

Scotland's constitutional future

Responses to the consultation



Scotland's constitutional future

Presented to Parliament
by the Secretary of State for Scotland
by Command of Her Majesty

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FOREWORD

The UK Government is committed to keeping the United Kingdom together. We firmly believe that we are stronger together and weaker apart. We do not believe that independence is in the interests of Scotland, or the rest of the UK. But we do believe that if there is to be a referendum on Scotland's constitutional future it must be legal, fair and decisive. The consultation launched in January explained how this could be achieved, and this report sets out a summary of the responses we received to the consultation and what action we will take as a consequence.

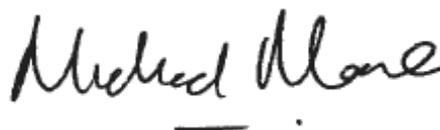
I would like to thank the nearly 3,000 individuals and organisations who took the time to respond to our consultation. This consultation was not about Scotland's place in the United Kingdom. That is a debate that we must come to quickly. But before we do, it is critical that we make sure that the issue of Scotland's future is decided in a way that people on all sides of the debate can agree is fair and legitimate. This is vital to ensure that the referendum result is accepted and decisive. The consultation was about the mechanics of ensuring a fair referendum rather than the implications of the result. But it is clear from the number and quality of the responses, that people across Scotland and other parts of the United Kingdom recognise that these issues of process are very important.

At the heart of our consultation was the question of legality. The consultation set out our clear view that the Scottish Parliament does not have the legal authority to hold an independence referendum and our firm intention to put that issue beyond doubt. The consultation sought views on how legislation could provide for a referendum that is fair and decisive.

People responding to the consultation gave very strong support for the UK Government's proposal that a legislative order should be used to give the Scottish Parliament the power to deliver a referendum. I am pleased that since the publication of our consultation, the Scottish Government has also agreed with this approach.

The consultation responses gave resounding endorsement to the proposal that there should be a referendum with a single, clear question on independence; and that the question should be reviewed by the independent Electoral Commission who have the expertise to assess the question for intelligibility and neutrality. Respondents also showed very strong support for holding the referendum sooner rather than later to help end the uncertainty that businesses in Scotland in particular feel is damaging. There was also a clear endorsement for the proposal that those people entitled to vote in Scottish Parliament elections should be the people who can vote in the referendum.

We will now seek to arrange further discussions with the Scottish Government to agree the terms of an order to be approved by both Parliaments to deliver a legal, fair and decisive referendum in line with the results of our consultation. It is vital that the terms of the referendum are agreed quickly so that we can all get on with the main debate about Scotland's place in the United Kingdom.



Rt. Hon Michael Moore MP
Secretary of State for Scotland

1. BACKGROUND

The consultation paper *Scotland's constitutional future* was published on 10 January 2012. The paper sought views on how to deliver a legal, fair and decisive referendum on whether Scotland should leave the United Kingdom.

The paper set out the UK Government's view that legislation for a referendum on independence relates to the reserved matter of the Union of the Kingdoms and is therefore outside the legislative competence of the Scottish Parliament. The paper asked for views on how to ensure that there is a clear legal basis for a referendum. In particular, it described how a legislative order could be used to provide this clear legal basis. Under section 30 of the Scotland Act 1998, the power to legislate for a referendum can be devolved by way of an order that is subject to the approval of the UK and Scottish Parliaments (a "section 30 Order"). The consultation paper included a draft section 30 Order and sought views on this.

The UK Government also believes that any referendum must be demonstrably fair and must be decisive. As a consequence, the consultation paper also asked for views on:

- oversight arrangements for a referendum;
- entitlement to vote;
- the timing of a referendum; and
- the question or questions to be asked.

The consultation ran from 10 January until 9 March 2012. During this period the UK Government organised and participated in a number of events to explain our legal view and to share our thoughts on how a legal, fair and decisive referendum can be delivered. We were very pleased to receive 2,857 written responses to the consultation. Responses were received either by post or by email. We did not include any responses that could not be individually identified and where multiple responses were received from the same person, we only considered the first response.

This report summarises the responses we recorded. We have included extracts from a number of the responses to illustrate the range of views received. This report also sets out the UK Government's own response to the consultation and explains how we plan to proceed in light of the findings of the consultation.

A list of organisations who responded to the consultation can be found at **Annex A**.

The consultation paper and this report are available on our website: www.scotlandoffice.gov.uk
Hard copies of this report are available on request from the address below. Copies in various other formats, including large print, Braille, and audio may be made available on request.

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2. SUMMARY OF RESPONSES

The consultation *Scotland's constitutional future* explained the UK Government's belief that a referendum on whether Scotland should become independent must be legal, fair and decisive. The consultation included options for achieving each of those requirements and the different ways in which legislation for a referendum could be delivered. A summary of the responses we received to the questions we asked is set out below.

A LEGAL REFERENDUM

The UK Government's consultation set out our clear view that legislating for a referendum on independence is outside of the Scottish Parliament's legislative competence.

We reached this view after giving careful consideration to the legal position in the Scotland Act 1998. Section 29 of the 1998 Act states that a provision is outside the legislative competence of the Scottish Parliament if it relates to reserved matters. This is determined by reference to the purpose and effect of the provision. As the consultation paper set out, it is clear from previous Scottish Government consultation papers and public statements that both the Scottish Government's purpose and effect is to further its aim of securing independence for Scotland.

Many legal experts and academics share the UK Government's assessment of the legal position and have set out their views during the consultation period:

A referendum is not a disinterested exercise in opinion gathering. It is embarked upon for a purpose – in this case to mobilise Scottish opinion in support of independence... Faced with a referendum that asked 'Do you agree that Scotland should become an independent country?' it is my opinion therefore that a court would hold that it was about the reserved matter of the Union and hence that it was beyond the Scottish Parliament's legislative competence. - **Alan Page**, Professor of Public Law, University of Dundee

I fully agree with the legal analysis as to the competence of the Scottish Parliament offered by the Government in Scotland's Constitutional Future and by the Advocate General for Scotland in his public lecture delivered at the University of Glasgow on 20 January 2012. I note that the same view has been expressed by numerous other leading commentators, including Lord Pannick QC (Times, 19 January 2012), Iain Jamieson (Scotsman, 23 January 2012), Professor Alan Page and Aidan O'Neill QC (oral evidence to the House of Commons Scottish Affairs Committee, 27 February 2012). - **Professor Adam Tomkins**, John Millar Professor of Public Law in the University of Glasgow

Some alternative views were expressed about the Scottish Parliament's legal power to legislate for a referendum on independence. However, even those who did not share the UK Government's view on legislative competence, were clear that doubts about the question of legality needed to be properly addressed. Many respondents supported the UK Government's commitment to ensuring that the referendum is held lawfully and highlighted their view that all

necessary steps should be taken to avoid resolving the issue of legislative competence in the courts:

Whether it [the Scottish Parliament] has the legal competence to [legislate for a referendum] has been a matter of some debate, and there are a variety of views...We share the view of many that it would be undesirable for the issue of the Scottish Parliament's right to hold a referendum to be contested in the courts. - **joint submission from academics at the University of Edinburgh**¹

Given our view that the legality of a referendum Bill is not clear cut, we think that there is considerable merit in seeking to put the matter beyond doubt...leaving the matter to be resolved by the courts creates a risk to their authority by embroiling them in divisive political controversy - **Professor Tom Mullan & Dr Aileen McHarg**, Glasgow University, School of Law

Everything should be done to avoid the result being subject to legal challenge - **Scottish Council for Development and Industry**

For the avoidance of doubt and to ensure there is no question of legal action around the referendum bill we would favour the power to legislate for such a referendum being devolved to the Scottish Parliament. The referendum should be decided by the voters of Scotland, not lawyers. - **Scottish Council for Voluntary Organisations (SCVO)**

In the consultation paper, the UK Government set out its view that any Bill introduced in the Scottish Parliament would be outside the powers of the Scottish Parliament and, if challenged, would be struck down by the courts. The UK Government made clear its view that the best remedy to avoid the risk of litigation was to ensure that the Scottish Parliament is given the powers to deliver a referendum in Scotland. Many respondents to the consultation highlighted their view that to avoid the matter ending up in court both Governments should work together:

All parties should be committed to avoiding circumstances in which that dispute is decided by the Supreme Court. - **University and College Union Scotland**

We favour a legally watertight process. We would therefore urge the two governments (UK and Scottish) to work together in reaching an agreed legal basis for the referendum to avoid any future challenge as to its validity. - **Scottish Financial Enterprise**

Options for legislation

Having set out our clear view on the Scottish Parliament's lack of legislative competence to legislate for a referendum on independence, the UK Government set out the two main ways in which a legal referendum could be delivered:

- legislate to give the Scottish Parliament the power to deliver a referendum on Scottish independence; or
- legislate directly in the UK Parliament for a referendum on Scottish independence.

¹ Dr Ailsa Henderson, Dr Eve Hepburn, Professor Charlie Jeffery, Dr Nicola McEwen, Dr Wilfried Swenden

The UK Government recognises that questions about the legislative competence of the Scottish Parliament and which law-making route should be used, are quite technical and legal issues, which are not necessarily easily accessible. We were pleased to note therefore that **1,419** respondents gave views on this part of the consultation, despite its technical nature. Of those who responded to this section, **72%** wanted the Scottish Parliament to be given the power to legislate for a referendum.

In the consultation paper the UK Government set out its view that the power at section 30 in the Scotland Act 1998, which allows the legislative competence of the Scottish Parliament to be modified, presents a good way to deliver a legal referendum on independence. A section 30 Order must be agreed between the two Governments and approved by both Houses of the UK Parliament and the Scottish Parliament. The consultation paper contained a draft order for comment. This draft made clear that the section 30 Order could set out the parameters for a referendum, for instance it could ensure that the referendum is subject to normal referendum rules set out in the Political Parties, Elections and Referendums Act 2000.

Of those who support the proposal to give the Scottish Parliament the power to legislate for a referendum, **63%** stated that they supported the use of a section 30 Order. This support did not just come from legal and academic responses to the consultation but ranged across a wide cross-section of respondents including members of the public, business and groups representing civic Scotland:

The Society is of the view that the making of such an Order should remove doubt as to the question of legislative competence and for that reason it may be desirable that an Order be made. - **The Law Society of Scotland**

We are strongly of the view that the UK and Scottish Governments should make every effort to arrive at an agreement as to the terms of a section 30 Order. - **The Royal Society of Edinburgh**

We welcome the UK government's proposal to allow the Scottish Parliament to legislate for a legal referendum. There is currently a great deal of comment on the legal situation regarding the referendum and giving the Scottish Parliament the necessary powers will provide much needed clarity and ensure the referendum is decided by the voters and not lawyers. - **Reform Scotland**

it would seem reasonable that a Section 30 order applied via the 1998 Scotland Act, ...should be used as the basis for a discussion and agreement by both the UK and Scottish Governments as the legislative method by which power could be granted for a referendum on Scotland's constitutional future to be run legally by the Scottish Government. - **Church and Society Council of the Church of Scotland**

It is vital in a democracy that the rule of law is observed – and that the referendum is not open to legal challenge. I would support the use of a section 30 order to provide for the Scottish Parliament to legislate for a legal referendum - **letter from a member of the public**

The Scotland Bill

The UK Government's consultation sought views on whether the Scotland Bill should be used to deliver a referendum and ensured that the length of the consultation period allowed time to amend the Bill if it were judged to be the best course of action.

The Scotland Bill will deliver the largest transfer of fiscal powers out of the UK Parliament since the Act of Union, providing the Scottish Government and Parliament with increased financial accountability and responsibility. Our consultation paper highlighted that the Bill had already been through its detailed consideration in the House of Commons and been subject of consideration by two Scotland Bill Committees. Since publishing the consultation document the Bill has completed House of Lords Report stage and agreement has been reached between the two Governments on the Bill.

As a result of the agreement between the Governments and the changes made to the Bill at Lords Report stage, both the Scottish Government and Scotland Bill Committee have recommended that the Scottish Parliament gives its consent to the Scotland Bill in a legislative consent vote. The vote is expected to take place after Easter Recess and before Third Reading of the Bill in the House of Lords.

A very small number of respondents supported the use of the Scotland Bill to provide the power to the Scottish Parliament to legislate for a referendum. During House of Lords consideration of the Bill following the close of the consultation, the UK Government set out its view that the Bill is not the appropriate route by which to address the issue of legality. The UK Government shares the view put forward during the consultation by Professor Adam Tomkins:

Other things being equal, it would be better for the Scotland Bill not to be used either to confer legislative competence on the Scottish Parliament to legislate for an independence referendum or to deliver a referendum directly...I agree strongly with the view expressed by the Government at page 19 of Scotland's Constitutional Future that the future of devolution and independence are "two entirely separate constitutional issues". The Scotland Bill is concerned with the former and not with the latter. It would not be in the public interest for the two to become confused with one another. - **Professor Adam Tomkins**

The Secretary of State for Scotland has already sought and held a first meeting with the First Minister on the proposal to agree a section 30 Order to provide the Scottish Parliament with the power to legislate for a referendum. As a result of the consultation responses received, the UK Government will continue to pursue the successful delivery of a section 30 Order to ensure the delivery of a legal, fair and decisive referendum on Scotland's constitutional future.

A FAIR REFERENDUM

The consultation paper set out the UK Government's firm view that any referendum taking place within the United Kingdom must be fair and the consultation discussed how to ensure that a referendum on independence is provided for, organised, regulated and conducted in a fair way.

Oversight arrangements

This section of the consultation considered the oversight arrangements for an independence referendum. **2,301** responses were received to this section of the consultation. In general, responses to the consultation demonstrate overwhelming support for the oversight arrangements for the referendum to be closely aligned to and consistent with existing arrangements for referendums in the United Kingdom. Responses to this part of the consultation break down into three main categories:

- those expressing a general view on the oversight arrangements for a referendum;
- those expressing a view on the role of the Electoral Commission in overseeing a referendum; and
- those expressing a particular view on the role of the Electoral Commission in reviewing the referendum question.

Some respondents provided views on all three issues.

Oversight framework

In the consultation paper we set out the arrangements put in place by the Political Parties, Elections and Referendums Act 2000 (PPERA) which enshrines in law a broad framework of rules to regulate for consistency and fairness any referendum held as a result of an Act of the UK Parliament. Some respondents made specific reference to PERA in their submissions to the consultation, agreeing with the UK Government that it would be a sensible framework to apply to a referendum on independence in Scotland:

Oversight by the Electoral Commission reporting to the Scottish Parliament and an umbrella set of rules to be contained within the Referendum Bill similar to those provided for by the Political Parties, Elections and Referendums Act 2000 would seem to be both fair and sensible. - **Professor Stephen Tierney** of The University of Edinburgh

A referendum on Scotland leaving the UK would require independent oversight and monitoring to the same standards as any statutory UK electoral event, either an election or national UK referendum. The Political Parties, Elections and Referendums Act 2000 (PPERA) provides a model for the oversight of a referendum through the appointment of a Chief Counting Officer (CCO) and any referendum in Scotland would need to be administered to standards at least as rigorous as those prescribed by that Act. - **Electoral Management Board**

PPERA was introduced to provide a generic set of rules in which referendums could be conducted thus limiting as much as possible the ability for governments to design rules that would favour their desired outcome. It is important that a version of these rules are used, probably updated using the experience of the Alternative Vote and the Welsh referendums in 2011 and applying pro rata and inflation adjusted spending limits. - **Electoral Reform Society Scotland**

The role of the Electoral Commission

86% of respondents to this section of the consultation paper agreed with the UK Government that the Electoral Commission should have a role in overseeing an independence referendum. As the UK Government set out in its consultation paper, the Electoral Commission was established under PPERA as an independent statutory body. The overwhelming majority of respondents recognised the importance of having an independent, experienced and politically impartial body overseeing the referendum. This was a view shared by business groups, academics, members of the public and representatives of civic groups in Scotland:

[It is] absolutely essential that the Commission, rather than some improvised ad hoc body, shall take its normal role in the proposed referendum. - **British Armed Forces Federation**

CWU believes that the Electoral Commission is the correct and proper organisation to oversee the Referendum. - **The Communication Workers Union**

We...believe that the Electoral Commission, which is an independent, trusted, experienced and respected body, should have clear authority over the oversight of the referendum. - **CBI Scotland**

[oversight] should be carried out by the Electoral Commission who have the experience and the credibility to carry out this task - **email from a member of the public**

I am in favour of the Electoral Commission overseeing the referendum as this will ensure an unbiased approach - **letter from a member of the public**

In previous consultation papers the Scottish Government had proposed the creation of a separate 'Scottish Referendum Commission'. Only **1%** of people directly supported this view, with a further **4%** believing that the choice of oversight body should be left to the Scottish Government. In the consultation, the UK Government set out its view that it was unnecessary to create a new commission when the Electoral Commission is an independent and impartial body with the necessary expertise and knowledge. Since the publication of the UK Government's consultation paper the Scottish Government has now indicated that it shares the view that the Electoral Commission should have a role in overseeing the referendum, a point that was welcomed in some responses:

The Scottish and the UK Governments appear to be in agreement that the referendum should be conducted under the supervision of the Electoral Commission although there remain to be agreed matters of detail. This would seem to be the appropriate approach to this particular matter. - **Professor Tom Mullan and Dr Aileen McHarg** of Glasgow University, School of Law.

Assessing the question

The majority of those responding to this section of the consultation focussed in particular on the issue of who should assess the question. Amongst those who offered comment on this issue there was strong support for the Electoral Commission having responsibility for assessing the question:

In my view, the Commission's role must include advice on intelligibility, in order to provide assurance of the fairness of the process and ensure that the question is 'clear'. This is in the interests of all involved – that of both governments, and most importantly of voters. - **Alan Trench** of University College London

The Electoral Commission should have the right to determine the wording and appropriateness of the referendum question. - **The British Academy**

The Electoral Commission should be responsible for overseeing a referendum. It should also consider and report on how appropriate the proposed question is and recommend any necessary adjustments to ensure that the question is fair and neutral. - **email from a member of the public**

The Electoral Commission should run the referendum. They should undertake cognitive research, independently commissioned and fully published, to explore the issues surrounding the conduct of the referendum, and the question wording to be employed. Politicians should not assume that their understanding of phrases is the same as the public, and it is important to pitch this to include a wide range of people. - **email from a member of the public**

The oversight of an independence referendum must be undertaken by the Electoral Commission. It should assess and report on the suitability of the proposed question and make recommendations for such adjustments as necessary to make sure it is fair and neutral. - **letter from a member of the public**

The House of Lords Constitution Committee published a report on a referendum on Scottish independence during the UK Government's consultation period. In their Report, the Committee stated their support for the role of the Electoral Commission in assessing the question to be put to the electorate:

We regard the role of the Electoral Commission in reviewing the wording of referendum questions as an important constitutional check on executive power, one that clearly facilitates proper parliamentary scrutiny." - **House of Lords Constitution Committee**

In the consultation paper the UK Government highlighted the role that the Electoral Commission has played since its creation in overseeing three referendums:

- a referendum on the establishment of a Regional Assembly (North East England only);
- a referendum on increasing the powers of the Welsh Assembly (Wales only); and
- a referendum on the voting system for the House of Commons (UK-wide).

In each case the Electoral Commission had a statutory role to play in reviewing and reporting on the intelligibility and neutrality of the question included in each referendum. In their single submission to the UK Government and Scottish Government consultations, the Electoral Commission made clear they would welcome the opportunity to scrutinise the question in a referendum on Scotland's constitutional future:

The Electoral Commission has knowledge, expertise and recent experience of assessing the intelligibility of referendum questions and giving advice to parliaments and assemblies, and we would welcome the opportunity to undertake this role for the proposed Scottish referendum. -
The Electoral Commission

The existing PPERA framework does not provide the Electoral Commission with a statutory role to review and report on a question to be put in a referendum held under an Act of the Scottish Parliament. This statutory role for the Electoral Commission in relation to the question only exists for a referendum held under an Act of the UK Parliament. The UK Government made clear in its consultation paper that it believed the Electoral Commission should oversee any referendum on Scottish independence and we included provision in the draft section 30 Order to achieve this.

In its submission, the Electoral Commission sets out its view on the form and timing of an assessment of a proposed referendum question:

There needs to be sufficient time allowed for an assessment process that includes, as a minimum:

- carrying out qualitative research with voters
- taking advice from accessibility and plain language specialists
- asking prospective campaigners, politicians and other interested people for their views on the wording, in the context of our guidelines

...If the referendum is legislated for by the [Scottish Parliament], any statutory provision for the Commission to give its views on the intelligibility of the proposed question should also allow us to begin our assessment of the question before it is presented to Parliament, so that the Commission's report is available to inform Parliamentary scrutiny of the proposed question once the Bill has been introduced to Parliament. - **The Electoral Commission**

Entitlement to vote

The consultation paper set out the options available for determining who should be eligible to vote in the referendum. Entitlement to vote in elections to the United Kingdom varies slightly for different elections. The principal difference is that in UK Parliamentary elections, British, Irish and qualifying Commonwealth citizens resident in the UK can vote, along with British citizens who have been resident overseas for less than 15 years, but EU citizens resident in the UK cannot vote. In local government and Scottish Parliamentary elections, as well as elections to the devolved assemblies in Wales and Northern Ireland, British citizens resident overseas cannot vote, but EU citizens resident in the relevant part of the UK can. A summary of the views we received about entitlement to vote is set out below.

1,429 respondents expressed a view on the franchise to be used in an independence referendum. In the consultation paper the UK Government set out its view that the franchise used for the Scottish Parliament elections was best used for a referendum, as this is the same franchise that was used to elect the current Scottish Parliament and also the franchise used in 1997 in the referendum that created the devolution settlement in Scotland. **71%** of respondents expressed the view that those resident in Scotland should be entitled to vote in a referendum. This shows a clear majority in support of the UK Government's preference that the devolved legislature and local government franchise would be most suitable:

Entitlement to vote should be based as closely as practicable on residency - **Donald Shell** (former senior lecturer in politics at Bristol University)

We agree that the franchise should be as for Scottish Parliament elections i.e. limited to those who are resident in Scotland. - **UNISON Scotland**

To make a one off arrangement for one referendum and in one area of the UK would suggest that interested bodies can select the franchise they want – a dangerous precedent - **email from a member of the public**

The franchise that elected the Scottish Parliament and that was used in 1997 for the referendum that established the Scottish Parliament seems to be the most appropriate. - **The British Academy**

Some respondents stated a view that the UK Parliamentary franchise should be used. Reasons cited for this preference included concerns over non-UK citizens being entitled to vote in a referendum about Scotland's constitutional future and in a minority of cases the belief that those born in Scotland, or with a close connection to Scotland, but now living either overseas or in other parts of the United Kingdom should be entitled to vote:

I believe that it is very important that the Scots who are currently non-resident, but who were born and brought-up in Scotland and hope, one day, to return to Scotland to live and work, should have a vote in a referendum on Scottish Independence. - **email from a member of the public**

A small number of respondents (**4%**) stated their view that a referendum should be held across the United Kingdom:

Independence for any country in the United Kingdom should only be considered when all parts of the union are in agreement. It is not just for the people of Scotland - or Wales - or England to decide on their own - **email from a member of the public**

Extending the franchise to 16 and 17 year olds

The UK Government's consultation did not specifically seek views on whether the franchise for an independence referendum should be extended to 16 and 17 year olds but just under a third of people responding to the consultation expressed their views on this matter.

The Scottish Government have proposed extending eligibility to vote to 16 and 17 year olds. This would be an extension of existing franchise arrangements where those eligible to vote must be aged 18 or over on the day of an election or referendum.

Responses to the consultation were mixed with **44%** of those providing a view stating the franchise should be extended to 16 and 17 year olds:

it is vital for young people to be given a say on the major decisions which will shape their future as citizens of this country and the independence referendum represents an important opportunity to extend the voting franchise to those aged 16 and 17. - **National Union of Students (Scotland)**

There is merit in allowing 16 and 17 year olds to vote as it is their future which is being decided - **email from a member of the public**

However, more respondents (**47%**) were against extending the franchise; the majority of these stated their view that it was not appropriate to make changes to the franchise for this particular referendum. In addition, some noted that 16 and 17 year olds were unable to vote in the May 2011 Scottish Parliament elections which elected the current Scottish Government with the manifesto pledge to hold a referendum on independence. The views expressed below represent the views of many who stated that the franchise should not be extended:

While not unsympathetic to calls to extend the franchise to 16 and 17 year olds, we believe that this is an issue which is best separated from the referendum under discussion. - **joint submission from academics at the University of Edinburgh**

There should be no rule change to the current model for voting. It is inconceivable that the waters are muddied by inclusion of others who are not currently allowed to vote. This may well be a valid debate at some time in the future, but it is a separate issue which is politically motivated in a forlorn hope of affecting this particular vote. - **email from a member of the public**

The UK Government shares the view that questions about extending the franchise should be considered separately from a particular election or referendum, or any other referendum. The consultation set out our view that in addition to the need to ensure that the franchise used in the

referendum is administratively straightforward to deliver, it was also important to avoid the perception that changes were being made to favour one or other outcome.

The Electoral Commission did not offer a view on whether 16 or 17 year olds should be entitled to vote in the referendum but they did comment on the practical implications of the Scottish Government's proposals:

the Scottish Government should set out more clearly its intention regarding 16- and 17-year olds being able to vote at the referendum...

[we have] identified some apparent discrepancies between the Scottish Government's stated intention of extending the franchise to those aged 16 and 17, and what is currently permissible within UK electoral legislation. - **The Electoral Commission**

A DECISIVE REFERENDUM

The consultation paper set out the UK Government's view that the referendum must be decisive and that to be decisive, the referendum must have a single, straightforward question; and that question must be asked as soon as possible. The consultation paper asked for views on the timing of the referendum and on what question or questions should be asked in the referendum.

Timing

The UK Government firmly believes that the question of Scotland's constitutional status should be resolved sooner rather than later. We are clear that the continuing uncertainty about Scotland's future is damaging to Scotland and that whilst both the process and referendum remain unresolved this uncertainty will grow.

This section of the consultation paper attracted a very high response rate with **2,408** respondents. Responses to this part of the consultation break down into two main categories:

- those expressing a view on when the referendum should be held; and
- those expressing a view about the impact of a delayed referendum.

When should the referendum be held?

70% of respondents agreed with the UK Government that the referendum should take place sooner rather than later, including a large number of businesses based in Scotland:

As a reasonably large employer in Scotland, I feel that the referendum should take place as soon as possible. - **A Boyd Tunnock of Tunnock's**

In a survey of our members, only 22% favoured Autumn 2014 and 72% expressed a preference for an earlier date. Those who commented emphasised the uncertainty and harm to investment that they believe a delay would bring - **Scottish Engineering**

Our sector is a global sector, in its ownership, in its supply chain, its customers, its employees and it is difficult to see how the current environment adds to stability nor how it provides any certainty, consequently companies have a clear preference for the referendum being held as soon as is practical. - **ADS Scotland** (trade organisation advancing the UK Aerospace, Defence, Security and Space industries)

I am not clear as to why the referendum needs to be delayed until 2014. The terms of the debate are already clear and I am not sure what is expected to change in the next two years. - **email from a member of the public**

There is no doubt that the on-going debate about devolution and independence is having a destabilising effect on future planning and the uncertainty is affecting decisions about investment into Scottish projects. As a result, the MSA would support the holding of a definitive referendum as soon as possible. - **Motorsports Association**

The impact of a delayed referendum

Some respondents chose to focus their comments on the uncertainty caused by a long delay before a referendum is held rather than comment on the particular merits of a specific date. Most of those who chose to respond in these terms highlighted the impact that a later referendum will have on future investment decisions for companies in Scotland:

...the additional uncertainty represents increased risk, of which SSE will have no alternative but to take account in making final investment decisions on those projects while that additional uncertainty remains - **SSE** (energy supplier)

We would...urge that any referendum should take place as soon as reasonably practicable, to facilitate the taking of long-term planning decisions on an informed basis. - **Scottish Financial Enterprise**

It is not reasonable to put all government in Scotland on hold for 2.5 years while we face constitutional uncertainty. - **Chris Campbell, Managing Director, Campbell's Prime Meats**

Other responses highlighted that the referendum debate was distracting attention from the important business of ensuring Scotland's economic recovery:

The sooner the better...the colossal diversion of political activity into hugely time consuming consideration of independence, instead of a full time focus on delivering continuous improvement to all aspects of society, and its organisations has to be a big cost. - **Maitland Mackie of Mackie's of Scotland**

The proposal by the SNP to delay till the latter part of 2014 is I believe damaging to our economy and is restricting the type of political activity that we should be pursuing. My desire would be to tackle problems of unemployment, difficulties with health service, schools and hospitals - **email from a member of the public**

In pressing for an earlier referendum many responses acknowledged that there was a need for facts and analysis about the choices for Scotland's constitutional future, but the overwhelming majority felt that this information could and should be provided to allow for an early referendum. CBI Scotland summed up this view in their response to this part of the consultation:

...on balance, we believe that the referendum can and should be held sooner than currently planned [by the Scottish Government]. - **CBI Scotland**

As to the timing I think it should happen as quickly as the necessary legislation can be put in place - a prolonged period of uncertainty is damaging to business confidence and there is the danger of voter fatigue. Clearly there needs to be time for informed debate once the exact questions are formulated - but the suggested October 2014 seems to stretch matters out unhelpfully - **email from a member of the public**

22% of respondents were of the view that the timing of a referendum is a matter for the Scottish Government, including Professor Stephen Tierney of the University of Edinburgh who said:

The timing of the referendum is a matter for the Scottish Parliament to determine in passing a Referendum Bill - **Professor Stephen Tierney**

The majority of respondents who favoured the Scottish Government setting the timing of the referendum also favoured the date currently proposed by the Scottish Government for a referendum in autumn or late 2014:

The people of Scotland, civic organisations and democratic membership organisations such as trade unions require sufficient time to consider the implications...and to ensure that their members and the electorate are equipped to make an informed choice. The Autumn of 2014...would appear to provide sufficient timing in order to meet the above. - **Public and Commercial Services Union**

The timing of the referendum should be decided by the Scottish Parliament. Autumn 2014 would be a good time, as it gives plenty of time for the debate to take place. - **email from a member of the public**

Other respondents – with a mix of views on when the referendum should be held - highlighted their view that the important issue was to agree and settle the date and other important issues such as the question and the oversight arrangements quickly to allow clarity on the process:

What is important is that the timescale for a referendum be made clear as soon as possible - **Alan Trench** of University College London

We believe that the electorate require clarity, as soon as possible on the date and questions to be asked in the referendum, so that the debate can move from process to discussion of the issues. - **Aberdeen and Grampian Chamber of Commerce**

The Electoral Commission did not express a view on the date, stating that this was a matter for Governments and Parliaments to agree. However, the Electoral Commission did highlight some practical considerations:

Any consideration of an autumn poll should take into account the (relatively short) number of daylight hours at that time of year and assess how, and to what extent this may affect participation by voters and campaigners. - **Electoral Commission**

Their submission also drew attention to the fact that:

2014 is currently proposed to be a time of significant change in terms of electoral registration, with the proposed implementation of individual electoral registration from July 2014. This could lead to potential confusion for electors as well as posing practical challenges for Electoral Registration Officers in Scotland to ensure that the registers used both for voting and campaigning at the referendum are accurate and complete. - **Electoral Commission**

Referendum question

The UK Government's consultation set out the proposal put forward by the Scottish Government in its 2010 draft Referendum Bill to ask two questions about Scotland's constitutional future: the first on further powers and a second question about independence. We set out our view in our consultation paper that there should be a single, straightforward question on the issue at stake: whether Scotland leaves the UK or stays within it. We asked for views on the question or questions to be asked in a referendum. A summary of the views we received is set out below.

2,524 people responded to this section of the consultation, making it the most answered question in the consultation. The majority of respondents concentrated on whether the ballot paper should contain only one question on independence or also address the devolution of further powers.

75% of respondents agreed with the UK Government that there should be a single question on Scotland's constitutional status. Most people who expressed this view indicated that they felt a single question would ensure a more decisive outcome focussed on the most important issue about whether or not Scotland should remain within the United Kingdom:

The question which is asked should be a single clear one requiring a simple yes/ no answer allowing any decision by the people to be clearly communicated to the Governments. - **Allied Vehicles**

There should be a single straightforward question. Not only would it be confusing to the electors to have two questions but it is not clear how the answers would be analysed, how conclusions would be drawn. - **email from a member of the public**

There should be one simple question as to whether or not Scotland separates from the UK. This is better to avoid ambiguity and to provide clarity. - **email from a member of the public**

Professor Adam Tomkins voiced concerns about the decisiveness of the result if more than one question were included, stating that to include a question on further devolution would be:

a recipe only for voter confusion, for highly ambiguous results, and for widespread incomprehension - the very opposites of the features and values that successful referendums must possess - **Professor Adam Tomkins**

Dr Matt Qvortrup of Cranfield University, whilst not giving a firm view on whether only one question should be included, stated:

There are solid democratic reasons to be sceptical of multi-option referendums...of the more than 200 referendums that have been held on ethnic and national issues only four referendums on independence have used multi-option referendums. - **Dr Matt Qvortrup**

12% of respondents to our consultation were of the view that the referendum should include a second question on further powers. Professor Michael Keating of the University of Aberdeen commented:

There is a substantial body of opinion in Scotland favourable to some form of 'devolution max'. This option is no more nor less coherent and well-developed than that of independence. - **Professor Michael Keating**

However, others felt that it would not be sensible to include a second question, for as long as the proposal for further devolution was undefined, with the Royal Society of Edinburgh commenting:

In our view it is not possible to determine at this stage whether or not it would be appropriate to include an additional question. Before that, the proponents of such a question would need to define, and explain to the electorate, the nature, extent and implications of the further devolution which they envisage. - **Royal Society of Edinburgh**

In the consultation paper, the UK Government set out its view that independence and further devolution are different issues and should be considered separately. This was also a view shared in a number of responses from academics, businesses and members of the public:

A second question could produce an unclear and inconclusive result. In the period since the Scottish Parliament and Scottish Executive/Government assumed their devolved powers in 1999, the devolution settlement has been amended on a number of occasions via both primary and secondary legislation... However, for as long as Scotland remains within the Union, these adjustments can only take place if the rest of the UK (RUK) is prepared to agree to the relationship between Scotland and RUK changing in that regard. Further changes to the devolution settlement therefore can only come about through agreement between the Scottish Government and the UK Government and with the support of both the Scottish Parliament and the UK Parliament. - **CBI Scotland**

Independence is in the end something Scottish voters can decide for themselves. Remaining within the UK but on different terms requires the agreement of the rest of the UK...[a second question could be] at the most a device to put political pressure on the UK to agree to changes: it could not be an authoritative determination of the question. - **Professor Jim Gallagher**

We agree with the UK and Scottish Governments' preference for a single question on independence...alternative arrangements, such as greater fiscal powers, should be determined through engagement and debate between interested stakeholders outside the referendum process. - **Weir Group, engineering group**

Better to keep the referendum distinct from changes to the scheme of devolution. - **email from a member of the public**

4. THE GOVERNMENT'S RESPONSE

In January this year, the UK Government set out its clear understanding that the Scottish Parliament does not have the legal authority to hold an independence referendum. The consultation explored ways of facilitating a referendum in Scotland that is legal, fair and decisive. The document made clear our preference of working with the Scottish Government to agree a section 30 Order that would empower the Scottish Parliament to run a legal, fair and decisive referendum. But we were clear that we wanted to hear from people across Scotland whether they agreed with this approach.

The UK Government is grateful for the number and the quality of responses we have received. The decision on Scotland's future is the most important political decision that people in Scotland will take in their lifetime and we are encouraged by the informed views that we have heard.

Analysis of the consultation shows that on the key issue of ensuring a legal referendum, there is very strong support for the UK Government's proposal that a section 30 Order should be used to give the Scottish Parliament the power to deliver a referendum. The UK Government is pleased that this fundamental point has been widely accepted and we will now seek discussions with the Scottish Government to agree an order that can be approved by both Parliaments.

People responding to the consultation also gave resounding endorsement to the proposal that there should be a single question on independence. This is for reasons both of principle and practice. On principle, independence and further devolution are separate issues: the first is designed to take Scotland out of the UK, and the second is designed to strengthen Scotland's place within it: the two should not therefore be framed as a continuum, with a first and second choice on the ballot paper. The Scottish Government was elected with a manifesto pledge for an independence referendum and that is what should take place. We recognise that there will continue to be debate about what further powers and accountability might be devolved to Scotland. But this is a separate issue and should not be confused with the independence debate. In practice, there is no agreement on what a further extension of devolution would entail, and therefore nothing around which to frame a second question. The consultation has endorsed the view that the referendum should focus on the single issue of whether Scotland should leave the United Kingdom.

Another clear message that emerged from the consultation was that the referendum should happen sooner rather than later. A number of significant businesses raised concerns that the longer the referendum is delayed, the more uncertainty is created, which puts jobs and growth at risk. The UK Government believes that there is no good reason to delay the referendum beyond autumn 2013. In addition, agreeing a section 30 Order quickly, will help to provide clarity for businesses and individuals on when the referendum will be held and how it will be run. We will be calling on the Scottish Government to agree the order very quickly, to remove the uncertainty.

The consultation also asked about the oversight arrangements for the referendum. The UK Government believes that it is critical that the referendum should be run in a way that is demonstrably fair, to ensure that there is public confidence in the outcome. We welcome the consultation responses on this issue, including the valuable contributions from the Electoral Commission and the Electoral Management Board. There was very strong support for the UK Government's proposal that the Electoral Commission should have a role in the referendum and

in particular a full statutory role in reviewing the referendum question. The UK Government is keen to agree with the Scottish Government the right arrangements for ensuring a fair referendum.

On the issue of who should vote in the referendum, the UK Government proposed that the same people entitled to vote in the Scottish Parliament elections should vote in the referendum. This too is an issue of principle. To ensure trust in the system, an established franchise should be used, rather than open it up to ad hoc changes that may be seen to benefit one side or the other. The Scottish Parliament franchise is well suited to that task. Most people responding to the consultation supported this. Many people raised the issue of 16 and 17 year olds being able to vote. Views on this were mixed, with a small majority against extending the vote to this age group for the referendum. Given that we believe that an established franchise should be used, the divided views and the range of opinions on this issue, the UK Government continues to believe that the debate about extending the vote to 16 and 17 year olds should be conducted separately and that any decision should be taken for all elections and not for one single vote.

ANNEX A – LIST OF RESPONDENTS

The respondents to the consultation included members of the public, academics, business people, members of the Scottish Parliament, members of the House of Commons and the House of Lords, councillors and the organisations listed below:

Aberdeen and Grampian Chamber of Commerce
ADS Scotland
Allied Vehicles
Association of Electoral Administrators
British Academy
British Armed Forces Federation
British Trout Association
CBI Scotland
The Chartered Institution of Taxation
Church and Society Council of the Church of Scotland
Communication and Workers Union
De Borda Institute
Electoral Commission
Electoral Management Board for Scotland
Electoral Reform Society Scotland
Electoral Registration Committee of the Scottish Assessors' Association
Enders Analysis
English Democrats
English Lobby
Falkirk Council Scottish National Party Group
Glasgow Chamber of Commerce
The Law Society of Scotland
London Scottish Conservative Club
National Union of Students (Scotland)
Motor Sports Association
One Dynamic Nation
The Open Episcopal Church in Scotland
Public & Commercial Services Union
Reform Scotland

Royal Society of Edinburgh
Scottish Chambers of Commerce
Scottish Council for Development and Industry
Scottish Council for Voluntary Organisations
Scottish Democratic Alliance
Scottish Engineering
Scottish Financial Enterprise
Scottish Human Rights Commission
Scottish Labour
Scottish Liberal Democrats
Scottish National Party
Scottish National Party European Parliament Group
Scottish National Party Scottish Parliamentary Group
Scottish National Party Westminster Group
Scottish Trade Union Congress
The Scotch Whisky Association
Scottish Youth Parliament
Society of Radiographers
SSE
ThinkTank Maths
TOTAL E&P UK (TEPUK)
UNISON Scotland
Universities Scotland
University & College Union Scotland
The Weir Group
Western Isles Constituency Labour Party



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