

**Working Group on
Unification Referendums
on the Island of Ireland**

INTERIM REPORT
Executive Summary

November 2020

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THE WORKING GROUP (CHAPTER 1)

1. The Working Group is examining how any future referendums on whether Northern Ireland should stay in the United Kingdom or become part of a united Ireland would best be designed and conducted. Our approach is focused on technical and procedural questions. As a group, we take no view on whether holding such referendums would be desirable or not, or what the outcome should be if referendums were to be held.
2. The Working Group comprises 12 experts based at universities in Northern Ireland, the Republic of Ireland, Great Britain, and the United States. It is based at the Constitution Unit at University College London, which has a long history of research into referendums, and which has no direct stake in the question of Northern Ireland's future. We have examined the issues in depth over the past year and have gathered evidence from numerous sources. We have received 24 written submissions, spoken with 63 individuals through interviews and witness sessions, and received 1377 responses to our public consultation.
3. Our starting point is the Belfast/Good Friday Agreement 1998. The Agreement states:

it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.
4. The 1998 Agreement sets out the principle of a unification referendum, but only some of the mechanics. That is why we embarked on this exercise: to think through the procedures underpinning potential referendums well in advance. We do not believe referendums to be imminent. The evidence is that a majority in Northern Ireland would currently support maintaining the Union, not unification with Ireland, though some recent surveys indicate a shift towards greater support for unification, particularly since the 2016 referendum on the UK's withdrawal from the EU.
5. **Three key principles** have underpinned our approach:
 - The Agreement provides the framework for decision-making on Northern Ireland's constitutional future. It offers the possibility of a binary choice: for Northern Ireland to remain part of the United Kingdom or become part of a united Ireland.
 - Processes of decision-making on this issue must be neutral, treating unification and the status quo equally and respectfully.

- Progress is best made in Northern Ireland when those belonging to both traditions and to none are included. That should be maintained so far as possible in any process of decision-making on the unification question. But the basic question of sovereignty is decided by simple majority.

POLITICAL AND HISTORICAL CONTEXT (CHAPTER 2)

6. There has been a previous referendum, or ‘border poll’, in 1973, asking people in Northern Ireland if they wanted to remain part of the UK, or to be joined with the Republic of Ireland. The nationalist community boycotted the vote. As a result, on a turnout of 58% of the electorate, 99% voted to remain part of the UK. The poll did not succeed in taking the border out of politics or bringing greater stability.
7. The 1998 Agreement subsequently re-affirmed the ‘constitutional guarantee’: that Northern Ireland would not cease to be part of the UK without the consent of a majority of the people of Northern Ireland voting in a referendum. It set out the legal framework in which such a vote would take place.
8. The 1998 Agreement also established the institutions through which Northern Ireland is now governed. Politics in these islands has seen considerable flux in recent years, not least because of the UK’s decision to leave the European Union. The Withdrawal Agreement and the Protocol on Ireland/Northern Ireland will have profound effects in the years to come. There are also wider constitutional tensions in the UK, particularly in Scotland.

LEGAL CONTEXT (CHAPTER 4)

9. The 1998 Agreement provides that unification cannot happen without consent both north and south. Consent in Northern Ireland can be given only through a referendum. The form of consent in the South is not specified, but our conclusion is that a referendum would be needed. That is principally because constitutional amendment or replacement would be required to allow a united Ireland to respect the continuing obligations in the 1998 Agreement on identity, citizenship, and rigorous impartiality.
10. In Northern Ireland, the Secretary of State has *discretion* to hold a unification referendum at any point. The Secretary of State *must* hold a referendum if ‘at any time it appears likely to him [or her] that a majority of those voting would express a wish’ for a united Ireland. Our conclusion is that the Irish government would be *required* under Irish constitutional law to hold a unification referendum in the South if a referendum in the North was passed.
11. The approval threshold for the unification referendum in the North is ‘a majority of the people of Northern Ireland voting in a poll’. It would breach the Agreement to require a higher threshold than 50% + 1. In the South, approval of constitutional referendums likewise requires a simple majority.

12. One referendum vote in favour of unification in each jurisdiction would provide the full mandate for unification to take place. If referendums approved the principle of unification before the details of a united Ireland had been worked out, it would not be permissible under the 1998 Agreement to make unification conditional on subsequent approval of those details: unification would be required to proceed.
13. The referendums north and south could be held simultaneously; or the referendum in the North could precede that in the South. But ‘concurrence’ means that the referendum in the South could not be on terms unknown at the time of that in the North. If the Irish government wished to propose the terms of a united Ireland before a referendum in the South, it would have to do so before any referendum in the North.
14. Legislation would be required at Westminster and in the Oireachtas to give effect to referendum votes in favour of unification. This legislation would fix the date of unification, and the transfer of sovereignty from London to Dublin. This need not be immediate: an implementation period could allow final preparations to be made. But delays for reasons unrelated to the implementation of the unification votes would not be permitted. We interpret the Agreement to mean that transfer of sovereignty must be direct.
15. If the Oireachtas legislated for unification while Westminster did not, Northern Ireland would become disputed territory: under Irish law, it would become part of Ireland; in British law, it would remain part of the United Kingdom. It would be highly desirable to avoid this eventuality.

CRITERIA FOR EVALUATING REFERENDUM PROCESSES (CHAPTER 5)

16. Beyond the basic principles underpinning our work, we identify five key criteria for evaluating potential referendum processes:
 - procedural legitimacy
 - stability
 - simplicity
 - informed choice
 - inclusivity.
17. All these criteria point towards the importance of *advance planning*: of the referendum processes; and about the shape of a united Ireland, or a continued Union.

PROCESSES OF DECISION-MAKING (CHAPTER 6)

18. Decision-making would need to involve processes for determining the following:

- whether and when referendums north and south would be called
 - the design of those referendums and the processes preceding and following them
 - the timing and terms on which sovereignty would transfer if that were the option chosen by voters
 - the form that a united Ireland would take
 - any changes to the Union if the vote was for the status quo.
19. Coordination and planning of the referendums and the processes surrounding them would be essential, particularly between the British and Irish governments. Lack of preparation ahead of the 2016 referendum on the UK's EU membership was clearly detrimental to the referendum process, and subsequent developments. Such planning would need to cover such matters as: when referendums would take place relative to each other and to other steps in the decision-making process; the conduct rules for the referendums; what matters would be discussed or negotiated by whom, at what stages, in what fora; what the process and timetable would be for implementing the results; and what would happen in the event of divergent outcomes between North and South.
 20. Coordinated planning should be organised through existing machinery such as the British–Irish Intergovernmental Conference (BIIGC), or through a new bilateral structure. As in the past, if thought helpful, there could be an external chair to oversee the process. A plan for the referendum process would need to be agreed before any referendum was called.
 21. The terms of the transfer of sovereignty, if that was what voters chose, and of future British–Irish relations would be for negotiation between the UK and Irish governments. The constitutional form of a united Ireland would be for the Irish government to propose: the UK could have no veto. But the UK could be seen as a guarantor of the interests of British citizens in Northern Ireland, reflecting the role currently played by the Irish government, working through the same Strand Three institutions, the BIIGC and British–Irish Council.
 22. Discussions should also involve politicians from Northern Ireland, and engage with civil society and the general public. Citizens' assemblies could help to identify the considered views of voters on important elements of the process and the choice on offer at any referendum.
 23. Reforms to the status quo could be proposed by unionists, similar to those proposed ahead of the independence referendum in Scotland in 2014. If voters opted to maintain the Union, decisions about implementing such reforms would need to be made as consensually as possible.
 24. One objection to preparatory work is that talking about the processes of unification might make unification more likely. Preparation could take the form of open-ended discussions on the future of the island and the islands, without prejudice as to whether

that future was in the UK or a united Ireland, backed up by an equally broad range of research.

DELINEATING THE TWO REFERENDUM OPTIONS (CHAPTER 7)

25. There would be two options on the ballot papers in any referendums: for Northern Ireland to become part of a united Ireland, or stay in the United Kingdom.
26. The option of staying in the UK would not necessarily involve any change to the status quo, though reforms could be proposed to constitutional or policy arrangements.
27. The option of a united Ireland would need to be delineated at some stage if unification was to occur. Matters needing to be addressed would include:
 - **The terms of the transfer of sovereignty.** Northern Ireland currently receives a substantial subvention from the UK Exchequer. Ireland is richer than it used to be, with higher per capita income than Great Britain; but a united Ireland would have a much smaller population to bear the costs of those policies and programmes supported by the subvention, if it continued. The division of UK assets and liabilities would need to be decided.
 - **The shape of a united Ireland.** Would a united Ireland
 - retain devolved institutions in the North
 - be a unitary state, with a single central legislature and government
 - be a federal state, with the North perhaps being one of the elements
 - or be a confederation, with Northern Ireland as an independent sovereign state?

There is scope for variation within each option.

- **Public policy issues.** Polls suggest these matters could be more important to citizens than constitutional architecture. They include:
 - Health provision: the National Health Service in the North is publicly funded and free at the point of use, while the South has charging and extensive private health insurance
 - Welfare provision: changes might involve both winners and losers
 - Education: structures, curricula, and narratives of history all differ markedly between North and South
 - Human rights and equality: what guarantees would protect minorities and safeguard civil and political rights in a unified Ireland?
 - Law and the courts: under devolution, the current law might carry over, and the separate Northern Ireland courts system

- Policing: amalgamating the Police Service of Northern Ireland with the Garda Síochána, or keeping the PSNI under a devolved Northern government
- Armed forces, with options for personnel to transfer
- Civil service: the terms on which NI and UK civil servants would assimilate
- Public services such as broadcasting, and the postal service.
- **Symbolic issues.** These would include the Irish language; the flag, national anthem, and other symbols of the new state; neutrality (Northern Ireland shares UK membership of NATO); possible roles for the Commonwealth, and the monarchy.

CALLING A REFERENDUM (CHAPTER 8)

28. The Secretary of State has a broad *discretionary power* to call a referendum in Northern Ireland, provided no such vote has taken place in the past seven years; if a majority for unification appears likely to the Secretary of State, they are under a *mandatory duty* to call a referendum. They must act fairly, honestly and with rigorous impartiality. The Irish government has no formal role, but coordination between the two governments would be highly desirable.
29. The Secretary of State might opt to call a discretionary referendum if the state of public opinion was uncertain, or the Northern Ireland Assembly had voted for one, or it was judged in the public interest. But calling a referendum in order to defeat or delay the possibility of unification would be problematic.
30. In assessing public opinion, the Secretary of State might draw on six possible sources of evidence: votes cast in elections; the results of surveys and opinion polls; qualitative evidence; a vote within the Assembly; the seats won at elections; or demographic data. The Secretary of State must take all relevant evidence into account. We do not think it possible to define in the abstract the weight that should be attached to each type of evidence, except that demographic data could provide only contextual information.
31. An expert review panel might form a useful part of this assessment, but only if it was impartial and independent. A referendum should be called if a vote for unification appears likely, even if by a slender margin.
32. A consistent body of evidence would need to build before calling a referendum became mandatory. But long periods of reflection might shake public faith. If opinion seemed finely balanced for long, the Secretary of State might think the better course was to call a discretionary vote. In exercising their power in relation to calling a referendum, the Secretary of State plays a crucial role in enabling the Irish people north and south to exercise without external impediment their right to self-determination. They must therefore exercise their powers conscientiously and not for any partisan political advantage.

POSSIBLE REFERENDUM CONFIGURATIONS (CHAPTER 9)

33. There are many conceivable referendum configurations. We eliminated those which did not fit the legal constraints, and then applied our evaluative criteria of procedural legitimacy, stability, simplicity, informed choice and inclusivity. That winnowed the most plausible referendum configurations down to five options, summarised in the table below.

Table 1. Possible Referendum Configurations

	What is it?	Should it be considered?
1. No plan, no guaranteed process	Referendums in NI and ROI on the principle of unification happen; no guaranteed plan or process after unification.	No
2. Maximum model	Aspects of the form of a united Ireland worked out <i>before</i> referendums in NI and ROI so far as possible.	Yes
3. Preliminary vote before maximum model	Prior referendum in NI on whether the UK government should enter negotiations. <i>Then</i> aspects of the form of a united Ireland worked out <i>before</i> referendums in NI and ROI so far as possible.	No
4. Design process before sovereignty transfer, with default plan	Referendums in NI and ROI on the principle of unification and on the process to agree its form. That process would come <i>before</i> unification.	Yes
5. Design process after sovereignty transfer, with interim/default plan	Referendums in NI and ROI on principle of unification and on the process to agree its form. That process would come <i>after</i> unification.	Yes

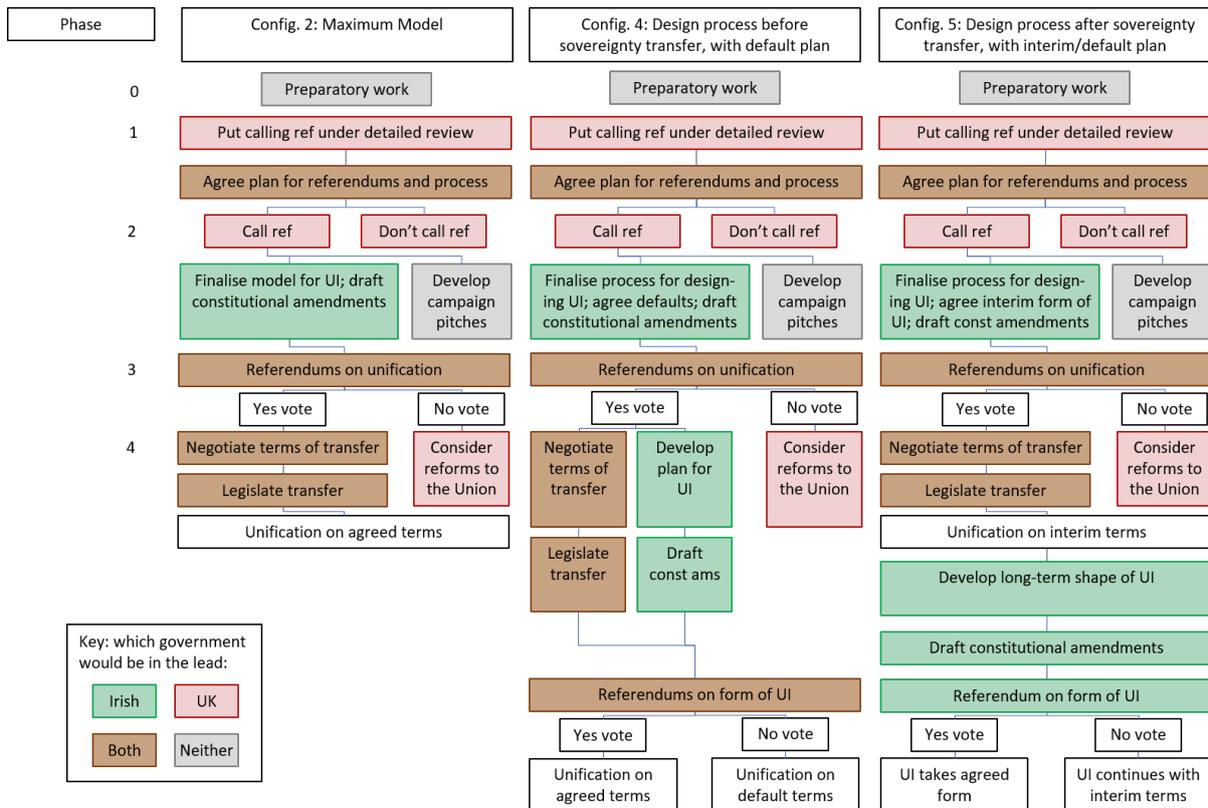
34. None of the options is clearly better than all the others. Further analysis against our five criteria led us to exclude the first and third configurations. Under the first, referendums would be held north and south on the principle of unification without detailed prior planning. But such an approach would be a leap in the dark: advance planning is essential to maximise legitimacy and stability. Despite its advantages in terms of detailed planning, we also excluded the third configuration. The preliminary referendum that it envisages in Northern Ireland could too easily be interpreted as violating the spirit of the 1998 Agreement, or misinterpreted as a vote on the substantive issue of unification.

35. Of the remainder, configuration 2 would offer voters a detailed *model* for a united Ireland. Configurations 4 and 5 would present voters with a proposed *process* for agreeing the shape of a united Ireland. Because unification would have to proceed even if new terms for a united Ireland were not agreed and approved, the initial unification referendums under configurations 4 and 5 would also—explicitly or implicitly—approve default and/or interim plans for a united Ireland.

PROCESSES FROM START TO FINISH (CHAPTER 10)

36. Figure 1 summarises the overall processes for the three configurations, and divides them into five phases. Phase 0 would come at a time when holding referendums was not an immediate prospect, but preparatory work would be done, perhaps mainly outside government. Phase 1 would involve decision-making on whether to call referendums. Phase 2 would encompass the period between a decision to call referendums and the votes. Phase 3 would constitute those votes, with referendums north and south. Phase 4 would cover the period after the referendums.

Figure 1. Summary of referendum processes



37. Several of these phases might take a year or more. More time before the referendum would be required under configuration 2 than under configuration 4 or 5, to allow detailed plans for a united Ireland to be determined. The default arrangements under configuration 4 might—and the interim arrangements under configuration 5 would—constitute the actual system for governing a united Ireland at its inception; they therefore deserve careful prior consideration.

REGULATING REFERENDUMS, AND THRESHOLDS (CHAPTER 11)

38. In the UK, the Political Parties, Elections and Referendums Act 2000 (PPERA) regulates many aspects of referendum conduct, and would apply to a referendum on Northern

Ireland's constitutional future. The Electoral Commission has developed standard practices for assessing proposed referendum questions, as well as extensive guidance relating to campaign conduct.

39. In Ireland the Referendum Commissions, which provide impartial information for voters on referendum proposals, are now thoroughly normalised. Practices governing broadcast coverage of campaigns have become stricter. And the recent practice of holding citizens' assemblies before referendums on contentious issues has emerged and increasingly become standardised.
40. The 1998 Agreement requires referendums to be decided by simple majorities of those voting, north and south. Proposals to change the threshold are often made. But the simple majority threshold is not just a product of the 1998 Agreement; it reflects the underlying principle of equal treatment. Any qualified majority threshold would favour the status quo. On the basic, binary question of sovereignty, that could not be justified.

THE FRANCHISE (CHAPTER 12)

41. Unification in the South would require a referendum to amend the 1937 Constitution; or enactment of a new constitution. The franchise for the first is those citizens who can vote at an election for members of Dáil Éireann. The franchise for a referendum on a new constitution is not fixed, but would likely be the same. The franchise could not be extended to non-citizens without a referendum.
42. In the UK the franchise for a referendum is typically that for elections taking place over the same area. UK-wide referendums use the UK parliamentary franchise, while Scottish and Welsh referendums use the franchise for the Scottish Parliament and the Senedd. If this practice were followed, the existing Northern Ireland Assembly franchise would be used for any unification referendum in the North.

DETERMINING THE REFERENDUM QUESTIONS (CHAPTER 13)

43. Differences in question wording between North and South are unavoidable. In the South, referendum questions to amend the Constitution take a standard form, 'Do you approve of the proposal to amend the Constitution contained in the undermentioned Bill?'. In the UK, there is no standard question wording. The legislation enabling each referendum stipulates the question, whose impartiality is scrutinised by the Electoral Commission.
44. The 1998 referendums suggest that differently worded questions between North and South would not necessarily cause difficulties. Voters in Northern Ireland were asked 'Do you support the agreement reached at the multi-party talks on Northern Ireland and set out in Command Paper 3883?' Those in the South were asked to approve the proposed change to the Constitution.

45. Discussion between the UK and Irish governments, consulting with the Northern Ireland Executive, political parties and civil society, and the UK Electoral Commission, ought to be able to prevent differences in question wording that could lead to confusion for voters, or difficulty for campaigners.

CAMPAIGN CONDUCT RULES (CHAPTER 14)

46. These rules relate to four key matters: campaigners and campaign finance; the role of governments during the campaign; information, misinformation, and the media; and the duration of the campaign.
47. The regulatory frameworks in both countries urgently need updating, for referendums and elections in general. Greater transparency in the identity of campaigners, and of the sources and scale of campaign spending, are imperative, as is greater accountability of campaigners through stronger regulatory enforcement powers.
48. Public information provision also needs to be addressed. UK practice provides little such information, while provision in Ireland is narrowly focused on the constitutional implications of the vote. On a matter of such import as the unification question, voters would deserve better.
49. The UK's rules on government campaigning could be aligned more closely with those in Ireland, so that state-financed campaigning would be prohibited throughout the referendum period, not just during the final weeks. On the duration of the campaign, Irish practice could permit the longer campaign period that has become the UK norm.
50. Some of the necessary changes would require primary legislation: in Ireland, through changes to the Referendum Acts; in the UK, by amending the Political Parties, Elections and Referendums Act 2000. It would be beneficial to initiate these changes as soon as possible.

CONCLUSIONS (CHAPTER 15)

51. We have sought to examine how referendums on the unification question would be designed and conducted from a procedural, not a political, perspective. We have done so not because we think referendums are imminent—we do not—but because the whole process needs to be thought through well in advance. The years of acrimony following the UK's vote on EU membership in 2016 illustrate the dangers of a vote called without adequate planning.
52. Unification could come about only through referendums in both Northern Ireland and the Republic of Ireland. The framework for holding referendums is set down in the 1998 Belfast/Good Friday Agreement. It stipulates that majorities of 50% + 1 would be required. But the ethos of consensual politics should be upheld as far as possible.
53. Our core interim conclusions are:

- It would be highly unwise for referendums to be called without a clear plan for the processes of decision-making that would follow. Such a plan would need to be agreed by the governments, working closely with the full range of actors in Northern Ireland, across the island of Ireland, and in the UK. When planning should begin is a political rather than a procedural matter, on which we do not take collective view. But it should be completed by the time any referendum was called.
- There are several plausible configurations of referendums north and south. Referendums could come relatively early in the process, before the details of a united Ireland had been worked out; or later, once a plan had been developed. Each configuration has advantages and disadvantages, and multiple variants.
- The conduct rules for any referendums would be crucial. The rules for referendum and election campaigns are badly out of date in both the UK and Ireland, and urgently need to be strengthened. This would be particularly important for referendums on the momentous unification question, where voters must be protected from misinformation, and have access to high-quality information. The process as a whole must be fair, and its administration rigorously impartial.

54. We welcome responses to any aspect of this interim report. In particular, we ask:

- Do you think we have missed out any important matters?
- Do you agree or disagree with any of our interim conclusions?
- Do you prefer one of our referendum configurations to the others? Are there other configurations we should consider?
- Are there any points where you think our reasoning requires further development or clarification?

SUBMITTING EVIDENCE TO THE WORKING GROUP

The Working Group is keen to hear your views on the matters covered in this report. In order to submit a response, please write to our Project Manager and Research Assistant, Conor J. Kelly, at conor.kelly@ucl.ac.uk.

To ensure that your response can be considered by the Working Group before it completes its final report, please send it to us by **18 January 2021**.

About the Constitution Unit

The Constitution Unit is a research centre based in the UCL Department of Political Science. We conduct timely, rigorous, independent research into constitutional change and the reform of political institutions. Since our foundation in 1995, the Unit's research had significant real-world impact, informing policy-makers engaged in such changes – both in the United Kingdom and around the world.

About the Working Group

The Working Group on Unification Referendums on the Island of Ireland is a group of researchers based at universities in Northern Ireland, Ireland, Great Britain and the United States. The members are experts in politics, law, sociology, and history. The Group is independent of all political parties and governments and is funded by the British Academy and Joseph Rowntree Charitable Trust. The Group takes no view on whether such referendums should take place or what the outcome should be if they happen.



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