on Ministers, government departments, local authorities and other bodies whose expenses are defrayed wholly or mainly from public funds. During this period, publishing material that addresses any issue raised by the referendum or provides general information about or encourages voting in the referendum is not allowed. Ministers may by regulations exempt certain publications from the purdah.

#### **Implications**

16. The City Corporation will be subject to the campaign rules outlined above. Officers have had numerous discussions with Electoral Commission officials to clarify how the rules will be applied. The assessment of how the rules will affect the City Corporation below is based on these discussions.

#### *Spending Limits and Reporting*

17. On the interpretation being applied by the Commission, spending on any set-piece dinners and other events will be included if the speakers take a line in support of the UK's continued membership of the EU on the basis that such interventions constitute events in connection with a campaign conducted with a view to promoting or procuring a 'remain' outcome. The Commission considers that expenditure on events which are not of a public nature (private dinners and such like) are not to be counted, and nor are events at which speakers of equal prominence are given a platform to advocate for a 'remain' and a 'leave' vote.
18. On this basis, hospitality and other events put on by the Corporation in the 10 weeks before the referendum at which the 'remain' option is advocated will count

towards the spending total unless they are private or the 'leave' case is given the same prominence.

#### *Donations and Sponsorship*

19. The City Corporation currently offers sponsorship to a range of events, initiatives and organisations through the Policy Initiatives Fund. It also pays affiliation fees to a number of think tanks and trade bodies. From 1st February 2016, funding or sponsorship above £7,500 in value paid to a think tank or trade body that is registered, or subsequently registers, with the Electoral Commission as a permitted participant in the referendum campaign must be reported to the Electoral Commission if it is used by the recipient to campaign for a particular referendum outcome. The responsibility to record and report such funding will reside with the recipient. The Corporation will be listed as a donor on the Electoral Commission's website.

#### *Purdah*

20. The City Corporation will be subject to the 28 day purdah period in its capacity as a local authority. During this period, the City Corporation, in its local authority capacity, may not publish material that addresses any issue raised by the referendum, or provides general information about or encourages voting in the referendum. The purdah is also applied to any body whose expenses are defrayed wholly or mainly from public funds. The Corporation is not such a body, so activities funded from City's Cash, which include most activities likely to be relevant to the EU referendum, will not be subject to this restriction. It is for consideration whether or not the restriction applicable to local authorities (and also to Ministers and government departments) should be observed voluntarily.

#### **Conclusion**

21. Registering as a 'permitted participant' with the Electoral Commission will enable the City Corporation to incur spending of up to £700,000 on advertising, published material, polling, market research, media activity and public events for purposes in connection with promoting or procuring a referendum outcome in favour of EU membership. These purposes will be broadly interpreted by the Electoral Commission.
22. As a consequence of registration the City Corporation will need to declare a preferred referendum outcome to the Commission.
23. If the City Corporation does not register as a permitted participant in the referendum campaign, it will be limited to spending no more than £10,000 on regulated activities during the 10 weeks prior to the referendum. As interpreted by the Commission, this will include any set-piece events at which Ministers are likely to outline their views in support of a 'remain' result in the referendum, but not 'balanced' or private events (see below).
24. The constraints outlined above will not apply before the formal 'referendum period', to begin on 15<sup>th</sup> April. As noted in the preceding paragraph, private events and those where the 'remain' and 'leave' options are given equal prominence will not be affected. However, larger events that attract significant

public exposure are likely to be affected if speakers are partial to a particular referendum outcome.

25. From 1<sup>st</sup> February 2016, if the City Corporation provides any sponsorship, donations or affiliation fees above the value of £7,500 to a think tank or trade body that is registered, or subsequently registers, to campaign in the referendum, the recipient will be required to declare it if the funds are used to advocate for a particular outcome at the referendum. Details of the funding will be published on the Electoral Commission's website.
26. The City Corporation will be subject to a 28 day purdah period immediately prior to the referendum in the exercise of its local authority functions. The restrictions do not apply to activity funded through City's Cash.

### **Appendices**

None

### **Background Papers**

[Referendum of UK's membership of the European Union](#) – Report by the Director of Economic Development to the Policy and Resources Committee, 23 June 2015

[Letter from the Electoral Commission to the CBI, 27 August 2014](#)

### **Michael Johnson**

Remembrancer's Office

T: 020 7332 1202

E: [Michael.Johnson@cityoflondon.gov.uk](mailto:Michael.Johnson@cityoflondon.gov.uk)