



House of Commons
Scottish Affairs Committee

The Referendum on Separation for Scotland: a multi- option question?

Third Report of Session 2012–13



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Report, together with formal minutes

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The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/scotaffcom. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Eliot Wilson (Clerk), Duma Langton (Inquiry Manager), Hannah Lamb (Senior Committee Assistant) and Ravi Abhayaratne (Committee Support Assistant).

Contacts

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Summary

Widening the number of options to be put in front of the voters in a referendum may at first sight be an attractive proposition: but it suffers from a number of fatal defects. Leaving aside the charges of political opportunism which can quite fairly be laid against the Scottish Government in pursuing this option, the evidence we heard shows very clearly the challenges and defects of the notion.

The Scottish Government does not have a mandate to hold a referendum on greater devolution. What it promised was a referendum on separation, and we agree they should be enabled to hold that. It is for those political parties and organisations which genuinely support devolution to make proposals for developing it, and propose how put those plans before the electorate.

It is perfectly clear that there are, at present, no developed plans for further devolution. In particular, the idea of “devolution max” is no more than a phrase in search of content. No plans exist, and none are in prospect which could properly be put forward to the voters in any referendum.

A referendum is a way in which the voters make a decision, or a choice. It is entirely appropriate to deal with the question of separation. But changing the devolution settlement is a different kind of choice. A referendum could only deal with the question of more powers if there were a proposal, and if the voters could be assured that, were they to support it, it would be put into effect. That means such a proposal has to be developed and broadly agreed in advance in the UK and the Scottish governments and then. No such proposal exists, and none is being developed.

There are very serious unanswered questions about how a three-option referendum would work. There are a number of potential ways in which the results could be calculated and aggregated, and it is deeply disturbing to discover that the choice of voting and counting mechanism could well determine the outcome. That is not acceptable. The outcome should be determined by the choices of voters – it should be clear to them what the consequences of their decision will be. It is probably for this reason that multi-option referendums are very uncommon internationally, on national issues of this sort. International experience strongly suggests that they are inappropriate because they do not lead to effective decisions. That would be true for Scotland.

1 Introduction

1. This is the fourth Report in our series of reports about the referendum on separation for Scotland. It follows on from our Report on the legal competence of the Scottish Parliament to hold a referendum on separation, and how that gap should be repaired.¹ It deals with the question of how many options can be offered to the voters in a referendum on separation. We are issuing this Report now because it has been widely suggested that the Scottish Government, despite its support for separation, favours a referendum with an additional option of more devolution.

2. The Scottish Government's manifesto for the 2011 Scottish Parliament elections contained a commitment to a referendum on separation. In the consultation paper "Scotland's Constitutional Future", the UK Government said:

The Scottish National Party entered the May 2011 election with a manifesto pledge for a referendum on independence. They have campaigned consistently for independence, and while the UK Government does not believe this is in the interests of Scotland, or the rest of the United Kingdom, we will not stand in the way of a referendum on independence: the future of Scotland's place within the United Kingdom is for people in Scotland to vote on.²

3. The devolved Scottish Government cannot claim a monopoly of political legitimacy in addressing Scotland's constitutional future. All of the parties who gained seats in Scotland the 2010 General Election in Scotland, apart from the Scottish National Party, campaigned on the basis of more powers for the Scottish Parliament. The manifestos of the Labour, Liberal Democrat and Conservative Parties all committed to taking forward the recommendations of the Calman Commission on Scottish devolution. Those parties gained an overwhelming share of the vote, and indeed in the seats at Westminster representing Scotland. It is, of course, Parliament at Westminster which has the legal authority to increase the powers of the Scottish Parliament, and the election results of 2010 gave a clear mandate to pursue further devolution to Scotland. These increased powers have now been put into effect in the Scotland Act 2012, which the Secretary of State for Scotland described as the biggest fiscal transfer of powers within the United Kingdom since the Union of 1707.

4. The UK Government's consultation paper was concerned principally with the legal uncertainty about the powers of the Scottish Parliament to hold such a referendum. We addressed this issue in our Report, *The Referendum on Separation for Scotland: Making the process legal*³, and we fully agree with the UK Government's analysis that the Scottish Parliament does not have the power legally to hold a referendum on separation, or indeed

1 Scottish Affairs Committee, Second Report of Session 2012-13, *The Referendum on Separation for Scotland: making the process legal*, HC 542; see also Sixth Report of Session 2010-12, *The Referendum on Separation for Scotland: Unanswered questions*, HC 1806, and Eighth Report of Session 2010-12, *The Referendum on Separation for Scotland: Do you agree this is a biased question?*, HC 1492

2 Scotland Office, *Scotland's Constitutional Future: A consultation on facilitating a legal, fair and decisive referendum on whether Scotland should leave the United Kingdom*, Cm 8203, January 2012, p. 5

3 Scottish Affairs Committee, Second Report of Session 2012-13, *The Referendum on Separation for Scotland: making the process legal*, HC 542

