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**Report of the  
Commission on the  
Conduct of  
Referendums**

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# Foreword

## Foreword

Today there is a clear prospect of referendums before us. And yet only 25 years ago referendums were regarded as unconstitutional; they had no place in the political process. Immediately after the first, and only, nationwide referendum in 1975 the then Labour Prime Minister, Harold Wilson, was asked in the House of Commons whether he "would keep to his determination not to repeat the constitutional experiment of the referendum." He replied: "I certainly give the Right Honourable Member...the assurance he seeks." Since then, however, two referendums have been held - in Scotland and Wales in 1979; and now, 17 years later, all three main parties are committed in principle to referendums on issues of outstanding importance.

Political referendums are essentially concerned with major questions of policy change about which views may be strongly divided. There is a clear need, therefore, that their conduct should be accepted by both Parliament and the electorate as efficient and fair. Hence the decision of the Electoral Reform Society and the Constitution Unit to set up in April 1996, a Commission with the membership and terms of reference set out on page 10. I gratefully acknowledge the advice and information which we have received from many people.

The Commission includes members of the principal political parties and others with appropriate experience and expertise. We have shared a stimulating and exacting task. In formulating practical guidelines we have sought to reflect political realities while avoiding political judgements. This report is the outcome. It draws on the experience of the previous UK referendums, and on a survey of referendums world-wide, where Commonwealth practices are particularly relevant. It discusses the problems which referendums present to a Government and Parliament. It outlines the options for the arrangements and procedures required. Its final chapter, Chapter 8, sets out the guidelines we recommend - some to be applied consistently to all referendums; others dependent on what the Government or Parliament decides in the light of political factors or circumstances at the time.

The principal message of our report is this:

- referendums cannot provide a panacea for major political problems; but they can significantly assist governments before controversial legislation is introduced, and they can give greater legitimacy to new policies after legislation has been enacted.
- referendums need offer no threat to Parliamentary sovereignty. It is open to governments and Parliament to set up all referendums by primary legislation or, alternatively, to enact a generic Referendum Act as a statutory basis for the conduct of a series of referendums.
- previous UK referendums have been successfully held without formal guidelines; but the varied character, in particular, of possible future referendums underlines the importance of establishing guidelines, accepted by all political parties, which will ensure consistency of administration in their conduct and maximize confidence in the legitimacy of their results.

- there is a strong case for the independent handling of at least some elements of the conduct of referendums, especially if the Government is committed to a particular result. Hence our recommendation of an independent statutory commission or, alternatively, the placing on an electoral commission, if it were established, specific responsibilities for the conduct of referendums.

The conduct of referendums closely concerns every voter in the United Kingdom. We hope that our report will be the subject of wide public interest and debate. We urge the Government and all political parties to give it full consideration with a view to the adoption in the years ahead of the referendum guidelines we have recommended.

A handwritten signature in cursive script that reads "Patrick Nairne". The signature is written in black ink and is positioned above a horizontal line that extends to the right.

Rt Hon Sir Patrick Nairne      21 November, 1996.  
Chairman

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**Terms of  
Reference and  
Commission  
Membership**

## Terms of Reference and Commission Membership

The independent Commission on the Conduct of Referendums was established jointly by The Constitution Unit and the Electoral Reform Society in April 1996. It is funded by a grant from the Joseph Rowntree Charitable Trust. The Commission's terms of reference are:

To prepare for the possibility that referendums may, in the future, be invoked as an instrument of decision making in the United Kingdom, by:

- examining the problems involved in the conduct of referendums; and
- setting out organisational and administrative guidelines for the conduct of referendums.

The Commission remains strictly neutral on whether referendums should be held on any specific question as well as on the desirable outcome of any given referendum.

## Members of the Commission

Rt Hon Sir Patrick Nairne GCB, MC - Chair	Chancellor, Essex University. Permanent Secretary, DHSS 1975-81; Second Permanent Secretary, Cabinet Office 1973-75.
Dr. David Butler CBE - Vice Chair	Emeritus Fellow, Nuffield College, Oxford.
Professor Vernon Bogdanor	Professor of Government, Oxford University and Fellow of Brasenose College.
Baroness Gould of Potternewton	Labour life peer.
Keith Hathaway	Chairman, Association of Electoral Administrators.
Robert Hazell	Director, The Constitution Unit.
Lord Holme of Cheltenham	Liberal Democrat life peer.
Dr Peter Jackson	Member, Electoral Reform Society Council.
Deborah Mattinson	Co-Founder and Director, Opinion Leader Research.
Paul McKee	Formerly Deputy Chief Executive and Director, ITN.
Joe Rogaly	Columnist, Financial Times.
John Whittingdale OBE MP	Conservative Member of Parliament for Colchester South and Maldon.

The Commission is deeply indebted to the joint Rapporteurs to the Commission, Katy Donnelly and Nicole Smith, for their expert advice and unfailing patience, and to Julia Fox (Constitution Unit Administrator) for her invaluable support.

## Acknowledgements

The Commission is extremely grateful to everyone who has contributed to its work and to those who kindly commented on various drafts of the report. The report also benefits from advice and information provided by Richard Guay and Claude Girard, Quebec Government Office; Professor Colin Hughes, former Chair of the Australian Electoral Commission; Robin Bell, Member of the Australian Electoral Commission; Michael Maley, Director and International Services, the Australian Electoral Commission; Richard Mulgan, Member of the New Zealand Royal



Commission on Electoral Reform; the New Zealand Electoral Commission; and the New Zealand Ministry of Justice. The Commission would particularly like to thank those who attended a one day seminar in Oxford in June and those who made written submissions to the Commission. They are listed below.

*Seminar Participants*

Nigel Buttler, Senior Administrative Officer, Oxfordshire County Council; Gay Catto, Head of Constitutional Unit, Home Office; Sir John Chilcot KCB, Permanent Under-Secretary of State, Northern Ireland Office; George Cunningham, Member of Parliament 1970-1983; Richard Jameson, Head of Cabinet Office Referendum Unit, 1975; Nevil Johnson, Fellow, Nuffield College, Oxford; Anna Killick, Campaigns Co-ordinator, Charter 88; David Magelby, Visiting Fellow, Nuffield College, Oxford; Dr. Roger Mortimore, Political Assistant to Robert Worcester, MORI; Professor Dawn Oliver, Head of Department, Faculty of Laws, University College London; Mary Southcott, Vice-Chair, Labour Campaign for Electoral Reform; Eric Syddique, Executive Director, Electoral Reform Society; Norman Warner, Special Advisor to Jack Straw MP; David Wilkinson, Director, Machinery of Government and Standards Group, Office of Public Service, Cabinet Office.

*Authors of Written Submissions*

Tony Benn MP; George Cunningham; Charter 88; Ronald Fraser, Chief Counting Officer for the 1979 Scottish Referendum; Sir Philip Goodhart; Labour Campaign For Electoral Reform; MORI; Rev Ian Paisley MP MEP, Ulster Democratic Unionist Party; J L Reason; Jack Straw MP, Labour Party.

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**Introduction**

# **Chapter 1**

- 1 The referendum now stands high on the political agenda. All three major parties are in principle committed to holding referendums<sup>1</sup> on certain major issues. This is a striking transformation. As recently as 25 years ago referendums were commonly said to be unconstitutional. The people, it was held, have no direct part to play in the legislative process. Since then there have been four referendums in the UK. The argument that they have no place in our constitutional tradition is hard to sustain. Yet their use remains controversial. The UK constitution is 'unwritten', with the doctrine of Parliamentary sovereignty at its heart. Referendums will therefore continue to have an uncertain place within our system of government.

### Proposed Referendums

- 2 Current proposals for the use of referendums relate to major constitutional issues. The people, it is argued, should be consulted on changes to the form of government in Northern Ireland, Scotland and Wales, a possible change to the electoral system, further developments in the European Union, and regional government in England. The political parties have different policies on which of these issues should be put to the vote, but what seems certain is that, whichever party forms the next Government, the electorate today faces the prospect of at least one and possibly several referendums in the years immediately ahead.

### The Conservative Party

- 3 The Conservative Government has proposed, with all-party agreement, that any settlement resulting from the Northern Ireland peace process should be put to the people of Northern Ireland.<sup>2</sup> Section 4 of the Northern Ireland (Entry into Negotiations etc.) Act 1996 contains a general enabling provision for referendums, thus adding to the existing power to hold a Border Poll at not less than ten year intervals.<sup>3</sup>
- 4 In April 1996, John Major declared that the Conservative Party's election manifesto would include a commitment that, if a future Conservative Government "decided to join a single European currency during the course of the next Parliament, that decision would be subject to confirmation in a referendum". Legislation providing for the UK's participation in a single European currency would not come into effect until so confirmed. A simple majority of those voting would be taken as an confirmation of Parliament's decision.<sup>4</sup>

### The Labour Party

- 5 The Labour Party has also promised to use referendums. In June 1996, it announced that referendums would be held in Scotland and Wales before the introduction of devolution legislation to Parliament.<sup>5</sup> In Scotland two questions are proposed. The first will ask voters whether they want a Scottish Parliament. The second will ask whether a Scottish Parliament should have tax-varying powers. In Wales there will be one question. Voters will be asked whether they want a Welsh Assembly. Varying timescales for holding such referendums have been reported in the press, ranging from six weeks to six months from getting into office. Labour intends that these referendums should be based on detailed proposals put forward in White Papers and that they should be held in Scotland and Wales only; simple majorities would prevail.

- 6 In 1995, the Labour Party Conference committed the next Labour Government to a referendum on the electoral system for the House of Commons. The Party has also proposed referendums on devolution to the English regions, on a strategic authority for London<sup>6</sup> and it has not ruled out a referendum on European Monetary Union.

### The Liberal Democrats

- 7 The Liberal Democrats were the only major party to call for a referendum on the Maastricht Treaty. They too favour a referendum on European Monetary Union and propose a referendum on proportional representation as the voting system for the House of Commons. They have recently proposed regional referendums before establishing assemblies in England; but not before establishing a London Assembly, or Parliaments in Scotland and Wales. In the longer term they propose that a written constitution should be drawn up and ratified by a referendum. They also have committed themselves more generally to "new methods of direct democracy - like referendums and citizens initiatives - to give people a new voice in decision making".<sup>7</sup>

### The Referendum Party

- 8 In 1995, the Referendum Party was formed by Sir James Goldsmith. The sole platform of this party is its commitment to a referendum on European integration. Once this has been achieved, it is proposed to disband the party. Sir James has indicated that he hopes to field 400-500 candidates at the next general election.<sup>8</sup>

### Popular Opinion

- 9 Popular support for referendums is high. Nearly 30 years ago a poll found that 69% of respondents believed that the UK should adopt the regular use of referendums. The 1995 MORI/Joseph Rowntree Reform Trust survey reported 77% of respondents in favour of the use of referendums on certain issues.<sup>9</sup> More recent polling data has shown strong support for referendums on the introduction of a single European currency (66%) on proposals for a Scottish Parliament (69% - poll in Scotland only) and on proposals for a Welsh Assembly (70% - poll in Wales only). Strongest support for the use of referendums comes from women, people aged 18-34 and classes C2DE. (See Appendix A.)

### The Role of the Commission on the Conduct of Referendums

- 10 There are no established rules, accepted by the main political parties, for the efficient and fair conduct of referendums. If referendums are to be held in the future and their results accepted, they should be conducted efficiently and ensure the fair presentation of competing views. The Commission on the Conduct of Referendums has been established to provide guidelines applicable to future referendums. The Commission's terms of reference are set on page 10.
- 11 The Commission has remained strictly neutral on whether referendums are desirable, on whether they should be held on any particular issue, and on what the outcome of any particular referendum should be. As a Commission, we are neither for nor against referendums - though, as individuals, we hold views ranging from enthusiasm to scepticism. This report is not

intended to provide material for advocates or for opponents of referendums, but to provide guidelines for regulating their conduct.

- 12 The questions before us fall into two groups. Organisational, administrative and procedural matters might be settled by a code or statute for use with every referendum. Questions of a more political character will be decided by the Government and Parliament in the circumstances of each referendum. A future Government might introduce a generic Referendum Act - which would provide general provisions for the initiation and conduct of referendums. Parliament would have to decide whether such an Act was appropriate and necessary. The Government might decide to hold back until there had been further experience of referendums in this country. In all referendums, however, there will be some common elements, and it would clear the ground for the discussion of the central political issues in any future referendum if the organisational and administrative framework was agreed in advance.
- 13 Our report does not consider the rules for local referendums, such as those held in the past on liquor licensing laws; nor does it deal with 'citizens initiative' referendums. Citizens initiative referendums raise different organisational and administrative issues, especially in relation to the process of initiation and specifically over the formulation of the question, the collection of supporting signatures, publicity and spending limits and the rôle of Government. A small number of countries have incorporated into their constitutional and political structures procedures for citizens initiative referendums. Switzerland is the most notable example, but in recent years a citizens initiative referendum has been used to change the Italian electoral system and in 1993 the New Zealand Parliament passed the Citizens Initiated Referenda Act which allows for referendums to be initiated by a petition signed by 10% of the eligible electorate. (See Appendix B.)
- 14 Much of the writing on referendums, including most of the literature on the history of the referendum debate in the UK and the analysis of specific referendums, is concerned with advocating or opposing referendums. There has been little detailed consideration of the conduct of referendums. However, in October 1979, the Hansard Society for Parliamentary Government held a conference (jointly with the American Enterprise Institute) on referendums. One by-product was a suggestion that it would be useful to draw up guidelines for the conduct of future referendums in the UK. A short report was published in 1983, prepared and revised by Dr. David Butler. Its aim was:
- "to explore the problems involved in holding a referendum in such a way as to allow a fair debate and to produce a verdict that, as far as possible, would be accepted as having been arrived at legitimately, with due opportunity for all views to be given a reasonable hearing."*<sup>10</sup>
- It is a timely moment at which to look afresh at the issues presented by the conduct of future referendums.
- 15 We have produced our report as rapidly as possible so that it can inform the debate about referendums up to and beyond the next general election. Throughout the report guidelines for the conduct of referendums are recommended. These are presented in summary form in the final chapter. We hope that these will form a valuable basis on which to develop a lasting framework for the conduct of referendums.

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The Use of  
Referendums

Chapter 2

## Precedents

- 16 Referendums have been used in almost every major democratic country. Only six major democracies have never had a nationwide referendum: India, Israel, Japan, the Netherlands, the United States and the Federal Republic of Germany.<sup>11</sup> No common characteristic distinguishes these six from other nations. Universal judgements about the nature and impact of referendums should, for the most part, be avoided. In most countries they are unique in origin and consequences. There are no universal rules; at the most there are some widely observed tendencies.
- 17 A few political systems - Switzerland and some states in the United States being the obvious examples - have used referendums regularly for securing authoritative political decisions. Politics in those systems are quite different from politics where referendums have been employed infrequently, often as a last resort. Half the 900 or so nationwide referendums in the history of the world have been in Switzerland, where they have long been an integral part of the governmental process and can be initiated by Swiss citizens. Australia (with 42 referendums, 34 producing a 'No' answer) comes next; these were all required by the constitution. Italy has begun to move in a Swiss direction with a considerable number of citizen initiated votes. The majority of Western-style democracies rarely use the device. No country, except perhaps Norway, has had its party system upset by referendums; no country, except perhaps Ireland, has had progressive legislation frustrated - or accelerated - by referendums.<sup>12</sup>
- 18 In general, referendums have been used to solve a particular crisis or to endorse a new constitution (see Table B, Appendix B). A history of nationwide referendums provided in Butler and Ranney's *Referendums around the World* shows these key facts: how infrequent they have been, how constitutional and moral questions have predominated, and how seldom they have had close results.<sup>13</sup> Some polities have enabling legislation setting out the conditions for calling and conducting a referendum (Quebec 1980, Australia 1984). Others have provisions in their constitutions requiring a referendum to validate any constitutional change (Australia, Ireland and all U.S. states other than Delaware). Most democracies have used referendums on an ad hoc basis, holding them when a particular crisis called for a popular verdict (Canada 1992, to approve constitutional accord; Belgium 1950, on the return of Leopold III) or when internal party divisions required the public endorsement of Government policy (UK 1975). Referendums have a particular appeal when devolution of powers or territorial separation or fusion is involved (Australia 1890s, League of Nations 1919-21, Scotland and Wales 1979). Most referendums are initiated:
- a. when a Government deems it expedient. This is usually because (i) the Government wants to consult the electorate or, by securing its endorsement, to legitimise or entrench a particular policy (France 1992, Maastricht Treaty) or (ii) when the governing party or parties are split and wish to settle an important issue of policy, and also resolve their divisions, by referring the issue to the electorate (UK 1975, continued membership of the EC; Sweden 1955, driving on the right).
  - b. when a Government has committed itself to a referendum in a general election manifesto (New Zealand 1992, electoral reform).

- c. when they are mandated by law as the only means of constitutional change (Australia, Ireland).
  - d. when there is a legislative or constitutional provision empowering citizens to demand a referendum either to promote new legislation or to pass judgement on a specific act (Switzerland, Italy).
  - e. as a result of pressure from the legislature. (A backbench amendment to the Scotland and Wales Bill 1976-77 providing for referendums in Scotland and Wales was conceded by the Government to overcome opposition to the Bill.)
- 19 International use of referendums is considered in more detail in Appendix B.

## Experience in the UK

- 20 It was the constitutional lawyer A.V. Dicey who introduced the referendum into UK political debate in 1890. He argued that it would “protect the constitution from sudden changes, and thus ensure that every amendment in the fundamental laws of the land shall receive the deliberate sanction of the people”. Like most advocates of the popular vote, Dicey had his own political concerns in mind when supporting its introduction. He believed it would block Home Rule for Ireland. The referendum was seen as a conservative device which, in the absence of a codified constitution, could prevent a Government from making constitutional changes which lacked popular support.
- 21 Its use as an extra check on government resurfaced during the debates which preceded the 1911 Parliament Act. Various proposals were made for the use of referendums:
- as a means of resolving conflicts between the House of Commons and House of Lords. This was proposed as an alternative to the removal of the Lords’ veto.
  - as an addition to the Parliament Act, obligatory for ‘constitutional’ legislation.
  - as a regular part of government, to be used on issues where the two Houses reached deadlock and when 200 MPs petitioned for one.
- Such proposals failed. “The referendum was a necessity only when the absolute veto of the Lords was dying, but not before”, and suggestions for its use were perceived as being driven by political expediency. After 1911 proposals for referendums resurfaced periodically, including the suggestion by Winston Churchill in May 1945 that one be used to extend the term of the wartime coalition Government.

### 1975 Referendum on Membership of the European Community

- 22 Despite the continuing debate, there has been only one nationwide referendum in the UK - on 5 June 1975. The country voted on whether to remain in the European Community on the terms renegotiated by the Labour Government. It resulted in a two-to-one majority in favour of staying in the Community.



<b>DO YOU THINK THAT THE UNITED KINGDOM SHOULD STAY IN THE EUROPEAN COMMUNITY (THE COMMON MARKET)?</b>	Yes	17, 378, 581	67.2%
	No	8, 470, 073	32.8%
<b>Spoilt Ballot Papers</b>		54, 540	
<b>Turnout*</b>		25, 903, 194	64.0%

Source: *The Certificate of the Chief Counting Officer*, Cmnd 6105, 1974-75; FWS Craig, *British Electoral Facts 1832-1987*.  
\*Not including service votes.

### 1973 Northern Ireland Border Poll

- 23 Three regional referendums have been initiated by UK Governments within the last 25 years. The Northern Ireland Border Poll was held in 1973, following the collapse of the Stormont Parliament in 1972. The Ireland Act 1949 provided a guarantee that the constitutional status of Northern Ireland would not change without the consent of its Parliament, and with the Stormont Parliament prorogued this was transmuted into a 'consent of the people' test. Electors in Northern Ireland were asked whether they wished the province to remain in the United Kingdom or to join the Irish Republic. Of those voting, 98.9% chose to remain within the United Kingdom, while only 1.1% voted to join the Irish Republic. The parties representing the Nationalist minority had advised electors to boycott the poll and the turnout was only 58.7%. This limited the referendum's value as an exercise in popular consultation. Provision was made in the Northern Ireland Constitution Act 1973 to hold subsequent border polls at ten-year intervals. None was held in 1983 or 1993, although the Government restated the guarantee of Northern Ireland's constitutional status in Article 1 of the Anglo-Irish Agreement of 1985.

<b>DO YOU WANT NORTHERN IRELAND TO REMAIN PART OF THE UNITED KINGDOM</b>		591, 820	98.9%
or			
<b>DO YOU WANT NORTHERN IRELAND TO BE JOINED WITH THE REPUBLIC OF IRELAND OUTSIDE OF THE UNITED KINGDOM?</b>		6, 463	1.1%
<b>Spoilt Ballot Papers</b>		5, 973	
<b>Turnout</b>		604, 256	58.7%

Source: *The Northern Ireland Border Poll 1973*, Cmnd 5875, 1974-75; FWS Craig, *British Electoral Facts 1832-1987*.

## 1979 Devolution Referendums

- 24 In 1979 referendums were held in Scotland and Wales on the Labour Government's devolution legislation. In Wales devolution was rejected by a vote of four to one, even though it was supported by three of the four political parties in Wales - Labour, the Liberals and Plaid Cymru - parties which had gained around 75% of the vote in the October 1974 general election.

DO YOU WANT THE PROVISIONS OF THE WALES ACT 1978 TO BE PUT INTO EFFECT?	Yes	243, 048	20.3%
	No	956, 330	79.7%
Spoilt Ballot Papers		3, 309	
Turnout		1, 202, 687	58.8%
Percentage of Electorate which Voted Yes			11.9%

Source: FWS Craig, *British Electoral Facts 1832-1987*.

- 25 In Scotland the outcome was controversial. There was a majority for devolution: 51.6% for, and 48.4% against. However, during the Parliamentary proceedings on the Scotland Act, a clause had been inserted on the initiative of a Labour backbencher, George Cunningham MP;<sup>14</sup> this provided that, unless 40% of those entitled to vote voted in favour, the Government had to lay an Order before Parliament which, if passed, would repeal the Act.<sup>15</sup> With a turnout of 63.6%, the 'Yes' vote was 32.8% of the electorate. This was far short of the 40% required. The Labour Government accordingly tabled an Order repealing the Scotland and Wales Acts (Parliament did not vote on an Order repealing the Act until after the change of Government in May 1979). The outcome of the referendum produced lasting resentment; it was felt that the rules had been biased against advocates of a Scottish Assembly.

DO YOU WANT THE PROVISIONS OF THE SCOTLAND ACT 1978 TO BE PUT INTO EFFECT?	Yes	1, 230, 937	51.6%
	No	1, 153, 502	48.4%
Spoilt Ballot Papers		3, 133	
Turnout		2, 387, 572	63.6%
Percentage of Electorate which Voted Yes			32.8%

Source: *The Certificate of the Chief Counting Officer, Cmnd 7530, 1978-79*; FWS Craig, *British Electoral Facts 1832-1987*.

## Local Referendums

- 26 In addition to these referendums initiated by Governments, there have been a number of local referendums in the UK. For example, from 1932, local authorities were allowed to conduct referendums on the Sunday opening of cinemas, and since 1961 there have been septennial plebiscites in 'dry' counties in Wales on the Sunday opening of public houses.<sup>16</sup> Our report does not give detailed consideration to these.

## Referendums and the UK Constitution

- 27 Thus Governments have held referendums for political purposes on an ad hoc basis with no agreed criteria as to when to hold them. The Northern Ireland Border Poll was regarded as an extraordinary event necessitated by the exceptional circumstances of that province. The referendum of 1975 on the European Community was regarded as a unique issue necessitating a one off departure from constitutional practice. When, four days after that vote, Sir John Eden, a Conservative backbencher, asked the Labour Prime Minister, Harold Wilson, "Will he keep to his determination not to repeat the constitutional experiment of the Referendum?" Wilson replied, "I certainly give the Right Honourable Member...the assurance he seeks".<sup>17</sup> The 1979 referendums were forced on the Government by backbenchers during the Parliamentary debates on the Scotland and Wales Bill 1976-77.

## Constitutional and Legislative Framework

- 28 Almost alone among the world's democracies, the UK has no codified constitution.<sup>18</sup> Although referendums can be held on any issue, the majority of referendums held in other countries have been concerned with constitutional issues.<sup>19</sup> Many of them are required by the country's constitution, not by the Government of the day for a particular political purpose. In such countries it is the constitution which determines which issues must be referred to the electorate; and it is the constitution which defines what is 'constitutional change'.
- 29 In the UK there is no authority by which to decide what should be referred to the electorate, and no accepted way of defining a 'constitutional issue'. During the Constitutional Conference of 1910 (held to resolve the problem of how a disagreement between the House of Commons and House of Lords should be settled), and the passage of the subsequent Parliament Act 1911 the possibility of using referendums as a means of breaking deadlock between the two Houses on 'constitutional' matters was raised several times. All proposals foundered on the difficulty (and, in the view of some, the undesirability) of distinguishing constitutional from ordinary legislation without a written constitution. There were objections to the implicit need for a body responsible for adjudicating on whether a specific issue fell within one of the 'referendum categories'.
- 30 The four referendums which have been held in the UK could be seen as constitutional issues, as can the referendums currently proposed by UK political parties. However, major constitutional changes have previously been made without the use of a referendum, e.g. the Parliament Acts of 1911 and 1949. During the 1992-1993 controversy over the UK's acceptance of the Maastricht Treaty, Baroness Thatcher and other opponents argued for a referendum, but both Conservative and Labour leaders cited constitutional principles to block a move they feared might lead to the Treaty's rejection.

- 31 Given the UK's uncodified constitution, the question of whether a referendum should be held, and its timing, are likely to continue to be determined by the Government and Parliament in the light of policy factors or political expediency.

*Parliamentary Sovereignty*

- 32 Referendums in the UK also need to be considered in the context of the doctrine of Parliamentary sovereignty. Before 1975 it was widely held that a referendum would be inconsistent with the sovereignty of Parliament; since Parliament could not delegate its decisions to another body. That view appears to have lost its validity. If Parliament has sovereign power, it must have the power to call a referendum. The referendums so far held in the UK have been advisory, with Parliament formally retaining its right to reject the verdict. In practice, however, it has been accepted that Parliament could not ignore a decisive expression of popular opinion. Perhaps the best formulation of the constitutional position was made by Edward Short, as Lord President of the Council and Leader of the House, before the 1975 referendum. He declared that "The Government will be bound by its result, but Parliament, of course, cannot be bound".<sup>20</sup> We consider this issue further in paragraphs 77-81.
- 33 The use of referendums is likely to remain controversial. It has been argued that referendums divide parties and produce inconsistent government, and are likely to be invoked as a weapon against progressive legislation. A further argument made against referendums is that, by giving decision making to the electorate, they detract from MPs' representative role. It can be claimed that this not only undermines Parliamentary sovereignty, but removes the responsibility of the executive for policy and thus destroys the ability of the electorate to hold the Government to account.
- 34 On the other hand, a referendum can, theoretically, provide a limited means of entrenchment not otherwise provided for in our constitutional arrangements. Precedent or convention may make it difficult for a Government to reverse a measure, or to implement a future measure without holding a referendum, or a measure can be entrenched by a statutory requirement that a referendum be held before a change may be made.
- 35 Any such entrenchment provided through a referendum is a political, rather than a legal, safeguard. In theory Parliament could ignore precedent or pass legislation reversing any formal requirement to hold a referendum. The political difficulties of doing so may mean that the referendum can help guard against hasty or unwanted change. A referendum cannot, however, settle issues once and for all. At best it can provide a considered measure of the electorate's views at the time it is held. It can give a decision an immediate legitimacy, but it cannot settle any matter permanently as the 1975 referendum on Europe and the 1979 devolution referendums have shown.

### **Not a Political Panacea**

- 36 Concern about referendums has perhaps been more extreme in the UK than in any other democracy. Yet even the most institutionally conservative politicians look favourably on the device when they calculate that it may further their policies.

- 37 International experience offers examples of the different ways in which referendums can be conducted and some lessons to be learnt. However, the diversity of practice confirms that there is no single 'right' way to initiate and conduct a referendum. The use of referendums is shaped by the constitutional framework within which they are held, and by the specific political context in which they are called.
- 38 Referendums are not a political panacea. Some powerful arguments can be deployed against them. For example, political expediency rather than democratic principle has been the *dominant* factor in past UK referendums. Unless rules or conventions for the use of referendums are developed, it is likely to remain so. There are also no guarantees that a Government will get the referendum result it wants, or that Parliament will accept legislation that gives effect to the outcomes of referendums. Results may, in part, reflect the current popular standing of the Government, not the considered view of the voters on the referendum issues. Referendums may also over-simplify issues. They require a 'Yes' or 'No' answer and thus cannot reflect shades of opinion. The choice and precise wording of the question are crucial and their outcome may be affected by an unequal provision of information and resources. Referendums have also in the past been criticised because of their use by some authoritarian regimes to confer legitimacy on their policies.
- 39 Some of these difficulties can be minimised by the way in which questions are formulated, by adequate provision for the dissemination of information, and by the application of effective guidelines for their efficient and fair conduct. Referendums should, nevertheless, be recognised as blunt, but often effective, instruments with which to seek a resolution to complex political issues.

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# The Framework

# Chapter 3

## The Need for Rules or Guidance

- 40 The need for rules or guidance for the conduct of referendums is implicit in the Commission's task and explicit in its terms of reference. The various Representation of the People Acts govern the way in which elections are run in the UK and, through the provision of a consistent framework, ensure that they are fair. There is no comparable statute for referendums, and the arrangements for elections cannot simply be applied without change. Referendums raise a number of different issues. For example, a key element in the fair conduct of referendums is to ensure that the way they are run is independent of party political interest. The Government of the day may take ad hoc measures to that end, as in 1975 (for example, through the funding of campaign leaflets written by umbrella campaigning groups and distributed free of charge). Alternatively, standard guidelines on the conduct of referendums could be adopted. It is our belief that the rules governing the conduct of all referendums should, as far as possible, be consistent and widely understood; and promote efficiency and fairness.

### GUIDELINE 1

Guidance should be drawn up dealing with organisational, administrative and procedural matters associated with holding a referendum. Established guidelines should include fixed rules for some matters (for example, the organisation of the poll, the election machinery and the count). For other matters, on which it is impossible to determine rules in advance (for example, wording the question), the guidance should state how a decision should be reached.

- 41 Whatever status may be given to such rules, the most important factor affecting their introduction and application will be whether they are the direct responsibility of the Government or of an independent body. It would be possible for the Government, after appropriate consultation, to prepare and publish such rules. However, there may be significant advantage in making their development and implementation the responsibility of an independent non-political body outside Government.

## Organisation and Administration

- 42 Past UK referendums have been organised and administered by Government departments. The Government may decide to adopt this course for the conduct of future referendums, drawing upon the guidelines in statutory or non-statutory form which we are recommending.

### Ministerial and Departmental Responsibility

- 43 In 1975, Government responsibility for the conduct of the referendum was divided between the Cabinet Office, the Home Office and the Foreign and Commonwealth Office under the general direction of the Cabinet and, in particular, the Lord President in the Privy Council Office. In October 1974, when Patrick Nairne (then Second Permanent Secretary in the Cabinet Office) was asked to take the lead with other officials in considering the practical implications of a referendum on membership of the European Community, he had no relevant UK precedents to guide him.<sup>21</sup> However, a report was produced within two months which covered almost all the questions that arose later and served as a basis for the Prime Minister's statement to Parliament

on 23 January 1975, for the full White Paper on 26 February and the Referendum Bill published on 26 March. In January a special Referendum Unit was set up in the Cabinet Office.

- 44 Following the passage of the Referendum Act, Sir Philip Allen (now Lord Allen of Abbeydale) was appointed Chief Counting Officer, responsible for the administration of party funding and the approval of umbrella organisations. The conduct of voting and vote counting was left to local authorities, following, so far as possible, normal general election practice. The 1979 referendums drew on the 1975 experience. The incorporation of the referendum provisions into the Scotland and Wales Bills was handled by civil servants in the Constitution Unit, which had been set up in the Cabinet Office to co-ordinate the devolution legislation. The practical aspects of the referendums were handled by the Welsh and Scottish Offices.
- 45 A future decision to initiate a referendum would normally be taken by the Cabinet. The current Departmental expertise exists primarily in the Home Office which has recently established a Constitutional Unit bringing together various existing functions (including electoral matters, human rights and the House of Lords). The advent of a Government committed to a wide-ranging programme of constitutional reform might lead to the further development of constitutional expertise within Whitehall. But organisational and administrative responsibilities for a referendum would fall naturally to the Home Office and the Welsh, Scottish and Northern Ireland Offices unless an independent body was set up with responsibility for the conduct of referendums.
- 46 Within Government, the costs of holding a referendum will be allocated between central and local government on the same basis as in Parliamentary elections. The costs of maintaining the register are borne locally with other costs coming out of the consolidated fund. The costs of a referendum would normally come out of the consolidated fund. Central government costs for the 1975 referendum have been estimated at £11,415,000<sup>22</sup> (today equivalent to approximately £50,600,000). No comparable figures are available for 1979, but the costs would have been significantly less due to the limited geographical areas involved in polling and the fact that there were no government-funded public information leaflets or umbrella campaigning organisations.

### An Independent Statutory Commission

- 47 There is now a strong case for giving responsibility for the conduct of referendums to an independent body. Public confidence in the neutrality of the conduct of a referendum is essential if the result is to be accepted as legitimate, particularly where the Government is pledged to support a specific outcome, or the interests of Members of Parliament are directly affected. The functions of such an independent body might include all, or some, of the following:
- advising on the wording of the question.
  - allocating funding to campaign groups.
  - liaising with and acting as moderator between any campaign groups.
  - acting in an ombudsman rôle to deal with any complaints.
  - monitoring balanced access to the broadcast media.
  - providing public information, including a balance statement of the opposing arguments.
  - supervising the organisation for each polling station.
  - counting and declaration arrangements.



A continuing rôle could be to identify lessons from each referendum and recommend any necessary changes in procedure for future referendums.

- 48 An independent statutory Commission could be appointed on an ad hoc basis for each referendum, or it could be a permanent body. Unless it is certain that there will be a significant and sustained programme of referendums, a standing body solely concerned with the conduct of referendums may not be justified. An ad hoc Independent or 'Referendum' Commission would have the advantage that it could be set up quickly in the first instance, if, as the Labour Party proposes to do in Scotland and Wales, a Government wished to call a referendum at relatively short notice. It could be given statutory powers in the context of the referendum legislation, though, if it were required to advise the Government on priority issues such as the wording of the question, it would need to be operational at an earlier stage.
- 49 An alternative to a Commission of this kind would be to include responsibility for referendums within the wider remit of an Electoral Commission. A permanent Electoral Commission exists in other Westminster style democracies. (See Appendix B.) Such a Commission typically has responsibility for the administration and conduct of elections and referendums. Both the Labour Party and the Liberal Democrats have made policy statements recommending the establishment of such a Commission. The Labour Party has said that it will establish such a body, which would be "directly and solely responsible for all aspects of electoral administration and for ensuring freedom and fairness in all aspects of our electoral system".<sup>23</sup> The Liberal Democrats are committed to "a permanent Electoral Commission to streamline and improve the administration of elections...oversee the electoral process...it would have responsibility for supervising local, national and European elections and referenda. Its functions would include electoral administration, boundary revisions, the monitoring of election expenses, and the allocation of broadcasting time in campaigns...it would advise Parliament directly on changes to electoral law".<sup>24</sup>
- 50 The case for an Electoral Commission in the UK is set out in the Chataway Commission Report, Agenda for Change (Hansard Society 1991), which concludes:

*"Under existing arrangements, responsibility for elections is diffused, with deleterious consequences. A single body, an Electoral Commission, should be directly and solely responsible for all aspects of electoral administration. Its brief should be to supervise, streamline and unify arrangements, and to increase public and Parliamentary access to information about electoral administration. It should also have responsibility for allocating broadcasting time, monitoring party accounts, and should take over responsibility from the Boundary Commissions for drawing constituency and European Parliament boundaries. It should have a full time Chairman. The Home Secretary should remain the minister responsible to Parliament for all electoral matters."*

An assessment of the case for an Electoral Commission falls outside the remit of the Commission. However, referendums involve practices and procedures analogous to those of elections. If an Electoral Commission were established, there would be a cogent case for extending its functions to include the conduct of referendums or for bringing the rôle of an existing 'Referendum Commission' within its ambit. This would facilitate the development over time of experience and expertise relating to the conduct of referendums.

*Status and Structure*

- 51 As to the status of the Commission, there are two possible models. One would be that of the Law Commission or Boundary Commission, both non-departmental public bodies appointed by a Minister and funded through a government department, but operationally independent. An alternative model would be that of the National Audit Office, under the Comptroller and Auditor General, independent of any government department and separately funded, capable of advising the Government, but accountable to Parliament rather than to any minister. The second model would provide a more robust form of independence. Formal accountability to Parliament could also facilitate consultation with all the political parties through, for example, a Parliamentary committee.
- 52 An ad hoc Commission could be established without legislation, but a statutory basis would establish clearly its independence from Government. A statutory basis may also be required for some of the powers it may be given, including, for example, grant giving powers. This could be achieved through legislation specifically concerned with establishing a Commission, or the necessary powers could be provided ad hoc in the legislation initiating each referendum (see paragraphs 54-67).
- 53 The membership of an Independent Commission might be modelled on the multi-member Boundary Commissions, or could consist of a single Commissioner, similar to the Comptroller and Auditor General or the Ombudsmen and utility regulators. There could be disadvantages to a multi-member body. It might not be easy to achieve a generally accepted balance in the membership, and a corporate body might lack the decisive authority of a single Commissioner. The range of responsibilities proposed for the Commission suggests that a multi-member Commission, which enables a range of skills and interests to be represented among the membership, may be more appropriate. Consideration would need to be given to whether political parties should be represented in any way - although the Commission's accountability to Parliament may be a more appropriate form of political accountability. When regional referendums are to be held, a Commissioner from the relevant region could be included in the membership.

**GUIDELINE 2**

The decision to initiate a referendum would normally be taken by the Government. But the conduct of referendums, i.e. their organisation and administration, should in future be independent of Government and party political interests in order to ensure maximum confidence in the legitimacy of their results. An independent statutory Commission should be established. Its members would serve for a period of years, but it would be activated ad hoc for each referendum. The Chairman should be personally accountable to Parliament for the efficiency and consistency with which referendums are conducted.

If an Electoral Commission were established, the functions of such a 'Referendum Commission' should be brought within its remit.

## Legislation

- 54 Referendums need Parliamentary approval. This enables the Government to spend money and exercise powers not otherwise provided for. Election machinery must be adapted and the cost of organising the ballot and any grants to campaigning groups must be voted by Parliament. In the past, legislation for holding referendums has:
- defined persons eligible to vote.
  - specified the wording of the question.
  - provided for returning officers.
  - provided for the appointment of an Electoral Officer with responsibility for counting the votes and announcing the result.
  - specified grants to be made towards the cost of campaigning (where grants were made).
  - provided powers to adapt existing electoral machinery as necessary.
  - excluded legal proceedings in relation to the numbers of votes certified by the Chief Counting Officer.
  - provided machinery for determination of the date.
  - provided for Section 2(1) of the Welsh Language Act 1967 (power to prescribe Welsh version) to apply (where appropriate).
- In 1975, the Order in Council specified the parts of electoral law and regulations that were to apply to the referendum - 42 clauses out of the 175 in the Representation of the People Act 1949 were involved.

- 55 Future referendum legislation could provide for the establishment of an independent 'Referendum Commission' with responsibility for some of these issues (as recommended above).

## Different Approaches to Legislation

- 56 There are three ways in which these provisions could be covered by legislation. They could be:
- a. included in the legislation for the measure on which the referendum is being held - for example, the 1979 referendums in Scotland and Wales were provided for in clauses and schedules of the Scotland and Wales Acts 1978.
  - b. set out in a free standing Bill solely concerned with holding the referendum - for example, the 1975 referendum on membership of the European Economic Community was provided for in the free standing Referendum Act 1975.
  - c. set out in general legislation designed to provide permanent legislative provision for the holding of referendums - a generic Referendum Act.

### *Following Past Practice*

- 57 For previous referendums in the UK legislative provision has been made by one of the first two ways. If these models are used in the future, the choice between them will depend on the timing of the referendum:
- a pre-legislative referendum or a referendum where no substantive policy legislation is required
- A separate Act will be needed if a referendum is to be held prior to legislation on the substantive issue (as a Labour Government would propose to do in Scotland and Wales), or if a referendum is not considered until after the passage of relevant substantive legislation. If a referendum is to be held on an issue which does not require any legislation, it will have to be provided for in a free standing Act.

- a post-legislative referendum

If a Government intends to hold a post-legislative referendum on a specific Act, i.e. to ask Parliament to approve a Bill on the basis that it would be submitted to the electorate before a final decision is taken to implement it, provision for a referendum should be provided for in the same Bill.

- 58 The detail of provisions to be included in primary legislation will need to be decided by the Government and Parliament. Past practice has been to leave details, such as the date of the referendum and adaptation of electoral machinery, to secondary legislation. In theory all of the provisions previously set out in primary legislation for each referendum, could be handled through secondary legislation provided for by enabling clauses in a parent Act. There is already a UK example of this. Section 4 of the Northern Ireland (Entry into Negotiations etc.) Act 1996 contains a general enabling provision for referendums in Northern Ireland. This has, however, been generally regarded as an unsatisfactory provision - not least because it means that Parliamentary scrutiny of future referendum arrangements may be limited - and was only agreed to in view of the exceptional circumstances in Northern Ireland and the perceived desirability of proceeding as quickly as possible.

*A Generic Referendum Act*

- 59 An alternative to detailed primary legislation each time a referendum is held would be to introduce general legislation designed to provide permanent legislative provision for the holding of referendums - a generic Referendum Act (paragraph 56 c). This option may be particularly attractive if referendums were to become a frequent event, or if it were proposed to hold a series of referendums.
- 60 A generic Referendum Act could take one of two forms:
- A it could provide in specific terms for some, or all, aspects of the conduct of referendums and enable a Government to initiate each future referendum and deal with other issues, for example, the wording of the question, through secondary legislation.
  - B it could give statutory form to the organisational and administrative aspects of referendums (e.g. establishment of a 'Referendum Commission' and adaptation of the Representation of the People Act), while leaving the more political matters which may vary between referendums (e.g. the wording of the question and grants to any campaign groups) to be determined in primary legislation on each specific occasion.
- 61 The principal advantage of *option A* for a Government planning several referendums is that it would make possible the saving of Parliamentary time in the future. Primary legislation would not be needed to secure Parliamentary approval for the conduct of each referendum held. The matters listed in paragraph 54 (and the establishment of a 'Referendum Commission', if desired) would all be provided for in a generic Act, either in specific terms, or through clauses enabling matters to be dealt with through secondary legislation. This would provide a consistent statutory framework for referendums comparable to that which the Representation of the People Act provides for the conduct of elections.
- 62 The difficulty about *option A* is the possibility of Parliamentary objections to a Government relying on secondary legislation to secure approval for what could be the highly political issues of, for example, the wording of the question, grants to campaign groups, or whether or not to confine the eligible electorate to one region of the UK. The secondary legislation could,

however, be made subject to an affirmative motion of Parliament. That would ensure some debate, though it could be too restricted for the discussion of key issues since such debates are often limited to one and a half hours. Although it would in theory be open to Parliament to block a referendum in these circumstances by refusing to approve the motion or by voting against, say, the proposed wording of the question, this would be unlikely to succeed when the Government had a working majority. Furthermore, secondary legislation cannot be amended.

- 63 If a Government did decide to introduce generic legislation on the basis of option A, it should consider means of ensuring that Parliament would have adequate opportunity to debate any key issues to be dealt with through secondary legislation. For example, the generic Act could specify that the proposed secondary legislation be debated by the House at a draft stage. Amendments could then be proposed and debated over a day or more. In bringing forward the eventual Order, the Government would take the debate into account.<sup>25</sup>
- 64 A further objection may be that option A might facilitate too ready a use of referendums. But, whether or not a Referendum Act was on the statute book, a Government with a working majority could initiate a referendum through primary legislation almost as easily as through secondary legislation.<sup>26</sup> A Government planning a series of referendums could choose to reassure Parliament by specifying the proposed referendum issues in the generic Bill - though the Parliamentary reaction to the Bill might then be influenced by the views of Members on the particular referendum issues.
- 65 If the difficulties which option A may present were judged unacceptable, an Act following option B above might offer greater advantage - particularly if a Bill were to be introduced in the next few years whilst concern for Parliamentary sovereignty is a relevant factor and the UK experience of referendums is limited. Under this option the Act would cover only the organisational and administrative provisions for the conduct of referendums, though what those provisions should include might be controversial (for example, the question of thresholds). The Act would, however, meet the important need to establish in permanent statutory form a 'Referendum Commission', and the essential adaptations to the Representation of the People Act; and it would provide for a degree of consistency in the conduct of referendums. But the potential saving of Parliamentary time would be less than under option A since separate primary legislation would still be required to initiate each referendum, to decide the wording of the question and to resolve other issues which could vary between referendums.
- 66 A Government might consider that it would not be worth the Parliamentary time involved in enacting a generic Act if primary legislation was still to be required for the conduct of each referendum, and that it would be easier to legislate, as in previous referendums, for the necessary organisational and administrative provisions in the context of each individual referendum.<sup>27</sup> Against that, a generic Act would be an important policy option for a Government which was planning to hold a series of referendums. The choice between options A and B would depend on political and Parliamentary factors at the time. Such an Act, if it could be allowed some priority in Parliamentary time, would give an Independent Commission the status and statutory powers it would need. It would also demonstrate a serious intent on the part of a Government to ensure that the conduct of what appears likely to be a varied range of referendums would be efficient, fair and consistent.

- 67 An alternative for a Government committed to establishing an Electoral Commission would be, as indicated in paragraphs 47-53, to incorporate the necessary provisions for the conduct of referendums within its remit in the context of an Electoral Commission Act.

#### GUIDELINE 3

If a Government is planning a series of referendums, it has the option of establishing a statutory framework for the conduct of referendums through the enactment of a generic Referendum Act. Such an Act would demonstrate the Government's commitment to the efficient, fair and consistent conduct of referendums. It would provide for the establishment of an independent 'Referendum Commission' and include fixed rules for some matters (for example the organisation of the poll and the count). For other matters, on which it is impossible to determine rules in advance (for example, the wording of the question), the Act should set out how a decision should be reached. Those matters which will be different in each referendum and are likely to be of Parliamentary concern could be dealt with through primary legislation on each occasion.

### Judicial Review

- 68 A future Government would also have to consider the growing tendency of the courts to regulate administrative action by means of judicial review.
- 69 Since the reforms of 1978, which simplified procedures under Order 53 of the Rules of the Supreme Court, there has been a huge increase in the incidence of judicial review. The number of actions brought each year increased from just over 500 in 1980 to more than 2000 in 1991. Government departments and agencies have developed a greater awareness of the importance of due process. The Civil Service has published a training guide *The Judge over your Shoulder*. Future referendums must be organised with a keen eye to the judicial canons of propriety, natural justice, reasonableness and proportionality. If the Government does not ensure that a referendum is conducted with scrupulous fairness, the courts may intervene to ensure that it is.

### Experience in the Republic of Ireland

- 70 It is useful to note that recent referendums in Ireland have been accompanied by a barrage of litigation. The Irish Constitution requires constitutional amendments to be approved by referendum. Referendums have been held inter alia on the electoral system (twice), on Europe (three times: on accession, on the single European market and on Maastricht), and on abortion and divorce. Actions have been brought to stop a referendum by injunction; to force the Government to hold a referendum; and to challenge the fairness of the process. There have been challenges to the Government's expenditure supporting one side of a referendum campaign; to the Government's failure to produce a balanced explanatory leaflet; and to a broadcast by the Irish Prime Minister about the referendum when the other side was not given a right to reply.
- 71 Most of these challenges failed on the ground that they raised political rather than legal questions; but recently the Irish Supreme Court has intervened to control Government expenditure on a campaign. After an earlier unsuccessful challenge to Government expenditure on the Maastricht referendum, the courts ruled that it was wrong to spend public money on the

'Yes' campaign for the changes to the divorce laws. The immediate result was that Government advertising was stopped in the last week of the campaign; and afterwards there was a challenge to the result of the referendum (carried by only 9000 votes), on the basis that the Government had acted unfairly during the campaign. In 1996 the courts rejected that challenge because the applicants could not establish that the referendum result had been materially affected by the Government funded campaign. None of these issues litigated in Ireland are matters which were prescribed by the legislation on the UK referendums in the 1970s. They were left to the discretion of the Government of the day, and so might be equally susceptible to judicial review.

### UK Experience

- 72 The Referendum Bill 1975, as tabled, included clauses which would appear to have made a legal challenge very difficult. Clause 1(4)(b) stipulated: "The Secretary of State may by order made by statutory instrument make any such provision as to the conduct of the referendum as may appear to him to be expedient; and clause 4(b) stated: "No court shall entertain any proceedings for questioning the validity of anything done or purporting to be done under this Act or under any order made under this Act". The eventual Referendum Act did not, however, include clause 4(b). No clause similar to 4(b) was included in the Scotland and Wales Acts 1978.

### Ombudsman Rôle

- 73 It might be considered desirable to establish a body specifically to deal with disputes arising out of the conduct of referendums. In Canada a group of Supreme Court judges acts as a 'Referendum Commission'. Alternatively, grievances raised about referendums might be dealt with in the first instance by the Independent Commission. This could offer quicker access at lower cost, to arbitration and a means of resolving disputes without recourse to the courts.

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**The Policy  
Decisions**

**Chapter 4**



## The Policy Decisions

- 74 Whatever the issue on which a referendum is held, there will be decisions that are essentially matters of policy and on which the Government will have to take a position. These issues include whether collective Cabinet responsibility will be retained, whether the referendum should be advisory or mandatory, as well as the timing of the referendum.

### Cabinet Responsibility

- 75 Cabinet members may not always agree on what referendum result would be best. Collective Cabinet responsibility might be retained, or there might be a formal agreement to differ on a referendum issue during the campaign. In 1975 members of the Cabinet were found on both sides, whereas in 1979 all members of the Cabinet campaigned for a 'Yes' vote. The present Prime Minister, John Major, in his statement of 6 April 1996 on a referendum about European Monetary Union, made clear that he would not allow a Cabinet split on the issue. Where the Cabinet is allowed to divide, the experience of the 1975 referendum pointed to the value of placing Ministerial responsibility for the referendum on a senior Minister not closely associated with either side. In 1975 the Lord President of the Council exercised this responsibility.

### Consultation

- 76 If a referendum is to be held on an issue of Government policy, then it is unlikely that the Government will want to consult widely on either the merits of holding a referendum or the way in which a referendum is to be conducted. It is, however, possible to foresee a referendum where the Government's policy is purely to put the issue to a poll. The Labour Party's proposed referendum on electoral reform may prove to be such a case. In such circumstances, a Government may be more likely to consult on the way in which the issue should be presented. A referendum where several options are to be put to the electorate, rather than a straight 'Yes'- 'No' vote is another example of where consultation may be appropriate.

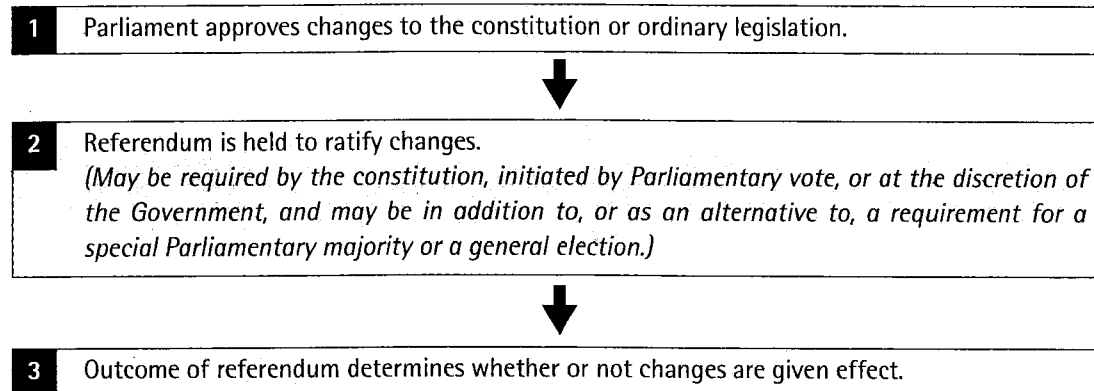
## Mandatory or Advisory

- 77 One of the first issues to be resolved will be the status of the referendum. In countries where there is a constitutional requirement for a referendum to legitimise constitutional change, its verdict is necessarily mandatory. In the UK it is in principle difficult to reconcile a mandatory referendum with the doctrine of Parliamentary sovereignty. However, a UK referendum result could be mandatory in the sense, for example, that legislation passed by Parliament would automatically come into effect if there was a vote in favour. If a referendum is advisory, Parliament might be unwilling to be bound by the result, citing perhaps a low turnout or a small majority.

78 The different stages involved in mandatory and advisory referendums are set out below.

### Mandatory Referendums

A referendum whose result is binding on the Government and Parliament. Referendums which are required by a state's constitution are generally binding, e.g. Australia, Denmark and Ireland.

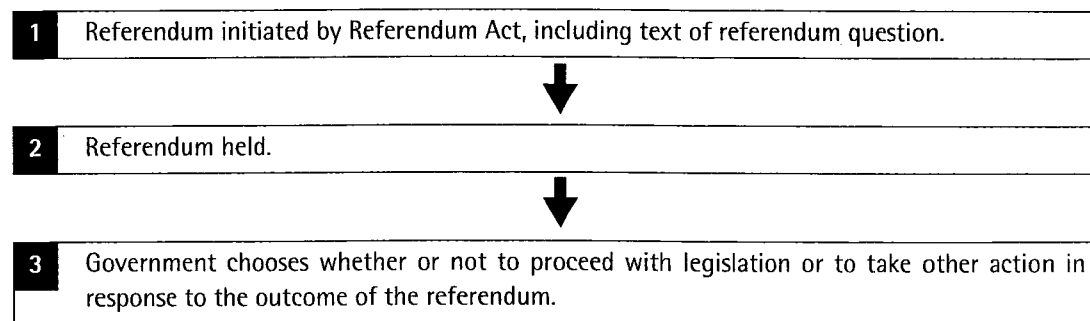


### Advisory Referendums

An advisory referendum could be held either before or after substantive legislation is passed, but with no formal binding effect - although in practical terms it would be difficult for a democratic government to act contrary to a ballot result. In some countries, such referendums are also called indicative referendums. Two versions are illustrated below.

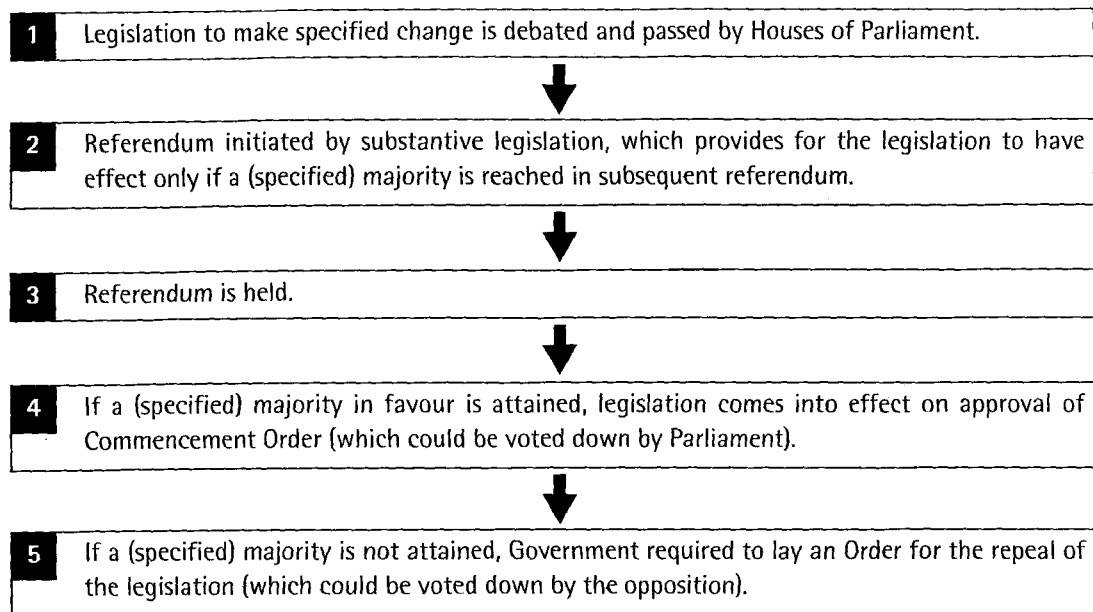
#### *Pre-Legislative Referendum*

In which the referendum is held as a means of consulting in advance on the principle of change rather than as a means of endorsing a specific reform already embodied in legislation. An example is the Scottish and Welsh devolution referendums currently proposed by the Labour Party.



*Post-Legislative Referendum*

Popular approval is sought for legislation already passed by Parliament. For example, in 1979, the devolution referendums asked for approval of the Scotland and Wales Acts. In some respects this replicates the operation of the mandatory referendum, but is open to Parliament to reject the outcome. The referendum result could depend on a simple, or on a specified, majority.



79 In 1975 the sovereignty of Parliament was formally preserved by the fact that the EC referendum was advisory. Parliament was not bound by the result, but the Labour Government declared that it would honour the result. During the passage of the Scotland and Wales Bill in 1977, the Government offered referendums as a concession to its own backbenchers. The clause providing for the referendums was innovative in that the results were to be mandatory. Previous attempts to propose mandatory referendums had been ruled out of order as, in the words of Erskine May, "proposing changes in legislative procedure which will be contrary to constitutional practice". The Committee Chairman ruled on 10 February 1977 that the new clause was in order. This created a significant precedent, but this was never tested as the Government subsequently announced that the referendums would, after all, be advisory. The Bill was in any case abandoned shortly afterwards.<sup>28</sup>

80 The Scotland and Wales Bills introduced the following year included provision for referendums. They were amended to incorporate a rule requiring a minimum 40% of the eligible electorate, as well as a majority of those who voted, to vote in favour of devolution in order to secure a 'positive' vote. The use of such a threshold might appear to increase the credibility of the result and therefore the likelihood of its being regarded as mandatory. But in the event of a failure to meet the threshold, the 40% rule made those referendums more advisory, not less, since the legislation had to go back before Parliament if the threshold was not reached. Parliament therefore had an opportunity to make a decision on the basis of the outcome. If, however, the 40% threshold had been met, the Act would have come into force without further recourse to Parliament.

- 81 The best known example of a consultative referendum is the first New Zealand referendum on proportional representation in 1992. Voters were asked whether they would like a change in the electoral system and offered a choice of four systems. In a second referendum in 1993 they were asked to approve an Act providing for a specific system. The 1992 referendum was an authoritative expression of public opinion. The 1993 referendum endorsed an Act of Parliament. Thus New Zealand showed that both types of referendum could be conducted efficiently and fairly within the Westminster form of Parliamentary democracy.

#### GUIDELINE 4

Whether a referendum is regarded as advisory or mandatory is a political issue. A referendum can be mandatory only to the extent that a Government binds itself to accept the result. That would depend on the referendum issue, and possibly on factors such as the turnout or the size of the majority vote. Although a Government could commit itself, Parliament could not be bound by the result.

### Pre- or Post-Legislative

- 82 Most referendums will relate to an issue requiring legislation. The question is whether a referendum should be held before or after the substantive legislation. The timing of a referendum initiated by the Government will be determined by general policy and current political factors. Whether it should take place before or after legislation is for decision by the Cabinet. Parliamentary aspects will be a key factor.
- 83 A referendum is likely to produce a more satisfactory result when the issue put to the electorate is clearly defined and widely discussed. A post-legislative referendum can be expected to provide for this. There may be disagreement over the consequences of the referendum result, but the substantive issues will have been fully debated in Parliament and in the public domain before the referendum is held.
- 84 If a Government is committed to asking a question on which the views of the electorate are uncertain, or contested, it may not wish to initiate the legislation before it knows the result of a referendum. A pre-legislative poll may also be seen as an aid to getting the eventual legislation through Parliament; what the Leader of the Opposition, Tony Blair, has described as a “principled, tactical reason” for holding pre-legislative referendums in Scotland and Wales.<sup>29</sup> However, the Home Office Minister, Baroness Blatch, in a Lords’ debate on the Constitution in July 1996, made the point that the duty of an Opposition is to oppose: if the Opposition did not support a proposed measure, it would feel free to oppose it, regardless of the outcome of a referendum.
- 85 A difficulty with a pre-legislative referendum is that important aspects of the issue put to the electorate might to be changed during the passage of the Bill through Parliament. Referendums on complex measures which Parliament would wish to debate in detail - for example, pre-legislative referendums relating to devolution in Scotland and Wales - could make it hard to ensure that the electorate knew what it was voting for. One means of ensuring that the electorate was aware of the issues involved would be through the publication of a White Paper. This would enable the Government to set out the detail and the policy implications of the bill to be presented to Parliament. A draft bill could also be published, and laid before Parliament.

- 86 A further consideration is the time required to ensure that the electorate fully understands the question, or questions. Some questions may have been publicly discussed long enough to allow a referendum to be held relatively quickly after a short campaign. Other issues may require longer public debate. The passage of the relevant legislation would contribute to the electorate's understanding of the policy implications of a proposed measure.

**GUIDELINE 5**

Whether referendums are to be held before or after legislation will be decided in the light of political factors. It will be important to give voters adequate information and sufficient time for public discussion. For a pre-legislative referendum a White Paper should set out in detail the Government's proposals and their implications.

## The Electorate

### The Electoral Register

- 87 The relevant electorate for a national referendum will usually be the one entitled to vote in general elections - UK citizens, other Commonwealth citizens, citizens of the Irish Republic and overseas electors - with the addition of members of the House of Lords (who are entitled to vote in local elections). In local and regional referendums voting rights could be extended to EC nationals resident for longer than one year as is the practice in local and European elections (but not general elections). The usual postal and proxy facilities should be available. Provision should also be made for the late inclusion of eligible electors on the electoral register.
- 88 There are some criticisms of the way in which the electoral register is compiled. It is revised once a year. Although a 'rolling register' would allow for continuous amendment, the register is unlikely to be completely accurate even with regular updating. A study by OPCS in 1981 comparing the electoral register with the census found 7% of names omitted and a similar number of duplications at the time of completion (October 10).<sup>30</sup> By February when the register comes into force and still more by the time of a June or October general election there will have been a few deaths and many more changes of address. Almost 2% of the electorate die in the course of the year and more than 2% move every month. In any referendum a proportion of electors will be unable to vote, even though registered, because they have moved, are in hospital, seriously disabled, ill at home or for other reasons. Such people can still vote by post, by proxy, or, if they have moved, come back to their old polling district. But very few do so. Only 3% of votes cast in recent British elections are not cast in person and most of these are cast by people who are ill or away on business or holiday.
- 89 Doubts about the accuracy of the register raised particular problems in the devolution referendums of 1979, because "the 40 per cent rule placed on the electoral register a burden which it was ill-equipped to bear, and...the requirement of a qualified majority cannot be completely fair unless the efficiency of the register is improved."<sup>31</sup> (see further paragraphs 93-101 below).

**GUIDELINE 6**

Those entitled to vote should be the same as in general elections, with the addition of members of the House of Lords. Postal and proxy voting should be provided for as at general elections.

**Nationwide or Regional**

- 90 Another key issue is whether to hold a nationwide referendum, or to limit the ballot to one particular area. The UK has held only one nationwide referendum. The Northern Ireland, Scottish and Welsh ballots were held only in those parts of the UK that were directly concerned, although some Members of Parliament argued that the referendums should have been nationwide since they affected the 'constitution' of the UK as a whole. The course chosen in 1979 is broadly in accord with international practice. In Denmark nationwide votes have been held on the status of a part of the country (cession of the Virgin Islands, 1916). France (Algeria, 1961; New Caledonia, 1988) offers other examples. There are, however, a far greater number of instances where voting has been restricted to the areas where change is contemplated, as in Quebec, 1980 and 1995; Gibraltar, 1967; Algeria, 1962. Once sub-national referendums in the United States and Switzerland are put to one side, the majority of sub-national referendums have been on issues relating to different degrees of self-determination (see Table C, Appendix B). The UK precedents established in the 1970s will be invoked in future referendums on devolved government and issues of territorial integrity.
- 91 A related question is whether natives of the region residing elsewhere in the United Kingdom should be allowed to vote on an issue affecting the future of the region and held only in that region. If the eligible electorate is defined as those in the region eligible to vote in general elections then a Scot living in France while on the electoral register in Scotland would be able to vote on devolution, while a Scot living and registered in a London constituency would not. Indeed, anyone registered to vote in a Scottish constituency as an overseas voter, be they Scottish, Welsh, Northern Irish or English, would be eligible to vote in a referendum held only in Scotland. However, as there is no means of identifying a 'true' Scot, using the criteria of eligibility to vote in a general election is the only practicable approach.

**GUIDELINE 7**

The electorate for a referendum may be UK-wide or confined to a region, as precedents in the UK and internationally show. This would be a decision for Government and Parliament dependent on the character of the issue.

**Thresholds**

- 92 General elections in the UK are decided by simple majorities in each constituency. Simple majorities were required province-wide in the 1973 Northern Ireland referendum and nationwide in the 1975 European referendum. The 40% rule applied in the Scottish and Welsh referendums in 1979 involved a double test: a majority for change and a substantial turnout.

- 93 The application of a threshold in future referendums is likely to be one of the most difficult issues to resolve. There are three main options:
- a simple majority of one.
  - a proportion of those voting.
  - a proportion of those entitled to vote.
- 94 A simple majority of those who cast their votes carries a natural authority. But to provide a measure of effective entrenchment of the decision, it may be desirable to achieve a substantial majority of a specific size, i.e. a threshold endorsed by Parliament. The case for thresholds advanced in those countries where they are used to approve constitutional amendments is that they provide a safeguard against changing the basic laws too easily. A similar case applies to thresholds in other types of ballot; for example, the recent ballots of building society members about giving up mutuality.
- 95 The main difficulty in specifying a threshold lies in determining what figure is sufficient to confer legitimacy - e.g. 60%, 66.7%, or 75%, and whether the threshold should relate to the total registered electorate or those who choose to vote. Requiring a proportion of the total registered electorate to vote 'Yes' creates further problems, as noted above, because the register can be so inaccurate. Some of the electorate may believe that abstention is equal to a 'No' vote. An abstention only has the same effect as a 'No' vote where the margin between the 'Yes' and 'No' votes is greater than the number of people who abstain in the belief that this will have the same effect as a 'No' vote.<sup>32</sup> Thus the establishment of a threshold may be confusing for voters and produce results which do not reflect their intentions. A turnout threshold may make extraneous factors, such as the weather on polling day, more important.

### International Practice

- 96 Internationally, thresholds have taken various forms. In Weimar Germany, a referendum had to receive the support of 50% of the electorate to succeed. Abstention was equivalent to a 'No' vote. In one case a referendum drew 94.5% support from those voting, but since the turnout was only 14.1%, it failed. In Denmark, 45% of the electorate was once required for a referendum on a constitutional amendment to succeed. In 1939, a 92% 'Yes' was nullified because the turnout was only 49%, so the 'Yes' vote was 44% of the electorate. In 1953 the threshold was changed to 40%. Other countries have adopted diverse requirements:
- Australia requires a majority of voters nationally and in at least 4 of the 6 states.
  - New Zealand once required a 60% 'Yes' vote (1908-14).
  - in Italy popular initiatives can only succeed if the turnout is over 50%.
  - in Gambia a new constitution failed in 1965 because it failed (by 1%) to secure the two-thirds 'Yes' vote required.
  - Uruguay requires the support of 35% of registered votes.
  - no country seems to have used a double threshold - say two-thirds in favour and 50% turnout.

### UK Experience

- 97 The 1975 White Paper considered the arguments for a majority of a specified size, but concluded: "The Government are concerned that the size of the poll should be adequate, and they are confident it will be so. They also consider it to be of great importance that the verdict of the poll should be clear and conclusive. In the circumstance, they believe that it will be best

to follow the normal electoral practice and accept that the referendum result should rest on a simple majority - without qualifications or conditions of any kind."

- 98 As already noted, In 1979 the use of a threshold became the focus of Parliamentary opposition to the devolution bills. The 40% threshold eventually adopted was the result of a backbench amendment and supported by those opposed to devolution.
- 99 There may be circumstances where a straightforward majority is not enough. Northern Ireland is a case in point. Any agreement that is to produce enduring change in the way Northern Ireland is governed will need not only the majority of voters to support it, but also a majority in each of the main communities, and even possibly a majority of the parties in Northern Ireland. Ascertaining the majority view of the Nationalist or Unionist communities will be difficult.
- 100 If referendums are to be advisory, the issue of thresholds becomes in itself less significant. For example, pre-legislative referendums, based on, say, proposals in a White Paper, would provide a measure of public support for a proposed piece of legislation. The legislation would still have to go before Parliament. Parliament would certainly take the referendum result and the margin of support into account, but will have the last word on whether and in what form the legislation is passed. A formal threshold would imply that, if it were not reached, a Government would be prevented from introducing the proposals for debate in Parliament. It seems unlikely that either the Government or Parliament would support this. An informal threshold would almost certainly apply anyway, with MPs and Government interpreting the results in varying ways.

**GUIDELINE 8**

The use of thresholds is a political decision. If a threshold is used, it should be a set percentage of the votes cast and not a percentage of the eligible electorate. If thresholds are set, a clear explanation of the meaning of the threshold for the electorate should be included in the public information provided.



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# The Question

# Chapter 5

## The Question

- 101 The words chosen for a referendum question must be both few and simple. But the process of deciding the wording may prove complex and frustrating because:
- a. it is essential that the wording should be accepted as objective and fair.
  - b. the preamble or introduction to the question, if there is one, may significantly affect the response of the electorate. This wording must also be accepted as objective and fair. The same applies to any explanatory information. This is particularly important where an issue has technical aspects, as with a referendum about European Monetary Union. In short, its significance should be fully understood.
- 102 When a referendum takes place at the same time as a general election or asks a whole series of questions, the cues offered on the ballot paper may make a significant difference. But too much weight may be attached to the influence of the exact wording of the question when the referendum relates to a single issue attracting a high media profile and wide public interest. In February 1975 NOP tried seven formulations of a question about UK membership of the EC and got 'Yes' majorities that ranged from 0.2% to 16.2%. But, four months later, at the end of the Parliamentary debates and the public campaign, everyone knew what the issue was and it seems unlikely that the precise wording made a significant difference. Nonetheless there is always likely to be argument over the fairness of the wording and the layout of the ballot paper. The Government must allow time for debate and resolution of any differences before holding the referendum. The Independent Commission could fulfil a helpful rôle.

## Defining the Question

- 103 Where a referendum follows the passage of legislation by Parliament - as in the 1979 devolution referendums - identifying the sides to the debate and defining the question is made simpler. The question is 'for' or 'against' the contents of the new law. In Australia, where national referendums are held on proposed changes to the written constitution, the ballot paper asks whether the voter approves of the proposed law ('Yes') or not ('No'). Where the referendum is not effectively seeking approval for legislation already passed or proposed, establishing the broad scope of the question(s) should not prove too difficult. Determining the exact text of the question can take longer and be more exacting.

## Wording the Question

- 104 No simple rules can be established for deciding on the wording of referendum questions. What is important is establishing a process for reaching a decision. Key decisions must be made about the nature of any consultation on the wording and essential information associated with it, and about where responsibility lies for taking the final decision on the wording.
- 105 It is likely that some Parliamentary or public discussion will precede any final decision on the wording. In 1975 there were talks between the Government and representatives of: the two campaigning organisations - Britain in Europe and the National Referendum Campaign; the six

political parties in the House of Commons; and the Labour, Conservative and Liberal Parties outside Parliament. Views on the wording of the question varied according to the opinion of the organisation concerned about UK membership of the EC. Among the points raised were: that there should be no preamble; that the ballot paper should refer to the Common Market rather than the EC; that instead of 'Yes' and 'No', the ballot paper should offer a choice between 'In' and 'Out'; and that the question should make clear that the membership terms had been recommended by Parliament. Suggestions were also made that the ballot paper should pose more than one question, and that one of the questions should ask the voters if they would prefer to leave the issue to Parliament.

- 106 In 1979, however, there was far less controversy over the wording of the questions relating to devolution to Scotland and Wales. A Government spokesman said that "there is no intention of having consultations with any umbrella organisations that might spring up during the campaign".<sup>33</sup> The referendum was post-legislative and the question simply asked for approval of the provisions of the Scotland and Wales Acts.
- 107 The final decision on the wording could be made by the Government confirmed by Parliament (on the basis of a Government's proposal), drawing on the advice of the Independent Commission. If the referendum related to a constitutional issue from which the political parties should preserve some detachment, the independent role and advice of the Commission would be important. An Independent Commission with this task would need to take account of the views of Parliament. The Commission would advise on the initial draft. The final decision would rest with Parliament. Alternatively, the Government might consult by way of a White Paper. It would then leave the question to be considered by Parliament, in debate on a bill, and accept Parliament's decision on the final wording, as in 1975 and 1979.
- 108 The question must be easy to understand and accessible. 'Reverse' wording, where the way in which the question is put makes it unclear what a particular answer means, is to be avoided. The problem of reverse wording is difficult to eliminate entirely, and politicians may seek to manipulate wording to their advantage. California's 1976 vote on nuclear power is a good example. Most people believed that they were voting on whether to keep nuclear power, but there was confusion over whether a 'Yes' vote was one in favour of limiting future development (correct) or a vote to continue the development of nuclear power (incorrect). Testing the ease with which the different wording of questions can be understood would be an appropriate task for the Independent Commission. Accessibility may be enhanced in particular cases, e.g. providing a Welsh language version, or alternative formats for visually impaired voters (large print and Braille).
- 109 The format of the ballot paper can also make a difference. One frequent concern is the order in which the options are presented. The Australian legislation specifies both a standard layout and the colour of the paper that should be used and has a provision for rotating the order of the questions on the ballot papers. The New Zealand electoral reform referendum illustrates the advantage of surrounding boxes on the ballot papers with a black background, to avoid disputes over which box had been marked and to eliminate the problem of voters marking in the space between boxes. In UK general elections candidates are listed in alphabetical order by surname with six words of description, usually identifying the political party they represent; but none of the previous UK referendums provides any clear guidance on how ballot papers should be laid out. Again, this is an issue where the Independent Commission might usefully offer expert, impartial advice.

**GUIDELINE 9**

The wording of the question should be short and simple and should not be open to either legal or political challenge after the result is known. Its significance should be fully understood and it should therefore emerge from a thorough process of Parliamentary and public consultation and media discussion. The exact character of the consultation will depend on the substance of the issue; but the final decision on the wording can best emerge in the context of Parliamentary debate on the legislation which includes the text of the ballot paper.

**Preamble**

- 110 A Government and Parliament may wish to include a preamble to a referendum question. In 1975 the ballot paper included the sentence "The Government have announced the results of the renegotiation of the United Kingdom's terms of membership of the European Community" as a preamble. In 1979 a preamble explained that "Parliament has decided to consult the electorate in Wales [Scotland] on the question whether the Wales [Scotland] Act 1978 should be put into effect". Parliament should decide on any such preamble when it is considering the wording of the question. As with the question, it should emerge from a thorough process of Parliamentary and public consultation and media discussion and should be easy to understand.

**One- or Two-Stage Referendums**

- 111 Although the majority of referendums around the world have consisted of a single vote, there are examples of two stage referendums, i.e. two referendums held at different times. The 1992/93 New Zealand referendums on the reform of the electoral system are the best known. The New Zealand model may be appropriate where there are a number of reform options. A first referendum might address a question of principle - "Do you support change?" - with a second referendum running two or more options off against one another in relation to the specific proposals.
- 112 There are complications in holding two-stage referendums. They are vulnerable to the same unclear outcomes as other multi-option referendums (see paragraphs 113-119). The timing of legislation for the two referendums requires careful consideration, taking into account local, national and European elections. If the two referendums are to be authorised by separate pieces of legislation, there can be no guarantee that the second referendum will take place. Government and Parliament cannot be formally bound by a commitment to legislate for the second referendum. Two-stage referendums are more demanding of the electorate, requiring interest to be sustained for some time.

## Multi-Option Referendums

- 113 The 'classic referendum' has one question and two possible answers - 'Yes' and 'No'. There are alternative formulations which have been described as the 'cafeteria' approach, where there is one question, but several possible answers, and the 'supermarket' approach where a series of questions which may, or may not, be related are put to the vote at the same time. An example of a 'cafeteria' referendum would be where a choice was given between different electoral systems. 'Supermarket' referendums are generally used where citizens initiative polls are held and several questions are voted on at the same time.
- 114 The first New Zealand referendum on the electoral system held in 1992 provides an example of both formulations in one referendum. The referendum was in two parts:  
*"First, in Part A, voters were asked to vote for the present system, or to vote for a change to the voting system. Second, in Part B, they were asked which one of four specified 'reform options' they preferred if there was to be a change. Voters could vote on both parts or on only one. Those voting for the present system in Part A were also able to indicate their preferred reform option in Part B. If a majority opted for first-past-the-post in Part A, then that would settle the issue."*<sup>34</sup>
- 115 Multi-choice nationwide referendums have also been held in Sweden in 1957 (on alternative pension plans) and in 1980 (on nuclear energy); and in Andorra in 1982 (on the electoral system). Similar referendums have been held in a number of subordinate territories in relation to issues of territorial status (e.g. Curacao 1993, Guam 1982, Uganda 1964, Newfoundland 1948); (see Table, D, Appendix B). Multi-choice referendums are, however, the exception and may present considerable difficulty if there is no clear 'winner'.
- 116 The New Zealand referendum was unusual in that, if the first ballot came out in favour of a change to the electoral system, the Government undertook to hold a second referendum where voters were asked to choose between the existing electoral system and the option which had received the most votes in the 1992 referendum. Somewhat surprisingly, no provision was made to secure a decision in the event that two or more options - there were four - secured a near equal number of votes. Legislation providing for the new voting system was passed after the first referendum, with its implementation dependent on the second referendum result, thus making the second result mandatory.
- 117 If a UK referendum on the electoral system were to be held in a similar way to the one in New Zealand, it is possible that two, or more, of the reform options could attract a similar level of support. To avoid a situation where two reform options attract a similar share of the vote, voters might be asked to rank options in order of preference. A system of preference voting which gave voters the opportunity to rank their options would prevent an unclear outcome and would allow supporters of electoral reform to indicate that they would be prepared to accept their second, or even third, choice reform option if it led to a rejection of the status quo. Ballot papers illustrating first, the New Zealand model and second, a preferential voting model are set out below. Either form of ballot could be followed by a further referendum (as was the case in New Zealand) where voters are asked to choose between the existing system and the reform option which attracted the most votes in the first referendum.

## Ballot Paper Following New Zealand Model

<p><b>Part 1</b> Please put a cross in the circle beside the statement you agree with. Your vote will still count if you choose not to vote in Part 2.</p>	
<p>I vote to keep the present voting system (First Past The Post)</p>	
<p>I vote to change the voting system</p>	
<p><b>Part 2</b> You may vote for one of the reform options, but you do not have to. Put a cross in one circle only. If you voted against changing the voting system in Part 1, you can still vote in Part 2.</p>	
<p>Which of these voting systems would you prefer?</p>	
<p>Additional Member System (AMS)</p>	
<p>Alternative Member System (AV)</p>	
<p>Single Transferable Vote System (STV)</p>	

## Preferential Voting Ballot Paper

<p><b>Part 1</b> Please put a cross in the circle beside the statement you agree with. Your vote will still count if you choose not to vote in Part 2.</p>	
<p>I vote to keep the present voting system (First Past The Post)</p>	
<p>I vote to change the voting system</p>	
<p><b>Part 2</b> Three different voting systems are listed below. Mark your first preference '1' in the circle next to it, your second preference '2', and your third preference '3'. You may number as many or as few as you wish. If you voted against changing the voting system in Part 1, you can still vote in Part 2.</p>	
<p>Which of these voting systems would you prefer?</p>	
<p>Additional Member System (AMS)</p>	
<p>Alternative Member System (AV)</p>	
<p>Single Transferable Vote System (STV)</p>	

- 118 Where an issue cannot easily be resolved into two possible courses of action, a multi-choice referendum can reflect this more accurately than a 'Yes' and 'No' ballot. However, the more options, the more complex is the task of public information and interpretation of the result. The Swedish experience also suggests that multi-choice referendums, as much as 'Yes'-'No' referendums, can be used as a mechanism for appeasing political parties rather than offering the public a genuinely wider choice, and can prolong debates that might be resolved by a clear cut 'Yes' and 'No' referendum.<sup>35</sup> In some instances, as with electoral reform, there is a possibility that reform may be prevented by the use of a multi-choice referendum because of divisions among supporters of change as to which specific option should be preferred. As seen above, New Zealand avoided this difficulty by having a two part ballot paper, with the results of the second part multiple-choice question only having effect if the initial 'headline' question was answered in favour of change.
- 119 Other issues are raised where two or more related questions are voted on at the same time - as the Labour Party proposes for Scotland. Where subsequent questions cover details related to a change proposed in the first question, a decision is needed on whether those voting 'No' on the first question are allowed to vote on the second question. Should the different questions each be presented on a 'Yes'-'No' basis - or should they be presented in a multi-option format with voters being able to mark their preferred option. Using the Scottish example, this would mean three options: the status quo; a Scottish Parliament with tax varying powers; and a Scottish Parliament without tax varying powers. Once one supplementary question is included in the referendum, demand may emerge for other questions. A referendum including a question on tax varying powers could pose the no less significant questions of whether a Scottish Parliament should have legislative powers and what electoral system it should use.

**GUIDELINE 10**

The choice of a multi-option referendum or a 'Yes' and 'No' referendum will depend on the nature of the issue (or issues) to be put to the electorate; it will be considered by the Government and by Parliament as part of their consideration of the wording of the question. If the electorate is being asked to endorse legislation approved by Parliament, a 'Yes' and 'No' referendum is appropriate. If a multi-option referendum is used, it is important that a clear outcome is achieved. Voters could be given the opportunity to record votes in favour of their second or third choice; furthermore, or alternatively, a second confirmatory ballot could be used. Multi-option referendums can be confusing for voters; clear instruction on the ballot paper will be essential.

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# The Campaign

# Chapter 6



## The Campaign

- 120 Whatever the reasons for calling a referendum, the debate has to reflect a balance between respecting freedom of speech and the need for the question to be discussed objectively and fairly.
- 121 The referendum campaign will be significant in determining the outcome of a referendum. In 1975, polls on EC membership indicated support moving from an 8% 'No' majority in January to a 34% 'Yes' majority in May. But after the active campaign in the four weeks before the June poll, there was a slight falling off in the 'Yes' majority to 32%, despite a more professional effort by the 'Yes' forces. In 1979, a 'Yes' vote on Scottish devolution seemed likely until quite near to polling day. The Scotland Act's complex allocation of responsibilities, the differences between the measures proposed for Scotland and Wales, and the perception that the proposals represented politically expedient solutions were believed to be part of the problems which beset advocates of devolution. The devolution referendums had as their background the 'winter of discontent' and the struggle of a minority Government to stay in power. The popularity of a Government is likely to affect the outcome of a referendum, as can other factors including the political circumstances in which a referendum is called, the proximity to other elections, and the time of year.

## Campaign Duration

- 122 Election campaigns have no clearly defined duration. For general elections there is a statutory period of 23 or so days from dissolution to polling day; but usually the contest begins as soon as the date for dissolution is announced. For referendums a period of at least 23 days is necessary for administrative purposes. Postal and proxy votes need to be applied for 13 working days before the poll and time is required to circulate the necessary information. The length of the campaign may also affect whether late additions can be made to the electoral register - supplementary claims cannot be accepted later than the 20th of the month (22nd in February) to be effective on the first of the following month. Broadcasters would also be assisted by three weeks or more in order to allow for any referendum broadcasts and relevant programmes - though in practice informal campaigning and coverage in the media are likely to begin considerably earlier.
- 123 Provided that these administrative requirements were met, the need for a precise definition of the referendum campaign could arise only if particular restrictions were applied, e.g. limits on broadcasts or a requirement to account for expenditure. In practice, those involved in campaigning are usually anxious to limit expenditure by confining the period of full scale campaigning to a minimum. Once the legislation is in place, the period of notice required to prepare for the referendum should not be long.
- 124 What is more difficult to determine is the length of time needed to develop the debate about the issues. In 1975 an intensive campaign was concentrated into less than two weeks, but the date (June 5) had been announced on April 10. Each side was making preparations and arguing their case from then on. In the case of the devolution referendums held in March 1979, it had been known that referendums would be held since the Scotland and Wales Acts were passed in July 1978. The polling date of March 1, 1979 was announced in October 1978. If the issue is one that has been subject to extensive public debate before the announcement of a referendum, the time needed to ensure that the arguments are effectively put may be reduced. A maximum period of six weeks is judged adequate for all referendum campaigns.

**GUIDELINE 11**

Notice of a referendum should allow sufficient time for an effective information campaign, for adequate public debate, and for practical arrangements to be made. It will be necessary to define a formal start to the campaign period (for example, for accounts of expenditure, allocation of campaign broadcasts). The campaign period should be a minimum of three weeks (following general election practice), but should be no longer than six weeks.

**Public Information**

- 125 Two types of public information are necessary. Voters must be told that a referendum will take place and how it will be organised. They also need information on the issue at stake, the options and the arguments. Both need to be available in languages other than English and in an appropriate form for visually impaired people.
- 126 As to the first type of information, normal electoral practice points to the provision of poll cards to electors with a reminder of their right to vote - and information about the location of polling stations. If poll cards are not distributed, the Referendum Act should enable the Electoral Registration Officer to publicise electors' voting rights. Postal and proxy voting facilities could be advertised on television and in newspapers in good time.
- 127 As to dissemination of the arguments, the role of government needs to be defined. The Government will want to present its own policy view on the referendum issue. But a one-sided information campaign could bring the legitimacy of the vote into question, so the Government will want to ensure a basic level of information is fairly and widely presented to voters.
- 128 In 1975 a 'Yes' and 'No' leaflet written by the respective campaign groups was distributed at the taxpayer's expense, as was a popular version of the Government's White Paper. The 1975 experience suggests that producing a leaflet, or leaflets for campaign groups may not be straightforward. There was initial disagreement about the format and the colour scheme and the campaigning organisations rejected a Q&A format. Such an approach also relies on campaign groups emerging and agreeing to work together. Even where the Government was split over the referendum issue, as in 1975, there was distrust of information emanating from the Foreign Office and disquiet expressed by MPs about the role of civil servants in providing information.<sup>36</sup>
- 129 The devolution referendums in 1979 were not preceded by a Government publication detailing the arguments. This was because the campaign groups would not agree among themselves on the texts and Government Whips warned that a Government leaflet would not appeal to backbenchers. Even the provision of an explanatory leaflet in Post Offices in Scotland and Wales was not attempted. This was partly compensated for by private initiatives. Yet there is evidence to suggest that the turnout was reduced because some voters had no information delivered to their own homes.
- 130 International experience of leaflet distribution is mixed. In Quebec the Referendum Act provides that a brochure explaining the options must be made available to electors 10 days before voting takes place. The national committees (umbrella campaign groups) provide the content, and the Chief Electoral Officer ensures that each option is given equal space. In New Zealand, the 1992 referendum was preceded by a publicly funded publicity campaign organised by a Government-appointed Panel,

chaired by the Chief Ombudsman. The public information and advertising campaigns were carried out by commercial organisations chosen by competitive tender, supervised by the Panel.

131 In Australia the Referendum (Machinery Provisions) Act provides that a statement of the proposals must be made available to the Electoral Commission in each State or Territory; and a notice about the referendum must be inserted in at least two newspapers circulating in each State or Territory. The Electoral Commissioner is responsible for printing and distributing to all electors a pamphlet containing both sides of the argument - each of no more than 2,000 words - not later than 14 days before voting day. The texts included in the information pamphlets are prepared by the MPs who voted 'Yes' or 'No' in initiating the referendum. The pamphlet must also include a statement showing the proposed textual alterations and additions to the Constitution. The legislation applies only to referendums on constitutional changes. Where more than one referendum is held on the same day, the arguments on all the proposed laws are printed in the same pamphlet.

132 Several models for information provision emerge:

- the Government or the Independent Commission provides all publicly funded information, in consultation with campaign groups if they emerge.
- the Government or the Independent Commission provides facilities and funds for the production and distribution of leaflets written by a campaign group from each side (and is responsible for any arbitration between the competing claims of campaign groups).
- no public support is given to information provision - it is left to campaign groups.

133 The provision of information accepted as fair by both sides presents the clearest role for the Independent Commission. This could involve direct responsibility for the provision of information, or responsibility for facilitating, on an equitable basis, the preparation, production and distribution of campaign material provided by the campaign groups. Either way this would take the drafting, production and distribution of information out of the hands of the Government. This would forestall any criticism that the Government was promoting its own position. The provision of information by an independent body must be factually accurate about what may be complex issues and would need to be based on consultation with those campaigning, and with the Government.

#### GUIDELINE 12

Every household should receive a publicly funded leaflet giving general information on the holding of the referendum and statements of the 'Yes' and 'No' cases relating to the referendum question. The Independent Commission should facilitate, on an equitable basis, preparation, production and distribution of campaign material provided by umbrella campaigning organisations. If no umbrella organisations exist, the Independent Commission should produce the leaflets after appropriate consultation.

Poll cards giving electors notice of the referendum and information regarding the location of their polling station should be issued as with Parliamentary elections.

## Campaign Organisations

134 In the UK, the establishment of 'umbrella' campaigning organisations for the purposes of referendum campaigns has happened only once. In 1975, two umbrella organisations were in existence as self-appointed campaign co-ordinators before they were given legal status under the Referendum Act. Thereafter they were unchallenged as the representatives of the two opposing views, although each had some difficulties in maintaining unity. In both Scotland and Wales in 1979, anti-devolution Labour MPs were unwilling to work with Conservatives. Pro-devolution Labour MPs similarly resisted co-operation with the SNP. The decision by the Government to 'go it alone' in an official Labour 'Yes' Movement was followed by a refusal to recognise umbrella organisations, or to offer consultation as in 1975.

### Establishment and Identification of Campaign Organisations

135 The principal argument for formal recognition of campaigning organisations is the belief that, in order to promote a full and fair debate, there is advantage in being able to allocate public resources to the 'opposing camps' or campaigning organisations. Such resources may include airtime and advertising space; leaflet distribution; and financial grants. This may be regarded as particularly important when one side of the campaign has considerably more money to spend. Without campaigning organisations which can be formally recognised, allocation of public resources is not possible.

136 States with generic referendum legislation have established procedures for the identification and establishment of umbrella campaigning organisations. One possible model for the UK is provided by Quebec's Referendum Act 1978. It requires that two referendum committees be established with responsibility for the campaign - one committee for each referendum option. A minimum of 18 days is allowed for the formation of the committees. Members of the National Assembly (MNAs) have seven days from the adoption of the question or Parliamentary Bill to register with the Chief Electoral Officer in favour of one of the options. If no MNA registers, the Chief Executive chooses 3 to 20 voters who are publicly identified with an option. There are only provisional committees at this stage. Subsequently those registered with the provisional committees are summoned by the Chief Electoral Officer to:

- appoint a chairperson.
- give the committee a name.
- adopt by-laws.
- create local sections of the national committee for each of the electoral divisions.
- establish standards, conditions and terms for membership and the financing of groups or organisations other than parties.

The provisional committees then become referendum committees. The arrangements are fairly restrictive, because the committees are usually controlled by the parties represented in the legislature and tend to exclude smaller parties. When the legislation was first tested in 1980 it proved less severe than some had feared. In the 1996 referendum on independence a challenge was brought by a group wishing to campaign separately for a 'No' vote, but it failed in the Supreme Court.

137 In the UK in 1975, the White Paper, *Referendum on the United Kingdom Membership of the European Community*, suggested that the Government was willing to consider providing public assistance to the umbrella campaigning organisations, subject to it being possible to "identify

two organisations which adequately represent those campaigning for and against continued membership of the Community." Section 3 of the subsequent Referendum Act provided for the Lord President to make a grant not exceeding £125,000 towards the expenses incurred by the two organisations formally recognised (or expenses incurred by organisations affiliated to the two umbrella groups). This was an arbitrary figure decided on by the Cabinet. The Lord President later announced that certain conditions would be attached to the grants - among them a requirement that accounts must be submitted for audit; and that only expenses incurred after 26 March 1975 - the publication date of the Referendum Bill - would be covered. It was decided that no limit could be placed on total expenditure by the two campaigning organisations (see paragraphs 142-145).

- 138 The arrangements for funding the 1979 referendums, however, were different. No public funds went to either side, reflecting the Government's refusal to recognise any campaign organisations. No obligation was therefore placed on the campaigning groups to publish their accounts. Little attention was paid to the absence of public funding in either Parliamentary debates or media commentary.
- 139 The identification of campaign organisations in the future may not be as straightforward as it was in 1975. As in 1979, those campaigning on the same side may be unwilling to work together in a single umbrella organisation. Once more than one campaign group is recognised on either side, the allocation of any public resources becomes complicated. The more campaign groups that emerge, the more complicated allocation becomes and the Independent Commission would be required to adjudicate between competing claims.
- 140 Referendums with several questions, or a series of options, present further difficulties in identifying campaign organisations. Labour's proposed referendum in Scotland would contain two questions. Four campaign groups could emerge: one supporting a 'Yes' vote on both questions; one supporting a 'No' vote on both; and one supporting a 'Yes' vote on the first question, but a 'No' vote on the second and even one supporting a 'No' - 'Yes' vote. It is difficult to judge whether a campaigning group should be recognised for each possible permutation, or for the two sides in each question.
- 141 Similar difficulties to those experienced in Scotland in 1979 could emerge in future referendums - for example, in a referendum relating to a Single European Currency. Previous experience does not suggest that formalised procedures for establishing umbrella organisations, along the lines of those in Quebec, would be appropriate to the UK. It might be better for the Government to follow the precedent of the 1975 referendum and be ready to give formal recognition, and, if justified, financial assistance, to campaign groups if they emerged as two umbrella organisations. This process might need to be facilitated through consultation with different campaign groups and other interested parties, and criteria might have to be set (for example, the backing of a fixed number of signatories) as a basis for recognising campaign groups. The Independent Commission would be an appropriate body to handle this task. For some referendums, however, the best course might, once again, be to give no formal recognition to campaign groups, though groups would be free to participate in the referendum campaign, while leaving it to the Independent Commission to provide the electorate with the information summarised in Guideline 12 on public information.

**GUIDELINE 13**

The Government should formally recognise umbrella campaigning organisations if they emerge and should consider providing them with limited financial assistance. The Independent Commission would be an appropriate body to handle the process of consulting campaign groups, advising the Government on the establishment of umbrella organisations, and administering any financial assistance. Those who do not want to be associated with any of the recognised campaigning organisations, or compose a group which has not been formally recognised, would be free to participate in the campaign, but would not be eligible for any publicly funded assistance.

**Limits on Expenditure**

- 142 Unlike a number of other democratic states, the UK does not have state funding of political parties; nor does it set national limits on general election expenditure, though there are legal limits to the campaign expenditure of Parliamentary candidates. No limits were placed on expenditure in the referendum campaigns of 1975 and 1979 since the Government took the view that there would be practical obstacles to enforcing statutory constraints as well as possible objections to restricting freedom of speech. In 1979 there were in any case no formally recognised campaign groups over which the Government could exercise control. But in 1975 there was an evident problem of fairness as a result of the striking contrast between the resources of the two opposing campaign groups. The subsequent accounts of campaigning organisations showed Britain in Europe as having spent £1,481,583 against £133,630 spent by the National Referendum Campaign.<sup>37</sup> In future referendums there may be pressure on the Government to consider ways of applying some limits to campaign expenditure in the interests of fairness.
- 143 Few countries have attempted to limit the amount of money spent in referendum campaigns. The three places with most experience of referendums - Switzerland, California and Australia - do not apply any Government limits to campaigning expenditure. The exception lies in the Quebec Referendum Act. In order to prevent the distortion of campaigns by wealthy individuals the Act requires that referendum committees use a special fund to cover the expenses they incur during the referendum period. Each national committee may spend up to C\$1.00 per voter. The State contributes to the committees' funds an amount set by the National Assembly when it adopts the question - C\$0.50 at the last referendum. The committees may then raise other money up to the C\$1.00 per elector limit. Individuals may donate a maximum of C\$3,000 to each committee. Firms and 'legal persons' may not make any contribution.
- 144 The provisions of the Quebec Act would not be readily applicable to the different conditions and circumstances of UK referendums, but possible constraints to the spending of campaign groups could be explored if action of this kind, even though limited in scope, could usefully reduce a significant advantage in resources enjoyed by one of the groups. For example, limiting the expenditure of both campaign groups on posters and advertisements, and thus controlling one of the traditional ways of influencing voters, could be considered. But the effect of such action on the response of the electorate to the referendum issue would be unlikely to be large, and certainly not decisive, when account is taken of all that can be said and printed by the media and individuals, the use of telephone canvassing and direct mail, without the possibility of statutory control.

- 145 The possibility of an individual or a group providing disproportionate funding to one side of the argument, allowing for a very large-scale press and poster campaign, undoubtedly exists. It could cause considerable anxiety. But the difficulties of restraining such activity in a free society are very great.<sup>38</sup> Furthermore, US and Swiss experience suggests that conspicuous over-expenditure on one side can be counter-productive. In short, the balance of advantage is against any attempts to apply a fixed ceiling to campaign costs. If financial limits are not imposed, there would be advantage in monitoring and publishing the sums received and spent by campaign organisations, as was done in 1975. This requirement would be likely to have some restraining effect, even though it could be difficult to impose effective penalties on those who failed to produce satisfactory accounts after the event.

**GUIDELINE 14**

On balance, it is not considered practical to exercise Government control over the total expenditure by those campaigning on either side in a referendum. Umbrella campaigning organisations should be required to undertake to provide accounts of monies received or spent on the campaign if they are to qualify for public money or services in kind.

## Government Activity

- 146 Government does not stop for a referendum. The Government of the day may or may not have a clear and collective view 'Yes' or 'No'. It cannot be constrained from expressing its view. Whether a Government decides to do so is likely to depend on the referendum issue. While it would be bound to present its view on Government policy matters such as EMU, it might prefer not to do so on an issue such as electoral reform. This would have a potential impact on the role of civil servants in supporting Ministers during the campaign. Whatever action it took, the Government would be careful to avoid being counter-productive, or requiring civil servants to go beyond the provision of factual information in Government information programmes.
- 147 In 1975 the referendum followed the renegotiation of the terms of entry into the European Economic Community and in March 1975 the Government followed its White Paper of February 1975 about the holding of the referendum with the publication of a further White Paper, together with a popular version, presenting the outcome of the renegotiation and the Government's own recommendation. The White Paper was debated in Parliament with the Government putting forward the majority Cabinet view in the special circumstances of a divided Cabinet and a formal agreement to differ. The Government also arranged for every household to receive pamphlets, equal in length, which presented the opposing cases of the two umbrella campaigning organisations. In addition to that, an information unit was established in the Foreign and Commonwealth Office. By the end of April 1975 this unit employed 15 people, to deal with enquiries about the referendum and issues involved, from the media, the general public, the parties and any interested organisations.
- 148 It was essential for the Government in 1975 to ensure that the renegotiated terms of EC membership, which had been endorsed by Parliament, were clearly understood by the electorate. But it made the Government, in effect, a second campaigning voice in support of continuing membership of the European Community. This experience underlines the case for placing

responsibility for the publication and management of information on the referendum outside Government and in the hands of the Independent Commission. In possible future referendums, say, EMU or devolution to Scotland and Wales, the Government's point of view will be publicly known. It will not want its position to be misrepresented or misunderstood, but it may be especially important in those circumstances to ensure that the balanced presentation of both sides of the referendum question is the responsibility of an independent body.

**GUIDELINE 15**

Responsibility for the publication and management of information relevant to a referendum should be exercised outside of Government - by the Independent Commission. The conventions which require the Civil Service to avoid engaging in political or public debate, and which limit its actions to the provision of factual information, should be maintained.

**Party Political Activity**

- 149 Political parties cannot be restrained from expressing views and using their resources to promote them. A referendum may be held because parties are divided internally. For this reason they may, as parties, choose to stand aside from the campaign. Parliament will, however, continue to sit and - unless Parliament chooses to exercise self-restraint - will provide a forum for party debate and activity.

**GUIDELINE 16**

So long as there are no national controls on political parties' spending in general elections, no legal restraint should be placed on political parties' expenditure or activity in referendum campaigns, although they may choose to stand aside.

**The Broadcast Media**

- 150 The broadcast media will occupy a central rôle in informing the public of the issues and the arguments on both sides of the referendum question. The three distinct areas which concern the broadcast media are news and current affairs coverage, the provision of air time for referendum broadcasts - the equivalent of party election broadcasts - and paid advertising.
- 151 News and current affairs programmes would operate according to the rules and guidelines on political impartiality. Broadcasters would apply the well established and tested guidelines to ensure that "justice is done to a full range of significant views and perspectives during which the issue is active" (ITC Programme Code). As in general election campaigns, broadcasters should aim for a scrupulously fair balance between the opposing views. This is likely to be interpreted as a 50:50 balance over a period between both sides in any 'Yes' - 'No' referendum.



- 152 The question of referendum broadcasts was relatively uncontroversial in 1975, but extremely controversial in 1979. The major difference was the existence in 1975 of only two 'umbrella' organisations, whereas in 1979 there were no umbrella organisations, but several distinct campaign groups.
- 153 In 1975, the broadcasting authorities gave time, over the final two weeks leading up to the vote, for four broadcasts of ten minutes each to both sides of the campaign. The arrangements were generally perceived as satisfactory.
- 154 In 1979, the political parties decided to use their normal party political broadcasts to set out their views on devolution. In Scotland the political parties were three to one in favour of a 'Yes' vote. The 'Labour Vote No Campaign' won an interim 'interdict' prohibiting the Independent Broadcasting Authority from broadcasting four scheduled party political broadcasts. The court held that to transmit such broadcasts during the campaign could not be regarded as maintaining a proper balance. As a result, all the scheduled party political broadcasts on both Independent Television and the BBC in Scotland and Wales were cancelled immediately prior to the referendum.
- 155 Since the last referendum in the UK the broadcasting environment has altered radically. The advent of Channel 4, the growth of satellite channels and the new channels being planned for terrestrial, cable and satellite distribution have made the situation more complicated than it was in 1975 or in 1979. Similarly, the number of radio stations has increased considerably in the past two decades.
- 156 In this changed broadcasting environment there is a view that referendum broadcasts, in which the two opposing sides put their arguments direct to viewers and listeners, are redundant and that the extensive coverage of politics and political matters on both radio and television obviates the need for such broadcasts. However, this is not a view shared by many involved in the political process and the need for referendum broadcasts as a key element of fair conditions for the opposing campaigns is seen as a potentially important factor. There is therefore a strong case for encouraging the broadcasters to provide a limited amount of airtime for referendum broadcasts.
- 157 The responsibilities for the content and production of such referendum broadcasts is clearly simplified if there are umbrella campaigning organisations. Each of these organisations can take editorial responsibility and be allocated an equal amount of broadcasting airtime. In the absence of such umbrella organisations, it could fall to the Independent Commission to appoint independent production companies to produce such broadcasts. During the referendum campaign period, there should be no party political broadcasts, though the broadcasting of Parliament would continue as usual.<sup>39</sup> The use of Parliamentary broadcast material in news and current affairs programmes would be subject to the normal requirements to ensure balance.
- 158 Paid for radio or television advertisements for referendum campaign purposes would be forbidden under the Broadcasting Act, which prohibits advertising "which is directed towards any political end". This restriction applies equally to terrestrial and satellite channels licensed by the ITC.

**GUIDELINE 17**

A balance should be maintained between the 'Yes' and 'No' viewpoints rather than between the different political parties. Broadcasters should be encouraged to provide a limited amount of airtime for setting out the arguments for each option in the referendum. The content of such broadcasts would be the responsibility of any formally recognised campaign organisations. In the absence of such organisations the Independent Commission should appoint production companies to produce such broadcasts. Party political broadcasts should not normally be transmitted during the referendum campaign.

**Other Media**

- 159 Restrictions on political advertising do not apply to the print media. It is difficult to see how expenditure on newspaper advertisements could be subject a general restriction. Current advertising law requires that advertisements are identified as such and cannot be confused with the editorial content of the paper. There is no requirement for newspapers to present a balanced political view and the political affiliations of the national newspapers are well known.
- 160 Other forms of campaign media, like direct mail and telephone canvassing, are similarly unregulated. It is likely that legislation to do so would be politically unacceptable.

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The Poll

# Chapter 7

## The Poll

- 161 For the voter, the actual polling procedure is likely to be almost identical to that for national and local elections. However, fair and efficient management of the poll, both centrally and locally, and of the presentation of the poll results, requires planning that cannot rely solely on the arrangements for general elections.

## Date and Hours

- 162 A Government will choose the date for a referendum primarily on political grounds. On practical matters it may wish to consult interested parties such as any umbrella groups representing the opposing sides. As with general elections, the time of year, including the summer holiday season, will be taken into account. It will be essential to allow enough time between the announcement of the referendum and polling day for full debate and an adequate public understanding of the issue and for the provision of postal and proxy votes (see paragraphs 122 and 126).

- 163 The possibility of combining a referendum with a general election or European Parliament elections may need to be considered. This would maximise turnout. The second of the New Zealand referendums on an electoral system was held at the same time as the general election, and secured a turnout of 82.6%, against the 55.2% turnout at the first, free-standing referendum of 1992. The cost of holding a referendum, including its own information campaign, at the same time as a general election would be only slightly higher than the cost of a normal election. Both a general election and European Parliament elections could be combined with a national referendum. Local government elections could be combined with local referendums. English local authorities have differing electoral cycles, so if local elections in England were combined with regional or national referendums not all local authority areas would have local elections in any given year. This would not be an issue in Scotland and Wales, where the electoral cycle is the same for all local authorities. Closing off the possibility of combining referendums with local elections may limit flexibility in choosing the date.

- 164 We consider that the balance of advantage is against a combined ballot. As the Hansard Society 1981 report *Referendums - Guidelines for the Future* pointed out:

*"When referendums come frequently, and come mixed up with other issues, the public attention given to them is likely to be much less. The turnout and the decision may be shaped by the other matters being voted."*

For similar reasons the legislation for the 1979 referendums in Scotland and Wales provided that they should not take place until at least three months after a general election.

- 165 As to other aspects of electoral practice, it would be best for standard general election procedures to be followed, as they were so far as possible in 1975 and 1979. This would be efficient, and easier for the public to understand. General reform of election practice falls outside the remit of this report, but the Commission notes that wide ranging proposals have been made for such reforms, at both general and local elections, by among others the Chataway Commission and the Commission for Local Democracy. For example, weekend voting has been supported as a means of increasing voter turnout and assisting the Returning Officer in ensuring that such buildings as schools are automatically used as polling stations (there is increasing opposition by schools and parents to the use of school premises for elections). In the Commission's view, changes on these lines could prove helpful in the conduct of referendums.

**GUIDELINE 18**

The date chosen for referendums will turn on political factors. It should allow for full public debate of the issues raised. Referendums should be normally held separately from general elections, European Parliament elections or local government elections. Arrangements for voting hours should follow general election practice subject to any changes made in the future.

**Organisation of the Poll**

- 166 Existing electoral law provides for the compilation of the electoral register, the appointment of returning officers, the establishment and staffing of polling stations and the rules for the secrecy of the ballot. At this technical level there is little need for additional guidance or legislation, except possibly in defining the equivalents to the accredited representatives of the candidate at the polling stations and at the count. But some different and important problems are posed by referendums. Planning the organisation of the poll requires co-ordination between central and local government, in conjunction with the Royal Mail, police and transport operators. Many practical issues need resolution at local level; an analysis of the practical arrangements needed for the 1975 referendum is attached at Appendix D. The remainder of this section considers some of the key issues.
- 167 Arrangements need to be made for the appointment of returning officers and the staffing of polling stations. In 1975 and 1979, returning officers (who were normally clerks to the county council) were appointed by the Chief Counting Officer on a county basis with the practical arrangements for that poll being carried out at a local district and - in London - borough level. This worked well in 1975, but reorganisation of local government in the UK over the last two years, with the creation of unitary authorities in Scotland, Wales and parts of England, has made county councils much more remote from the electoral process than 20 years ago.<sup>40</sup> Westminster, or European Parliament, constituencies would now be a more appropriate level at which to assign overall responsibility for the poll, with the running of the poll devolved to local authorities in the constituency. The responsibility for appointing returning officers ought to fall to the Independent Commission.
- 168 The absence of party representatives to act as polling agents, as in elections, also requires special arrangements. Campaign organisations could be invited to appoint polling agents. If no campaign organisations are officially recognised, an alternative solution would be for the political parties to appoint polling agents.

**GUIDELINE 19**

The responsibility for poll organisation at each polling station could be undertaken by the Independent Commission. If that were not established, it would need to fall to a Chief Counting Officer. Independent returning officers should be appointed at the appropriate level. Officially recognised campaign organisations should be entitled to appoint polling and counting agents. In the absence of officially recognised campaign organisations, political parties should be entitled to appoint polling and counting agents. The total number of polling and counting agents should be at the discretion of the Returning Officer.

## Vote-Counting and Declaration of the Results

- 169 There are three main issues: the units in which votes are counted, the arrangements for declaring the results and the procedures for contesting the results.
- 170 In 1975 the initial Cabinet decision was in favour of a central count, in part because of concern that the results in Scotland and Wales might differ from the overall UK outcome thereby influencing the separate but parallel debate about devolution. There was also a desire to spare MPs the possible difficulties in their constituencies of discovering that their constituents disagreed with them. The Home Office prepared a feasibility study on a central count, which concluded that it would be possible, but hazardous. Eventually the plans for a central count were rejected by Parliament, which voted for an amendment to the Referendum Bill in favour of a declaration by counties. The Government accepted this, preferring a county to a constituency count in a referendum in which the issue was outside the ambit of local political parties. In the event it seems that every constituency, except the Western Isles, and perhaps one or two in Northern Ireland, voted 'Yes'.
- 171 In 1979 there was less controversy over the arrangements for the count. It was readily agreed that votes should be counted by Regional and Island Councils in Scotland and by counties in Wales.
- 172 If the practice in general elections is applied to referendums, counting should be organised on a constituency basis. The machinery is well known and there are people already available who have experience of electoral procedure. On the other hand, the precedents of the 1975 and 1979 county-based counting suggest that for political reasons a constituency count may be inappropriate in a nationwide referendum. There may also be cases, such as in a referendum on the constitutional status of Northern Ireland, where it may be undesirable for votes to be identifiable with a particular area. An alternative to counting votes at a district or Westminster constituency level could be to count at ward level, or to follow European Parliament constituencies, of which the electorate now has experience. A number of UK Parliamentary constituencies make up a European Parliamentary constituency, with an average of 500,000 electors. The returning officer could be appointed from the Parliamentary constituency with the largest electorate. The use of European Parliament constituencies could however be controversial in a referendum on a European issue. The advantage appears to lie with counting and declaring votes at a UK Parliamentary constituency level or ward level. Exceptions to this practice could be made if the identification of votes with a particular area could undermine the acceptance of the referendum result.
- 173 The procedure for contesting a referendum result, and the question of who has authority to initiate a recount must be decided. Under UK electoral law, the returning officer has discretion to order a re-count; and the candidate and his or her agent may ask the returning officer to do so, and pursue the matter through the courts if dissatisfied with the returning officer's decision. It would be best to follow the general election practice as far as possible. This may be difficult in the absence of campaign groups which could appoint the equivalent of election agents, though this is a task for which the Independent Commission could have responsibility. In Quebec, for example, only the chair of a national committee may apply for a recount of the votes. The application must be made to the Conseil du référendum, which is composed of three judges and has exclusive jurisdiction over any legal proceedings relating to the referendum, within 15 days of the polling. In Australia, a recount may be ordered by the Electoral

Commissioner, or by the Electoral Officer for a State or Territory. There appears to be no example world-wide of the outcome of a national referendum being dependent on a recount.

- 174 As to the promulgation of the results, in 1975 the full result of the poll was known by 5 p.m. the day after polling. Similarly, in 1979 the votes were counted and results announced on the day following the referendum. The administration of this aspect of the referendum presented few problems.
- 175 It is likely that, as in a general election, the results would be disseminated first by the broadcast media. There may also be exit polls which could give a strong indication of the way in which the vote has gone.

**GUIDELINE 20**

In both nationwide and regional referendums, the votes should be counted and declared at ward level or at Parliamentary constituency level. Exceptions to this practice could be made if the identification of votes with a particular area could undermine the acceptance of the referendum result.

Any formally recognised umbrella campaigning organisations should appoint the equivalent to election agents able to request a recount and to pursue challenges in the same way as at general elections. The Independent Commission should also be able to request a recount.

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**The Guidelines**

# **Chapter 8**



## The Guidelines

- 176 The Commission is neither for nor against referendums. We have remained strictly neutral on whether referendums are in general desirable; on whether they should be held on any particular issue; and on what the outcome of any particular referendum should be. Our task has been to formulate guidelines for the conduct of referendums which could be generally accepted as efficient and fair. It is essential that referendums should be conducted in a manner which enables all competing views to be heard. We recommend that special guidance on the conduct of referendums should be drawn up. This report sets out twenty guidelines. They are designed to provide a practical basis on which to develop an enduring framework for the conduct of referendums.

## The Framework

### 1 Need for Rules or Guidance

Guidance should be drawn up dealing with organisational, administrative and procedural matters associated with holding a referendum. Established guidelines should include fixed rules for some matters (for example, the organisation of the poll, the election machinery and the count). For other matters, on which it is impossible to determine rules in advance (for example, wording the question), the guidance should state how a decision should be reached.

*See paragraphs 40-41.*

### 2 An Independent Statutory Commission

The decision to initiate a referendum would normally be taken by the Government. But the conduct of referendums, i.e. their organisation and administration, should in future be independent of Government and party political interests in order to ensure maximum confidence in the legitimacy of their results. An independent statutory Commission should be established. Its members would serve for a period of years, but it would be activated ad hoc for each referendum. The Chairman should be personally accountable to Parliament for the efficiency and consistency with which referendums are conducted.

If an Electoral Commission were established, the functions of such a 'Referendum Commission' should be brought within its remit.

*See paragraphs 47-53.*

### 3 Legislation

If a Government is planning a series of referendums, it has the option of establishing a statutory framework for the conduct of referendums through the enactment of a generic Referendum Act. Such an Act would demonstrate the Government's commitment to the efficient, fair and consistent conduct of referendums. It would provide for the establishment of an independent 'Referendum Commission' and include fixed rules for some matters (for example the organisation of the poll and the count). For other matters, on which it is impossible to determine rules in advance (for example, the wording of the question), the Act should set out how a decision should be reached. Those matters which will be different in each referendum and are likely to be of Parliamentary concern could be dealt with through primary legislation on each occasion.

*See paragraphs 54-67.*

## The Policy Decisions

### 4 Advisory or Mandatory

Whether a referendum is regarded as advisory or mandatory is a political issue. A referendum can be mandatory only to the extent that a Government binds itself to accept the result. That would depend on the referendum issue, and possibly on factors such as the turnout or the size of the majority vote. Although a Government could commit itself, Parliament could not be bound by the result.

*See paragraphs 77-81.*

### 5 Pre- or Post-Legislative

Whether referendums are to be held before or after legislation will be decided in the light of political factors. It will be important to give voters adequate information and sufficient time for public discussion. For a pre-legislative referendum a White Paper should set out in detail the Government's proposals and their implications.

*See paragraphs 82-86.*

### 6 The Electorate

Those entitled to vote should be the same as in general elections, with the addition of members of the House of Lords. Postal and proxy voting should be provided for as at general elections.

*See paragraphs 87-89.*

### 7 Nationwide or Regional

The electorate for a referendum may be UK-wide or confined to a region, as precedents in the UK and internationally show. This would be a decision for Government and Parliament dependent on the character of the issue.

*See paragraphs 90-91.*

### 8 Thresholds

The use of thresholds is a political decision. If a threshold is used, it should be a set percentage of the votes cast and not a percentage of the eligible electorate. If thresholds are set, a clear explanation of the meaning of the threshold for the electorate should be included in the public information provided.

*See paragraphs 92-100.*

## The Question

### 9 Wording of the Question

The wording of the question should be short and simple and should not be open to either legal or political challenge after the result is known. Its significance should be fully understood and it should therefore emerge from a thorough process of Parliamentary and public consultation and media discussion. The exact character of the consultation will depend on the substance of the issue; but the final decision on the wording can best emerge in the context of Parliamentary debate on the legislation which includes the text of the ballot paper.

*See paragraphs 104-109.*

### 10 Multi-Option Referendums

The choice of a multi-option referendum or a 'Yes' and 'No' referendum will depend on the nature of the issue (or issues) to be put to the electorate; it will be considered by the Government and by Parliament as part of their consideration of the wording of the question. If the electorate is being asked to endorse legislation approved by Parliament, a 'Yes' and 'No' referendum is appropriate. If a multi-option referendum is used, it is important that a clear outcome is achieved. Voters could be given the opportunity to record votes in favour of their second or third choice; furthermore, or alternatively, a second confirmatory ballot could be used. Multi-option referendums can be confusing for voters; clear instruction on the ballot paper will be essential.

*See paragraphs 113-119.*

## The Campaign

### 11 Campaign Duration

Notice of a referendum should allow sufficient time for an effective information campaign, for adequate public debate, and for practical arrangements to be made. It will be necessary to define a formal start to the campaign period (for example, for accounts of expenditure, allocation of campaign broadcasts). The campaign period should be a minimum of three weeks (following general election practice), but should be no longer than six weeks.

*See paragraphs 122-124.*

### 12 Public Information

Every household should receive a publicly funded leaflet giving general information on the holding of the referendum and statements of the 'Yes' and 'No' cases relating to the referendum question. The Independent Commission should facilitate, on an equitable basis, preparation, production and distribution of campaign material provided by umbrella campaigning organisations. If no umbrella organisations exist, the Independent Commission should produce the leaflets after appropriate consultation.

Poll cards giving electors notice of the referendum and information regarding the location of their polling station should be issued as with Parliamentary elections.

*See paragraphs 125-133.*

### 13 Campaigning Organisations

The Government should formally recognise umbrella campaigning organisations if they emerge and should consider providing them with limited financial assistance. The Independent Commission would be an appropriate body to handle the process of consulting campaign groups, advising the Government on the establishment of umbrella organisations, and administering any financial assistance. Those who do not want to be associated with any of the recognised campaigning organisations, or compose a group which has not been formally recognised, would be free to participate in the campaign, but would not be eligible for any publicly funded assistance.

*See paragraphs 134-141.*

### 14 Campaign Expenditure

On balance, it is not considered practical to exercise Government control over the total expenditure by those campaigning on either side in a referendum. Umbrella campaigning organisations should be required to undertake to provide accounts of monies received or spent on the campaign if they are to qualify for public money or services in kind.

*See paragraphs 142-145.*

### 15 Scope Of Government Activity

Responsibility for the publication and management of information relevant to a referendum should be exercised outside of Government - by the Independent Commission. The conventions which require the Civil Service to avoid engaging in political or public debate, and which limit its actions to the provision of factual information, should be maintained.

*See paragraphs 146-148.*

### 16 Scope Of Party Political Activity

So long as there are no national controls on political parties' spending in general elections, no legal restraint should be placed on political parties' expenditure or activity in referendum campaigns, although they may choose to stand aside.

*See paragraph 149.*

### 17 Access To Broadcast Media

A balance should be maintained between the 'Yes' and 'No' viewpoints rather than between the different political parties. Broadcasters should be encouraged to provide a limited amount of airtime for setting out the arguments for each option in the referendum. The content of such broadcasts would be the responsibility of any formally recognised campaign organisations. In the absence of such organisations the Independent Commission should appoint production companies to produce such broadcasts. Party political broadcasts should not normally be transmitted during the referendum campaign.

*See paragraphs 150-158.*

## The Poll

### 18 Date and Hours

The date chosen for referendums will turn on political factors. It should allow for full public debate of the issues raised. Referendums should be normally held separately from general elections, European Parliament elections or local government elections. Arrangements for voting hours should follow general election practice subject to any changes made in the future.

*See paragraphs 162-165.*

### 19 Organisation Of The Poll

The responsibility for poll organisation at each polling station could be undertaken by the Independent Commission. If that were not established, it would need to fall to a Chief Counting Officer. Independent returning officers should be appointed at the appropriate level. Officially recognised campaign organisations should be entitled to appoint polling and counting agents. In the absence of officially recognised campaign organisations, political parties should be entitled to appoint polling and counting agents. The total number of polling and counting agents should be at the discretion of the Returning Officer.

*See paragraphs 166-168.*

### 20 Vote-Counting and Declaration of the Results

In both nationwide and regional referendums, the votes should be counted and declared at ward level or at Parliamentary constituency level. Exceptions to this practice could be made if the identification of votes with a particular area could undermine the acceptance of the referendum result.

Any formally recognised umbrella campaigning organisations should appoint the equivalent to election agents able to request a recount and to pursue challenges in the same way as at general elections. The Independent Commission should also be able to request a recount.

*See paragraphs 169-175.*

## Conclusion

- 177 The holding of any referendum is likely to be controversial. There are no agreed rules relating to either the circumstances under which referendums are to be held or to their organisation and conduct when they are initiated. In previous referendums, rules of conduct have been prepared in an ad hoc manner, although guided in part by UK and international precedents. It is, however, essential that future referendums should be conducted in a manner that is regarded by all sides as efficient and fair. Organisational and administrative guidelines - acceptable to all political parties, and adopted in an appropriate form by the Government of the day - can effectively fulfil this need. To that end we recommend the adoption of the guidelines formulated in this report and set out in this chapter.

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**Public Opinion  
and  
Referendums**

**Appendix A**

Information extracted from a Submission to the Commission on the Conduct of Referendums prepared by Dr. Roger Mortimore, MORI.

**Q. Do you think that Parliament should decide all important issues or would you like Britain to adopt a referendum system whereby certain issues are put to the people to decide by popular vote?**

	1991 %	1995 %	Change ±%
Government decides	20	19	-1
Referendum	75	77	+2
Don't know	5	4	-1

Base: 1,758 British adults, 21 April-8 May 1995. Source: MORI/JRRT.

**Q. Do you think that Parliament should decide all important issues or would you like Britain to adopt a referendum system whereby certain issues are put to the people to decide by popular vote?**

	All %	Men %	Women %	18-24 %	25-34 %	35-54 %	55+ %	ABC1 %	C2DE %
Government decides	19	24	14	12	11	19	25	25	13
Referendum	77	72	81	84	84	76	71	71	82
Don't know	4	4	5	4	5	5	4	4	5

Base: 1,758 British adults, 21 April-8 May 1995. Source: MORI/JRRT.

**Q. In principle, do you think it would be a good or bad idea if the British People could force the Government to hold a referendum on a particular issue by raising a petition with signatures from, say, a million people?**

	1991 %	1995 %	Change ±%
Good idea	77	77	0
Bad idea	16	15	-1
Neither	2	3	+1
No opinion	5	5	0

Base: 1,758 British adults, 21 April-8 May 1995. Source: MORI/JRRT.

<b>Q. Would you personally like to see a referendum on...?</b>			
	Support Referendum %	Oppose Referendum %	Don't know %
<b>Reintroducing the Death Penalty</b>			
March 1991 (MORI/JRRT)	60	37	3
April-May 1995 (MORI/JRRT)	69	27	4
August 1995 (MORI/NoW)	80	16	4
<b>Whether there should be a single currency for the European Union</b>			
November 1994 (MORI/FT)	64	25	10
<b>Whether the pound sterling should be part of a single European currency</b>			
April-May 1995 (MORI/JRRT)	61	29	10
June 1995 (MORI/MoS)	64	27	9
June 1995 (MORI/Economist)	71	21	8
<b>Introducing a single European currency</b>			
May 1996 (MORI/Times)	66	24	10
<b>In Scotland whether a Scottish assembly, with some taxation and spending powers, should be set up</b>			
April-May 1995 (MORI/JRRT)	56	24	20

Base: MORI/JRRT, 1,758, 21 April-8 May 1995; MORI/NoW, 1,527, 4 August 1995; MORI/FT, 1,919, 17-21 November 1994; MORI/MoS, 726, 23-24 June 1995; MORI/Economist, 1,102, 26-27 June 1995; MORI/Times, 1,620, 23-26 May 1996.

## Scotland and Wales

<b>Q. Would you personally like to see a referendum on...?</b>			
<b>...a Welsh Assembly</b>			
(poll carried out in Wales only)			
February-March 1996 (NOP/HTV)	70	5	24
<b>...a Scottish Parliament</b>			
(poll carried out in Scotland only)			
June 1996 (MORI/SoS)	69	19	12

Base: MORI/SoS, 1,011, 27-28 June 1996; NOP/HTV, 1,556, 24 February - 17 March 1996 - information on Welsh public opinion provided by Denis Balsom, University of Wales..



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International  
Use of  
Referendums

**Appendix B**

## International Use of Referendums

- 1 The major democratic polities, Italy and some American states excepted, have not significantly increased their use of referendums in recent years. Conversely, except for Ireland between 1928 and 1937, nowhere has the right to hold a referendum been withdrawn or narrowed. Politicians may privately be reluctant to transfer responsibility to the general public, but evidently they see no reason to take the risk of saying so publicly.
- 2 Across the world politicians tend to dislike referendums. There are however occasions when party leaders turn to them as devices for resolving issues so contentious that, if left to the ordinary ways of party government, they might shatter the established parties. In some circumstances, such as in U.S. states, politicians see referendums as another tool with which to advance their careers or agendas. Referendums take decisions out of established hands, and elected leaders can never take control - or be responsible - for their outcomes.
- 3 The impact of referendums on the policies and institutions of democratic polities depends in part on the degree to which their use is controlled by elected officers. In the United Kingdom and the Scandinavian democracies referendums are held only when elected governments call them, settle the wording of the question and define the voters' choices. In such nations referendums rarely shape the basic character of parties, legislatures, cabinets, and the other institutions of representative government.
- 4 In France the President uniquely has authority to call a referendum unilaterally. The device has added significantly to presidential power over policy-making. In Italy, Switzerland, and some American states, the people have authority to call a referendum unilaterally. In those polities it has become a major constraint on elected officials.

## Infrequent Use of Referendums

- 5 Most countries have held very few referendums. Belgium's only referendum in 1949 was on the continuance of Leopold III's monarchy. Canada has had two referendums on conscription and one in 1992 on constitutional reform. The package included a revised Senate, recognition of Quebec as a distinct society and a new definition of the powers of each province.
- 6 In low-user systems most politicians regard the referendum, in James Callaghan's words, as "a rubber life raft into which we may all have to climb". When that happens, everyone has to turn to a new form of politics, in which party cues to the public are much less effective than usual and coalitions of interested groups on both the 'Yes' and the 'No' sides have to learn how to work together, often across established lines of political cleavage, in formal or informal umbrella organisations.

## Frequent Use of Referendums

- 7 Frequent recourse to referendums can contribute to a special political culture in which politicians are inhibited, for good or ill, from acting as representatives. They can avoid making difficult and unpopular decisions by referring divisive issues to the people. They make other decisions, secure in knowing that those decisions may be overruled by the people. In Switzerland and the higher-user American states, those ever-present possibilities shape

politicians' strategies in ways that are largely unknown in low-user political systems. Much the same has been true in Italy, as shown in 1993, when, in defiance of the dominant parties, the electorate voted for a major transformation of the electoral system.

- 8 Referendum campaigns are usually organised quite differently in Switzerland and the states of America than in most other polities. Since referendums in those polities are frequent, and often closely contested for higher stakes, well-established firms of professional campaign consultants are employed by interest groups to collect signatures, raise money, buy newspaper space and television time, and plan and execute campaign strategies and tactics.

#### *Citizen Initiative Referendums*

- 9 In polities such as Switzerland, Italy, and some American states, in which ordinary voters can, by signing petitions in sufficient numbers, launch new measures, or require popular approval of measures enacted by governments, or both, public policies and representative institutions have been powerfully affected by referendums and the threat of referendums. Switzerland shows how a regime of constant referendums can operate in a reasonably satisfactory way, although an average turnout of 50% may be seen to decrease their legitimacy.
- 10 New Zealand introduced legislation providing for citizen initiative referendums in 1993. This sets out a staged process for consultation, approval of the question, gathering of signatures and polling. So far only one has been held - on staffing levels in the fire service. The turnout in this referendum was just under 28% of registered electors, of whom 87.8% supported the position advocated by the Firefighters Union. The Minister of Justice has established a review committee to consider and report on a number of matters in relation to the 1993 Act. The committee is due to report later this year.

#### *US Experience*

- 11 Referendums came into fashion in the United States at the turn of the twentieth century as the Progressives sought ways to counter the corruption endemic in many state governments and to end 'boss control' of big-city politics. The referendum, the initiative, the recall, and the direct primary<sup>41</sup> (regarded by some as the most radical of these reforms) were intended to give power to the people over the politicians.
- 12 Experience in the United States illustrates some of the problems that referendums can generate, both in relation to fair play during their conduct and also in their occasionally contentious implications for democratic efficiency. Direct legislation measures voted on in the American states have not been broadly representative of most voters' concerns. The issues at stake are often complex and confusing, so the campaign on an initiative tends to focus on only one part of the actual proposal. The outcomes of some ballots represent the comparative amounts spent on the campaign by the two sides.<sup>42</sup> The referendum has remained an occasional vehicle for protest.

#### **Referendum Results**

- 13 Referendums, like laws enacted by legislatures, do not always produce the consequences expected by either their advocates or their opponents. For example, after the Swedes voted eighty-five to fifteen in 1955 against driving on the right, the Government waited twelve years and then made the change without recourse to another referendum. In Switzerland, politicians

have been skilful in evading awkward referendum decisions. In America, the courts have disallowed some policies approved in referendums as well as some enacted by legislatures; thus the courts have used the power of judicial review to override direct expressions of the popular will by referendum majorities as well as indirect expressions of that will by the actions of elected representatives.

- 14 The unpredictability of referendums should not be exaggerated. The majority of referendums have been sponsored by Governments and have produced the voting outcomes desired by those Governments. That is certainly true for some authoritarian regimes (the Chilean referendum of 1988 is a shining exception<sup>43</sup>), but it is also largely true for democratic systems (although Australia is another exception, with thirty-four Government defeats in forty-two referendums and with almost all referendums producing votes in the 60-40% range). Some leading examples of popular majorities rejecting Government positions include the defeat of de Gaulle's referendum in 1969; the Danish vote on the Maastricht Treaty in 1992; and the defeat of the New Zealand political and business elites over changing the electoral system in 1992 and 1993.
- 15 Nevertheless, referendum decisions, unwanted by (and sometimes embarrassing for) the leaders of representative assemblies, are far more common in Switzerland and in the high-user American states. Campaigns can make a difference to the outcome of referendum elections. Opinion polls in Canada, Denmark, and France in 1992, for example, showed a fall-off in 'Yes' support in the last few weeks. In the first two cases the slump denied the Government its expected victory.<sup>44</sup>
- 16 These outcomes argue against the contention that opinion polls offer an economical substitute for referendums. Opinion polls do offer a continuous measure of public opinion on major issues. But many people vote differently when faced with a choice of Government in a general election from the way they vote in a by-election, when only a single seat is at stake and the voters can send a message to elected leaders without going so far as to remove them from office. Similarly, voters may say one thing to a pollster when they know what they will say will not have any practical consequences, but they may well say another at the end of a serious referendum campaign, when they know that the outcome will control what Government does or refrains from doing.
- 17 Referendums are not unimportant. In South Africa and in Chile, they opened the door to a transformation of the regimes' basic characters. On a more modest scale, in Italy and New Zealand, they brought about changes in the electoral system that a majority of the politicians did not favour. In Canada, a referendum rejected a modification of the federal system that the politicians did not want. And in the former Soviet Union, referendums have been used repeatedly to express nationalist claims and establish the legitimacy of new nations and constitutions. In Russia especially, the 1993 referendum played a vital role in President Boris Yeltsin's battle with Parliament over economic reform. The cohesion and the development of the European Community have depended on referendum results and put at stake in critically close popular votes, twice in Denmark and once in France (see Table A).

**Table A Referendums on the European Community**

Date	Country	Issue	'Yes' Vote %	Turnout %
12 June 1994	Austria	Join European Community	66.6	81.3
2 Oct 1972	Denmark	Join European Community	63.3	90.1
27 Feb 1986	Denmark	Approve Single European Act	56.2	74.8
2 June 1992	Denmark	Maastricht Treaty	49.0	68.7
18 May 1993	Denmark	Maastricht Treaty	56.8	86.0
16 Oct 1994	Finland	Join European Community	56.9	70.8
23 April 1972	France	Expand European Community	68.3	60.2
20 Sept 1992	France	Maastricht Treaty	51.0	69.8
10 May 1972	Ireland	Join European Community	83.1	70.3
26 May 1987	Ireland	Approve Single European Act	69.9	43.9
18 June 1992	Ireland	Maastricht Treaty	69.1	57.3
24-5 Sept 1972	Norway	Join European Community	46.5	79.2
28 Nov 1994	Norway	Join European Community	47.8	89.0
13 Nov 1994	Sweden	Join European Community	52.2	83.3
5 June 1975	United Kingdom	Remain in European Community	67.2	64.5

Source: David Butler and Austin Ranney eds., *Referendums Around the World*, 1994; Michael Gallagher and Pier Vincenzo Uleri, *The Referendum Experience in Europe*, 1996.

**Table B Referendums Approving a New Constitution**

Date	Country	'Yes' Vote %	Turnout %
November 1976	Algeria	99.2	92.9
March 1992	Burundi	90.0	97.1
May 1953	Denmark	78.4	58.3
May 1946	France	47.1	80.7
September 1958	France	79.2	84.9
October 1946	France	53.2	68.8
September 1968	Greece	91.9	77.7
July 1937	Ireland	56.5	68.3
September 1989	Niger	99.3	95.0
October 1993	Peru	55.0	not known
December 1993	Russia	54.8	58.4
August 1979	Somalia	89.9	not known
December 1966	Spain	95.9	98.2
December 1982	Sri Lanka	54.6	70.9
November 1982	Turkey	91.5	not known

Source: David Butler and Austin Ranney eds., *Referendums Around the World*, 1994; Michael Gallagher and Pier Vincenzo Uleri, *The Referendum Experience in Europe*, 1996.

Year	Country	Region/Territory	Issue	Vote in region only	'Yes' Vote %	Turnout %
1933	Australia	Western Australia	Secede from Australian Constitutional Convention	Yes	66.2	92
1967		New England, New South Wales	Proposed new state area	Yes	45.8	92.5
1984		Cocos Islands	Integrate with mainland	Yes	88.5	n/a
1980	Canada	Quebec	Independence	Yes	40.4	84.1
1982		Northwest Territory	Divide Territory	Yes	55.9	n/a
1995		Quebec	Independence	Yes	49.4	93.5
1916	Denmark	Virgin Islands	Cession from Denmark	No	64.2	38.0
1920		Schleswig	Incorporation	No	96.9	50.1
1979		Greenland	Approve Home Rule	Yes	73.1	63.2
1961	France	Algeria	Self-determination	No	75.3	76.5
1987		New Caledonia	Remain Part of France	Yes	94.6	n/a
1988		New Caledonia	New Caledonia deal	No	80.0	37.0
1979	Spain	Basque Region	Increased autonomy	Yes	94.7	58.9
1979		Catalonia	Increased autonomy	Yes	88.1	59.7
1980		Andalusia	Increased autonomy	Yes	93.3	60.4
1980		Galicia	Increased autonomy	Yes	77.3	26.2
1967	UK	Gibraltar	Keep link with UK	Yes	99.6	95.8
1973		Northern Ireland	Stay in UK	Yes	98.9	58.7
1979		Scotland*	Approve devolution	Yes	51.6	63.6
1979		Wales*	Approve devolution	Yes	20.9	58.8

Source: David Butler and Austin Ranney eds., *Referendums Around the World*, 1994; Michael Gallagher and Pier Vincenzo Uleri, *The Referendum Experience in Europe*, 1996. \*40% of electorate required to vote 'yes'.

**Table D Multi-Choice Referendums 1900-1996**

Year	Country	Issue	No. of Options	Turnout %	Result %	
1931	Finland	Prohibition	3	44.4	Permitting strong liquour	70.5
					Continuing prohibition	28.1
					Permitting wine & weaker beverages	1.4
1948	Newfoundland*	Constitutional Status	3	88.4	Responsible Government	44.6
					Confederation with Canada	41.1
					Commission Government	14.3
1957	Sweden	Pensions	3	72.0	Option 1	45.8
					Option 2	15.0
					Option 3	35.3
1962	Singapore	Constitutional Status	3	89.4	Three Types of Merger with Malaysia	70.8
						1.6
						1.8
1967	Puerto Rico	Constitutional Status	3	65.8	Association with USA	60.5
					Statehood within USA	38.9
					Independence	0.6
1980	Sweden	Nuclear Energy	3	74.3	No expansion	1.7
					No expansion; changed control	39.1
					Phase-out	38.6
1982	Guam	Constitutional Status	6	38.0	Commonwealth	48.5
					Other options	25.7
						3.9
						3.8
						<3
1982	Andora	Electoral System	3	51.9	Proportional Representation	42.2
					Majority System	31.9
					Mixed System	23.4
1992	New Zealand*	Electoral System	4	55.2	Supplementary Member	5.6
					Single Transferable Vote	17.4
					Mixed Member Proportional	64.9
					Preferential Voting	6.6
1993	Puerto Rico	Constitutional Status	3	N/A	Commonwealth	48.4
					Statehood	46.2
					Independence	4.4

Source: 'The Multi Option Referendum: A Comparative Perspective', James Mitchell in *Asking the People: the Referendum and Constitutional Change* ed. Allan Macartney, 1992; *Referendums Around the World*, David Butler and Austin Ranney, 1994.

\*These referendums were followed by a second referendum where only two choices were given.

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**Initiating a Referendum  
- a Checklist**

**Appendix C**



## Initiating a Referendum – a Checklist

- 1 When a future UK Government considers the use of such an instrument, it will need to ask itself certain initial questions. Political considerations will determine these questions. Once a Government has reached a decision in principle to hold a referendum, it will have to settle a wider range of more detailed policy issues. It may want to publish a consultative White Paper before deciding on some of them. A future Government can be expected to take account of the relevant experience of referendums in the UK and overseas in making decisions about the conduct of a referendum.
- 2 Before committing itself to holding a referendum, or initiating a policy of holding referendums, a future Government will need to consider and, as necessary, decide on the following issues:

### *Status*

- Should a referendum be advisory or mandatory?
- If advisory, should it be pre- or post-legislative?
- How far advanced does the public debate of the issues need to be before a referendum can be held?
- Should there be a White Paper or a draft bill?

*See paragraphs 77-86*

### *Cabinet Responsibility*

- If there is a major division within the Cabinet, should collective responsibility be maintained?
- If the Cabinet decides to agree to differ, how should that be applied?

*See paragraph 75.*

### *Consultation*

- How and when should prior consultations about the referendum take place?
- Should there be a consultative White Paper?

*See paragraphs 76 and 104-107.*

### *The Electorate*

- Should the referendum be held on a UK-wide basis, or should it be confined to a region of the UK?
- Should the electorate be the same as for Parliamentary elections?
- Should peers be allowed to vote as in local government elections?
- Should there be any changes to the provisions for proxy or postal or overseas voting?

*See paragraphs 87-91.*

### *Thresholds*

- Is there a case for a special majority or 'threshold' to validate the result?
- If so, should it be a requirement for minimum turnout or for a majority of specified size?

*See paragraphs 92-100.*

*Allocation of Ministerial Responsibility*

- What Minister and department should be responsible for organising and administering the referendum?
- What co-ordinating machinery would be needed at Cabinet and official level?

*See paragraphs 43-46.**Role of an Independent Commission*

- Should an independent body have primary responsibility for the conduct of referendums?
- Should a permanent or ad hoc independent Commission be set up?
- If there were an Electoral Commission responsible for the administration and conduct of elections, should it also conduct referendums?
- Either way, what would be the Commission's functions?

*See paragraphs 47-53.**Enabling Legislation*

- How should legislation be drafted and how far in advance should it be introduced into Parliament?
- Is there a case for a generic Referendum Act - as in Australia or Quebec - which would provide a standing framework for the operation of referendums.
- What should be covered in the Act and what should be covered by secondary legislation?

*See paragraphs 54-67.**Scope of the Question*

- How is the question - the essential basis for holding a referendum - to be formulated?
- How narrowly defined does the question need to be and is a multi-option referendum appropriate?
- What guidance is needed for the complete wording and format of the ballot paper?

*See paragraphs 101-119.**Information Policy*

- Should special arrangements be made for the provision of information about the reasons for the referendum, its mechanics, or whatever recommendations the Government may make, or for the cases for and against the referendum issue?
- Should a central information unit be established?
- If so, how should its rôle be defined and to whom should it be accountable?
- Should an independent Commission be responsible for public information?

*See paragraphs 125-133.**Campaigning Activities and Financial Regulations*

- Should there be formal recognition of 'umbrella groups'?
- Is there a need for restrictions other than those applied to Parliamentary election campaigns?
- Should Government grants be provided? If so, on what scale?
- Is it practicable to impose expenditure limits?
- Should the names of financial sponsors be published?
- Should the 'umbrella groups' be required to provide accounts, and to whom?

*See paragraphs 134-148.*

*Use of the Media*

- What arrangements should be made for allocating broadcasting time?
- What rules should apply to ministerial and party political broadcasts?

*See paragraphs 150-160.*

*Date of the Referendum Poll*

- How and when should the date of the poll be decided?
- Are there factors, such as Parliamentary pressures or the danger of market fluctuations, that should be taken into account?

*See paragraphs 122-124 and 162-165.*

*Organisation of Poll*

- Would an independent Commission have a rôle?
- Should a chief returning officer be appointed?
- Who should be responsible for the local conduct of the poll?
- What should be the hours of polling?
- Should campaigning organisations or political parties appoint polling agents and/or polling agents?
- Should the administrative arrangements for the conduct of the referendum be based on the existing machinery for Parliamentary elections?

*See paragraphs 47-53; 166-168; and Appendix D.*

*The Count*

- Should the arrangements for the counting of the votes and the announcement of the results be on a national, regional, county, constituency or ward basis?
- Who may nominate counting agents?

*See paragraphs 169-175.*

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**An Analysis of the  
Practical  
Arrangements for  
the 1975 Referendum**

**Appendix D**

## An Analysis of the Practical Arrangements for the 1975 Referendum

*Produced by Keith Hathaway and Nigel Buttler*

### Informal Consultation

Date	Detail of meetings
Mar 13	An informal meeting was held at the Home Office with the Electoral Advisory Panel of Society of Local Authority Chief Executives (SOLACE) - 7 members - to discuss the practical arrangements for the conduct of the referendum. Plans were at that stage being arranged around the possibility of conducting the count for the whole of the U.K. at one centre, Earls Court. This was envisaged to take 4 days, with polling taking place on a Monday.
April 7	Next meeting of group, at which practitioners were invited to attend.
April 28	Meeting held at Home Office of SOLACE Electoral Advisory Panel and Sir Philip Allen (Chief Counting Officer) to discuss content of legislation and details of polling, verification and counting arrangements.
April 29	Letter from SOLACE to all Chief Executives advised of outcome of meeting held on 28 April.
May 2	Letter from SOLACE to members of SOLACE and Association of Local Authority Chief Executives (ALACE) on Referendum Fees to Counting Officers and Returning Officers.

N.B. In the County of Oxford, Sir Philip Allen refused a request by its Chief Executive for the County Secretary to be appointed counting officer on the grounds that the responsibility should rest at the top, namely with the Chief Executive.

### Home Office Letters and Circulars

Date	Subject matter and brief details
Feb 17	(To Electoral Registration Officers "in Confidence"). Seeking observations on possible difficulties in obtaining and producing Poll Cards.
Feb 26	White Paper - Indicating that existing electoral machinery would be used wherever possible.
Mar 14	Authorisation to E.R.O.'s to arrange printing of poll cards (without need to obtain quotations, and stating that name of County Council to be printed on front, also with Welsh version of text).
Apr 15	Advised of which forms and stationery was being prepared by HMSO and anything else to be obtained locally.
Apr 24	Advised of latest date for delivery of poll cards to Post Office as 19 May and that Referendum would be held on 5 June.
Apr 4	Supplied details of funding arrangements.
Apr 29	Supplied details of national advertising of postal voting placing applications in national newspapers.
May 6	Supplied content of Notice of Poll:- publication by 22 May (which ignored exclusion days under Regulation 73), day and hours of poll, situation of polling stations and description of voters. Advised that list of polling stations need only be published at one venue within council area.
May 6	Advised that proxy appointments by members of H.M. Forces and spouses living abroad would not be valid for referendum as special arrangements were being made for service personnel to vote at service units.
May 6	Arrangements for printing ballot papers. Provided details of its contents.
May 8	(To Counting Officers). Provided details of verification and counting arrangements. Also issued copy of Referendum Order, and asked for county electorates.
May 12	(To ERO's and Returning Officers of District and Borough Councils). As letter to Counting Officers of 8 May.
May 15	Issued copy of Memorandum for Guidance of Referendum Returning Officers dated 14 May, together with copy of Referendum Act and Draft Referendum Order.
May 15	Provided advice on publication and supply of special lists.
May 15	Issued details of Fees and Disimbursements.
May 21	Provided instructions to counting officers for forwarding documents to Secretary of State.
May 21	Referred to their letter dated 6 May about proxy arrangements for service voters. Amended instructions to enable proxies to remain in force in instances where spouses registered as service voters had returned to UK.
May 21	Provided further details about claims for re-imbusement of expenses.
May 22	Referred to letter of 21 May about proxy arrangements for service voters and advised that the ammendment was to be applied to retired members of H.M. Forces having returned to the UK.
May 29	Issued guidance on appointment of observers.
June 2	Issued instructions as to Certification of the Result.

## Practical Arrangements

- 1 Political parties and candidates not involved in the referendum.
- 2 Two umbrella organisations (i.e. the pro common market and the anti common market) were financed by central government.
- 3 Protracted discussions took place over announcement of result. Should this take place at counting centres as well as centrally.
- 4 At counting of votes the number of observers were limited to half the number of counters.
- 5 Guidance received indicated that there was no need for re-count at any counting centre in instance of close result, but counting officers had expressed concerns over possibility that total of votes recorded would vary considerably from the total number of ballot papers recorded as having been counted in the ballot boxes at the verification centres.
- 6 Verification Officers were required to band verified ballot papers into bundles and record total. This total rarely tallied with the verification figures. This presented a problem at the commencement of the count in determining which set of figures should be used by the counting officer as the total number of ballot papers received.
- 7 Lack of Official Mark on ballot papers was to be detected at the Verification Stage - not at the counting of votes. Although at the count if an observer asked for the ballot paper to be examined for some other reason it could then be rejected for lack of official mark.
- 8 The Official Mark was to be set by each District Council for the whole of their area - thus not on a county wide basis.
- 9 Entitlement to vote was restricted to parliamentary electors plus peers.
- 10 Latest date for publication of Notice of Poll differed from that in parliamentary election rules.
- 11 Members of H.M. Forces were entitled to register for voting at service units both within the United Kingdom and overseas regardless of whether or not already registered in pursuance of a service declaration. It was an offence to vote more than once. At one of the service units within a county a Counting Officer was appointed to conduct the count. Counting of votes of service units abroad was undertaken as part of the London count. In Oxfordshire the officer appointed to conduct the count, Flt. Lt. Campell Smith admitted on 16 May that planning for compiling the list of voters (called the nominal roll) or arrangements for the count had not begun and that he had received no guidance by that date.
- 12 Proxy appointments were suspended for members of H.M. Forces on polling day and for spouses of such persons who were registered as service voters. Notifications of such had to be issued to those proxies to avoid double voting. This presented a logistical problem in dealing with the 6 000 service registrations in Oxfordshire at that time. The late notification of the amended advice received from Home Office enabling those proxy appointments for retired members and those having returned from overseas duty to remain in force did not help matters.
- 13 Armed forces ballot papers had official stamp marked on back of ballot paper. It was neither embossed nor perforated.
- 14 The police were asked to provide security arrangements for delivery of ballot boxes containing verified ballot papers from district verifying centres to venue for count, and to preside at the count centre overnight.
- 15 Special arrangements were made for the transportation of ballot papers from the count venue to County Hall and for their storage for a possible re-count and delivery to the Secretary of State.
- 16 Two Ballot Paper Accounts had to be completed - the second copy was placed in the ballot box at the count centre overnight.

- 17 Verifying Officers delivered to the Counting Officer ballot boxes containing the verified ballot papers (including the postal votes) and statement of their contents and the ballot paper accounts. All other documents used at the poll was to be retained by the Verifying Officer.
- 18 Provision was made in the Order for the official Observers to attend the verification of the ballot boxes, which also included the opening of the postal votes.
- 19 The ballot papers at the verification were required to be kept face downwards, and at the Count face upwards.
- 20 The rules for rejecting ballot papers were modified, with samples of good and bad ballot papers being issued to counting officers.
- 21 The two organisations were not permitted to use schools as Committee Rooms for public meetings during the two weeks prior to the poll.
- 22 Provisions for postal and proxy voting were allowed for the referendum. National publicity was given to the last date for receipt of postal/proxy voting by placing applications in national daily newspapers. In addition, local publicity was given by the electoral registration officers.
- 23 Members of Parliament were permitted to attend polling stations within their parliamentary constituency on polling day, and to attend both the verification and to attend both the verification and the counting of the votes. They have no special responsibility or position in the proceedings.
- 24 Special poster was produced for display inside the voting compartment at the polling station.
- 25 The Questions to Electors was modified to meet the circumstances.
- 26 The ballot papers were required to be of the same size, weight and colour throughout each county.



## Procedure at the Count

- 1 Count commenced generally 10 a.m. on the day following the poll, and in Oxfordshire concluded about 4 p.m.
- 2 Some verifying officers forwarded the ballot boxes of ballot papers immediately following the verification stage, whilst others delivered them by 9 a.m. on the day of the count.
- 3 Stages
  - Verification
    - i. Presiding Officer place a copy of ballot paper account in ballot box. Returning Officer check ballot paper account by comparing it with number of ballot papers accounted for. He then list for each ballot box the number of ballot papers alleged to be in each ballot box, the number counted as being in that box and record any discrepancies. Ballot papers at this stage are to be kept face downwards.
    - ii. Returning Officer delivers to Counting Officer the ballot boxes containing the counted ballot papers, the ballot paper accounts and the statement referred to in (ii) above.
    - iii. Ballot papers rejected for lack of official mark are to be identified at this stage. The numbers rejected are to be recorded.

- Counting of Votes
  - i. Counting Officer must satisfy him/herself as to the number of ballot papers received from each Verifying Officer and may prior to the commencement/at the commencement of the count undertake a brief check on the contents of a ballot box to verify total numbers of bundles received.
  - ii. The ballot papers are to be mixed with ballot papers of other box(es).
  - iii. The mixed ballot papers are then to be sorted out between the YES and NO votes and counted.
  - iv. Throughout the sorting and counting the ballot papers are to be kept face upwards.
  - v. The number of spoilt and rejected ballot papers is to be recorded.
  - vi. The total number of votes recorded for both answers is to be announced by the Counting Officer and notified to the First Lord of the Treasury.

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- 1 The Commission uses the word *referendums*, not *referenda*, following the advice Dr. David Butler received from the editors of the *Oxford English Dictionary*: "Referendums is logically preferable as a plural form meaning ballots on one issue (as a Latin gerund *referendum* has no plural). The Latin plural gerundive *referenda*, meaning 'things to be referred', necessarily connotes a plurality of issues".
- 2 *Frameworks for the Future*, Cm 2964, September 1995.
- 3 Northern Ireland Act 1973.
- 4 Statement by Rt Hon John Major MP, Prime Minister and Leader of the Conservative Party, 3 April 1996.
- 5 Rt Hon Tony Blair MP, Leader of the Labour Party, *Speech given in the Playfair Library, University of Edinburgh*, 28 June 1996; George Robertson MP, Shadow Scottish Secretary, *News from Scottish Labour*, 27 June 1996; Interview with Rt Hon Tony Blair MP, *New Statesman*, 5 July 1996; Labour Party, *Road to the Manifesto*, 3 July 1996.
- 6 Labour Party, *A New Voice for the English Regions*, October 1996.
- 7 Liberal Democrats, *Here we Stand: Federal White Paper*, 1993; see also Rt Hon Paddy Ashdown MP, *Building Britain a Bridge to the Next Millennium*, January 1996, and Liberal Democrats, *Constitutional Declaration*, 24 September 1996.
- 8 The Referendum Party Newsletter, Spring 1996.
- 9 Royal Commission on the Constitution 1969-1973, *Memorandum of Dissent by Lord Crowther-Hunt and Professor A T Peacock*, Cmnd 5460-I, October 1973 and The Joseph Rowntree Reform Trust/MORI, *State of the Nation survey*, 1995.
- 10 *Referendums: Guidelines for the Future*, Hansard Society, 1981.
- 11 There have been several proposals for a national referendum in the United States; a notable example of such proposals is the Ludlow amendment, which would have amended the U.S. Constitution to require a popular referendum before war could be declared. In 1977-1978, bills were introduced in Congress to provide for nationwide referendums demanded by a number of voters equal to at least 3% of the vote for president in the most recent election. The bills failed to get out of committee, but Gallup polls taken at the time showed a 57% majority favouring such referendums.
- 12 The Republic of Ireland voted against liberalisation of divorce law on 12 May 1974 and 29 June 1986.
- 13 David Butler and Austin Ranney eds., *Referendums Around the World*, 1994.
- 14 A Scot sitting for an English constituency.
- 15 A similar clause was inserted into the Wales Bill.
- 16 See Philip Goodhart, *Referendum*, 1971.
- 17 House of Commons, *Official Report*, 9 June 1975, col. 37.
- 18 Only Israel and New Zealand are like the UK in having an unwritten constitution.
- 19 Butler and Ranney eds., *Referendums Around the World*, 1994.
- 20 House of Commons, *Official Report*, 11 March 1975, col. 293.

- 21 The 1973 referendum in Northern Ireland was held in such specific circumstances and on such a scale that it did not provide a useful precedent for the nationwide referendum planned on Community membership. International practice was however considered, see Cmnd. 5925, February 26, 1975.
- 22 See David Butler and Uwe Kitzinger, *The 1975 Referendum*, 1996. They state: "The full cost to the taxpayer cannot be fully established. But it is possible to list the approximate expenditure under the main heads." These are set out below:
- |   |            |
|---|------------|
| Returning Officers' expenses  | £5,000,000 |
| Cabinet Office activities - mainly the distribution of three leaflets to every home | £4,000,000 |
| Distribution of poll cards and arrangements for postal votes                        | £1,900,000 |
| Grants to umbrella organisations  | £250,000   |
| COI advertising of postal votes and availability of pamphlets and the need to vote  | £250,000   |
| MoD expenditure on Service voting   | £15,000    |
- 23 Labour Party, *A New Agenda For Democracy: Labour's proposals for constitutional reform*, October 1993, *A New Voice for England's Regions*, October 1996.
- 24 Liberal Democrats, *Here We Stand: Proposals for Modernising Britain's Democracy*, Federal White Paper No. 6, September 1993; see also *Constitutional Declaration*, 24 September 1996.
- 25 The Quebec Referendum Act, an example of a generic Act on model A, allows for a referendum to be initiated in two ways: (a) as a result of a vote on a motion of the Prime Minister, which includes the text of a question and can be debated (for up to 25 hours) and amended; (b) as a provision of a bill adopted by the National Assembly.
- 26 However, if it was judged important to counter this objection, it would be possible to limit the issues on which referendums could be held. In other countries, statute law sets out the issues on which a referendum can be called.
- 27 Where there have been differences in referendum arrangements, they have followed changes to electoral law, e.g. voting arrangements for those on holiday. The most notable exception is the 40% threshold introduced into the devolution bills in 1978 as a result of a backbench amendment.
- 28 See Vernon Bogdanor, *Devolution*, 1979; and House of Commons, *Official Report*, 15 February 1977, col. 382.
- 29 Interview with Tony Blair MP, *New Statesman*, 5 July 1996.
- 30 J. Todd and R. Butcher, *Electoral Registration in 1981*, OPCS, 1981.
- 31 Vernon Bogdanor, *The People and the Party System: the referendum and electoral reform in British politics*, 1981.
- 32 For example, if in the 1979 Scottish referendum, 40% had voted 'Yes', 39% had voted 'No' and 21% had abstained, 5% of these in the belief that it was the same as voting 'No', the result would have been 'Yes', but the 'Noes' would have had a 'true' majority of 4%.
- 33 House of Commons, *Official Report*, 22 November 1978, col. 1334.
- 34 Paul Harris, 'Changing New Zealand's Electoral System: The 1992 Referendum', *Representation* Vol. 31, No. 115.
- 35 See Olof Ruin, 'Sweden: the Referendum as an Instrument for Defusing Political Issues', in Michael Gallagher and Pier Vincenzo Uleri eds., *The Referendum Experience in Europe*, 1996.
- 36 House of Commons, *Official Report*, 11 March 1975, cols. 330, 346, 422-423, 446, 448.
- 37 *Referendum on United Kingdom Membership of the European Community*, Accounts of Campaigning Organisations, Cmnd 6251, 7 October 1975.

- 38 In Canada, the legality of a blanket restriction on 'private' expenditure in elections was struck down by the Alberta courts under the Canadian Charter of Rights and Freedoms. In the United States, the Supreme Court has overruled similar legislation on the constitutional grounds of freedom of speech.
- 39 If a referendum were to be held at the same time as a local, European or General Election, normal party political broadcasts may be allocated in addition to referendum broadcasts.
- 40 Recent local government reforms have not affected Northern Ireland which has a single Chief Electoral Officer.
- 41 The initiative is where a certain number of citizens, meeting certain conditions, can initiate a referendum on a draft law or constitutional amendment; the recall is where a certain numbers of voters can force an election - 'recalling' elected members; the direct primary is where voters rather than party caucuses choose the candidates who will represent the party ticket.
- 42 David Magleby, 'Direct Legislation in the American States', in David Butler and Austin Ranney eds., *Referendums Around the World*, 1994.
- 43 Which brought to an end the fifteen-year dictatorship of President Augusto Pinochet in a test of his own devising. See David Butler and Austin Ranney eds., *Referendums Around the World*, 1994.
- 44 See also David Magleby, 'Opinion Formation and Opinion Change in Ballot Proposition Campaigns', in Michael Margolis and Gary Mauser eds., *Manipulating Public Opinion*, 1989.

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