

Electoral System Referendum

Referendum expenses: Guidance for campaign groups

April 2018

This guidance note is primarily for campaign groups who want to know about the rules relating to referendum expenses at the referendum on Guernsey's electoral system.

It aims to provide an overview of the principles of referendum spending and the rules the campaign groups need to comply with.

Referendum campaign spending is regulated under '[The Electoral System Referendum \(Guernsey\) Law, 2018](#)'¹ ("the Referendum Law"). Campaign groups are strongly advised to read sections 12 to 22 of the Referendum Law which relate to 'Financial controls on expenditure'. If the group is unsure as to its obligations under the Law, it may benefit from getting legal advice. If a group does not comply with legal or regulatory requirements its members may be subject to civil and/or criminal sanctions.

This guidance note does not constitute legal advice. Its contents are believed to be accurate, but for the avoidance of doubt, in any case of disparity between this guidance note and the relevant statutory provisions, the relevant statutory provisions will prevail.

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Other formats and further information

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¹ The legislation is available on the States of Guernsey website: www.gov.gg/article/163043/The-Electoral-System-Referendum-Guernsey-Law-2018 . It was presented to the States' Meeting on 7th February, 2018.

1. Introduction

The States of Deliberation agreed that campaign groups should be permitted as set out in the States' Assembly & Constitution Committee's policy letter entitled '[Referendum on Guernsey's voting system](#)'².

The policy letter stated that it was important that no individual or group should be able unduly to influence the outcome of the referendum by spending a disproportionate amount of money promoting their preferred option. It was agreed this objective could best be met by the appointment of official campaign groups to promote each of the options A to E by imposing restrictions (not dissimilar to those imposed at General Elections) on how much could be spent and by whom in the promotion of any of the options.

The Referendum Law provides the legal framework for the financial assistance for campaign groups and the financial controls on expenditure. It is important that all members of campaign groups have read and understood the relevant provisions.

Please also see the guidance note 'Applying to be a campaign group' for information on how campaign groups apply and are appointed. This is available to download at www.gov.gg/referendum or on request from the Lead Referendum Officer (contact details on page 1).

2. Financial assistance for campaign groups

Section 12 of the Referendum Law provides that a campaign group appointed under the Referendum Law is entitled to a grant from the States of up to £5,000. The grant provided by the States must be applied solely for the purpose of enabling the campaign group to publicise and represent the option to which its application relates.

The Committee will pay the grant in instalments, on receipt of an invoice, to either a campaign official or a person nominated in writing by a campaign official of the group. Further information is provided under section 3, 'Managing and recording referendum expenses'.

IMPORTANT

The total referendum expenses incurred by or on behalf of any appointed campaign group during the referendum period must not exceed £10,000 (in money or money's worth)³. For the avoidance of doubt, this amount includes the grant from the States.

The 'referendum period' starts on the date the Referendum Law comes into force and ends on the date of the referendum.

² <https://gov.gg/article/160142/Referendum-on-Guernseys-Voting-System>

³ Section 18 of the Referendum Law

3. What are referendum expenses?

Referendum expenses are expenses incurred by or on behalf of any individual or body during the referendum period:

- (i) in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to any question asked in the referendum; or
- (ii) otherwise in connection with promoting or procuring any such outcome; and

includes expenses incurred for any purpose described in Schedule 4 of the Referendum Law (listed below under “*What activities count towards referendum expenses?*”).

It includes expenditure on:

- items, services or facilities used during the referendum period including those bought before the period begins; and
- items, services or facilities used during the referendum period but paid for after it; and
- items, services or facilities given free of charge or at a non-commercial discount (see section (c) ‘*Definition of money’s worth*’).

(a) What activities count towards referendum expenses?

Spending on the following activities will be referendum expenses if they are expenses incurred in connection with the conduct or management of any campaign with a view to promoting or procuring a particular outcome in the referendum. Schedule 4 of the Referendum Law sets out examples of what constitute referendum expenses:

1. Advertising of any nature (whatever the medium used⁴) including agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.
2. Unsolicited material addressed to qualifying individuals⁵ (whether addressed to them by name or intended for delivery to households within any particular area or areas) including design costs and other costs in connection with preparing, producing or distributing such material (including the cost of postage).
3. Market research or canvassing conducted for the purpose of ascertaining voting intentions.

⁴ This includes (but is not limited to): advertising in newspapers, magazines and other printed publications; posters and leaflets; websites; and social media platforms such as Facebook, Twitter, etc.

⁵ A ‘qualifying individual’ means a person who is entitled to vote in the referendum (see section 2 of the ‘Referendum Law’)

4. The provision of any services or facilities in connection with press conferences or other dealings with the media.
5. Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with a referendum campaign including the costs of hiring a particular means of transport for the whole or part of the period during which the campaign is being conducted.
6. Rallies and other events, including public meetings⁶ organised so as to obtain publicity in connection with a referendum campaign or for other purposes connected with a referendum campaign including costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.

It is important for the group to include all the costs associated with each of the above activities (unless the costs do not count as spending – please see the next section “*What spending does not count as a referendum expense?*”). If, for example, a group produces a poster or leaflet to promote its option, it must include the costs of design, production and distribution. The group also needs to include administrative costs associated with the activities undertaken.

Splitting spending between referendum expenses and other costs

A group might need to split its costs between items which count as a referendum expense and those that don't. It may also need to split costs between items used before the referendum period began and those used during it.

Groups are expected to make an honest assessment of the proportion of expenditure that could be fairly attributed to its expenditure on campaigning.

The Electoral Commission has produced a detailed guidance paper ‘[Splitting Spending](#)’ which provides useful information on this subject and is available for download from its website: www.electoralcommission.org.uk.

(b) What spending does not count as a referendum expense?

- Time spent by volunteers (*see below*)
- Travel and food costs of people while they campaign, unless the campaign group reimburses them or pays for them directly.
- Expenses (except adverts) in respect of publication in a newspaper, magazine and certain broadcasts (*see below*).

⁶ Costs incurred by the States of Guernsey for any public events it may organise to promote the referendum, e.g. ‘husting-type’ meetings, do not count as referendum expenses.

(i) Volunteer time

Time spent on the campaign by a volunteer does not count as a referendum expense. However, any expenditure on resources provided to volunteers to carry out the campaign does count as a referendum expense.

If a volunteer provides a service similar to the service they offer professionally (e.g. PR or marketing advice) this is not counted as a referendum expense if the time they spend on the campaign is not paid for by their employer and they are providing their expertise on a wholly voluntary basis.

(ii) Expenses (except adverts) in respect of publication in a newspaper, magazine and certain broadcasts

Examples of the above would include television or radio interviews with representatives of campaign groups, or if a media outlet was to produce a supplement covering each of the options at no cost to the campaign groups. For the avoidance of doubt, the group does not need to include the value of airtime.

(iii) Documents available to download

A group might publish downloadable posters or documents on a website that individuals could print and display. The group needs to factor in any costs associated with producing the documents but does not need to factor in people's print costs against their spending limit, unless people are printing the posters for the group.

Individuals printing out posters or reproducing promotional material need to be conscious of section 17 of the Referendum Law⁷, the 'General restriction on referendum expenses'. If an individual, group or body other than an appointed campaign group spends more than £100 on a referendum expense (e.g. printing downloadable campaign documents), they are committing an offence.

(c) Definition of 'money's worth'

A group might receive items or services free or at a discounted rate from a person or an organisation, who may be supporters of a campaign for a certain option. The Electoral Commission defines 'notional spending' as *'the difference in value between the commercial rate for an item or service and the price you pay'* and the Committee has used this definition as guidance to define 'money's worth'.

Apart from volunteer time as set out in section (b)(i) above, if a campaign group uses any goods, items or facilities or receives any services that are given to it for free, or at a non-commercial discount, as part of its campaign, the normal/market cost will count as a referendum expense and must be included on its return as to referendum expenses. A campaign group must find out the full market value of the item or service and report that

⁷ www.gov.gg/article/163043/The-Electoral-System-Referendum-Guernsey-Law-2018

charge as part of the return. The campaign group must obtain an invoice for, or statement of, the full cost of the item or service to submit as part of their return.

The normal commercial costs will be the amount counted for the purposes of calculating the campaign group's overall expenditure.

(d) Special restrictions on referendum expenses by campaign groups

Section 18 of the Referendum Law places a maximum limit on how much a campaign group may spend on campaigning. An appointed campaign group is entitled to a grant funded from the States of up to £5,000.

The total referendum expenses incurred by or on behalf of any appointed campaign group during the referendum period must not exceed £10,000 (in money or money's worth). For the avoidance of doubt, this £10,000 includes the grant of up to £5,000 from the States.

The referendum period will commence in early June 2018 – on the day the Referendum Law comes into force - and end on 10th October (the date of the referendum).

If any referendum expenses are incurred in excess of the £10,000 limit, a campaign official of the group is guilty of an offence if they authorised the expense to be incurred and the members of the campaign group body also commit an offence.

Please note, any reference to referendum expenses incurred by or on behalf of a campaign group during the referendum period includes any referendum expenses incurred by the members of the group, or any member of the group, at any time before they became a campaign group appointed under the Referendum Law.

IMPORTANT

Please note that the costs of any relevant material prepared or commissioned prior to the referendum period will be deemed to be a referendum expense if those materials are used during the referendum period.

Such materials might include the costs associated with the design of a website or preparing, producing and distributing advertising or promotional material, etc.

The appointed campaign group would need to declare these costs in its return. Any costs incurred by an individual, group or body will be subject to the general restriction on referendum expenses (see section 7 below and section 17 of the Referendum Law for further details).

4. Managing and recording referendum expenses

The campaign group must record all of its referendum spending as it will need to report its referendum expenses after the referendum.

Each campaign group must have at least 2 qualifying individuals who agree to act as ‘campaign officials’ for the campaign group, one of whom is required to be nominated to act as the groups “nominated official”⁸. The nominated official has specific responsibilities which relate to the returns as to referendum expenses⁹ and the delivery of returns to the States’ Assembly & Constitution Committee¹⁰.

Authorising expenditure

All referendum expenditure incurred by or on behalf of an appointed campaign group **must** be authorised by a campaign official of that campaign group or a person authorised in writing by such a campaign official. A person who, without reasonable excuse, incurs any expenses in contravention of the above commits an offence¹¹.

No payment (of whatever nature) may be made in respect of any referendum expenses incurred or to be incurred by or on behalf of a campaign group unless it is made by a campaign official, or a person authorised in writing by a campaign official. Any payment must be supported by an invoice or a receipt.

If a person is authorised to make a payment by a campaign official, that person must notify the campaign official as soon as possible that such a payment has been made and provide them with the supporting invoice or receipt. A person who, without reasonable excuse, makes a payment in contravention of Section 14(1) or (3) of the Referendum Law, commits an offence.

A claim for payment in respect of referendum expenses incurred by or on behalf of a campaign group during the referendum period shall not be payable unless the claim is sent to a campaign official (or a person authorised in writing by a campaign official) not later than 30 days after the end of the referendum period. Such a claim shall be paid no later than 60 days after the end of the referendum period.

Section 15 and 16 of the Referendum Law sets out the rules relating to making claims for payments and disputed claims.

5. Reporting referendum expenses

Where any referendum expenses are incurred by or on behalf of a campaign group during the referendum period, when that period ends, the nominated official of the campaign group shall make a return under section 19 of the Referendum Law in respect of the referendum expenses incurred.

The return must be made on the form provided by the Committee for this purpose and must include copies of all invoices for the expenses incurred and a statement detailing the source and amount of any donations or grants from third parties.

⁸ Section 8(2)

⁹ Section 19(1)

¹⁰ Sections 20(1) and (2)

¹¹ Section 13

The return **must** contain:

- (a) A statement of all payments made in respect of referendum expenses incurred by or on behalf of the campaign group during the referendum period; and
- (b) A statement of all disputed claims (as set out in Section 16 of the Referendum Law)
- (c) A statement of all the unpaid claims (if any) of which the campaign official is aware in respect of which an application has been made, or is about to be made.

The return **must** be accompanied by all invoices and receipts relating to the payments. A campaign official must sign the declaration on the form of return and confirm that they have examined the return and that it is, to the best of his or her knowledge and belief, a complete and correct return as required by law and that all expenses have been paid for in accordance with the Referendum Law.

The nominated official **must** submit the return within six months of the end of the referendum period (i.e. by 10th April 2019).

6. Public inspection of returns

As soon as reasonably practicable after receiving the return, the Committee will make a copy of the return and of the documents accompanying it available for public inspection. The returns will be destroyed after two years unless the campaign official requests it be returned.

7. General restriction on referendum expenses

Section 17 of the Referendum Law imposes a general restriction on referendum expenses which applies to any person(s)/groups aside from the authorised campaign groups

This section restricts individuals, groups and organisations from spending in excess of £100 (in money or in money's worth) on campaigning for an option. If an individual, group or body other than an appointed campaign group spends more than £100 on referendum expenses, they are committing an offence.