

**Working Group on Unification Referendums on the Island of Ireland:  
Interim Report (November 2020):  
Evidence submission and feedback (January 2021):**

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Feedback provided:

- Executive Summary
- Chapter 5 – Criteria for Assessing Possible Processes
- Chapter 7 – Delineating the Two Referendum Options
- Chapter 10 – Processes from Start to Finish

*This document will consider elements of the Executive Summary as well as the chapters outlined above in reflection of the following questions:*

**(1) Do you think we have missed out any important matters?**

I think all key issues have been covered. I haven’t had a chance to fully go through the report but from the components of particular interest to my own research, I cannot think of any significant additions. I think however there should be within the final report, strong emphasis on the opportunities which are presented by citizens assemblies and the application of deliberative innovations to deliver a successful and well organised referendum(s).

**(2) Do you agree or disagree with any of our interim conclusions?**

I find it interesting the renewed focus which this paper takes on the provision of referendums both north and south being imperative. I think these referendums should take place on the same day should a referendum on unity take place soon. I particularly agree with 15.1. that significant and apt strategic planning should take place, in reflection of the acrimonious Brexit negotiations. I think 15.7. is a fantastic exemplar time frame for the referendums.

**(3) Do you prefer one of our referendum configurations to the others? Are there other configurations which we should consider?**

I can see merits to all three configurations but I think I would prefer either configuration 2 or 5 to take precedence over configuration 4.

**(4) Are there any points where you think our reasoning requires further development or clarification?**

Further development on unionist inclusion within the processes, reforms of intergovernmental relations to ensure adequate negotiations can be conferred prior to the referendum and a renewed focus on the opportunities presented by citizens assemblies as a significant force for good should be examined.

**Executive Summary:**

**Political and Historical Context:**

6. There has been a previous referendum, or ‘border poll’, in 1973, asking people in Northern Ireland if they wanted to remain part of the UK, or to be joined with the Republic of Ireland. The nationalist community boycotted the vote. As a result, on a turnout of 58% of the electorate, 99% voted to remain part of the UK. The poll did not succeed in taking the border out of politics or bringing greater stability.

**Commented [KF1]:** Relevant authors of the referendum process must reflect upon this. Yes, a different political context but inclusion should like at the fore of a future unity referendum that voters can make their decision confidently with no major gaps in the electorate/boycotts.

8. The 1998 Agreement also established the institutions through which Northern Ireland is now governed. Politics in these islands has seen considerable flux in recent years, not least because of the UK’s decision to leave the European Union. The Withdrawal Agreement and the Protocol on Ireland/Northern Ireland will have profound effects in the years to come. There are also wider constitutional tensions in the UK, particularly in Scotland.

**Commented [KF2]:** Lessons should be drawn from the Scottish Independence referendum to aid with the mapping process for a Unity ref.

**Legal Context:**

13. The referendums north and south could be held simultaneously; or the referendum in the North could precede that in the South. But ‘concurrence’ means that the referendum in the South could not be on terms unknown at the time of that in the North. If the Irish government wished to propose the terms of a united Ireland before a referendum in the South, it would have to do so before any referendum in the North.

**Commented [KF3]:** A revision of intergovernmental relations is crucial in the context of UK politics but is imperative in successfully delivering a UI. Here, this may be achieved by opening conversations on the British-Irish Council on unity. Nationalism cannot be rushed (i.e. Indy Ref/Brexit) and so clear communication between all concerned actors must be available before this can even progress.

15. If the Oireachtas legislated for unification while Westminster did not, Northern Ireland would become disputed territory: under Irish law, it would become part of Ireland; in British law, it would remain part of the United Kingdom. It would be highly desirable to avoid this eventuality.

**Commented [KF4]:** Not an impossibility and so therefore this furthers the case for reform on intergovernmental relations to ensure that the strategic actions of each actor are understood and legitimate i.e. Oireachtas legislating for unification, Westminster are not surprised and are well informed of the processes which have led to this/working on similar contingency operations to ensure a northern referendum.

**Criteria for Evaluating Referendum Processes:**

16. Beyond the basic principles underpinning our work, we identify five key criteria for evaluating potential referendum processes:

- procedural legitimacy
- stability
- simplicity
- informed choice
- inclusivity.

**Commented [KF5]:** Clear dialogue between all actors who are aware of the stage of each key referendum i.e. North and South.

**Commented [KF6]:** Well organised with most future projects/policy in place for a successful transfer of sovereign powers.

**Commented [KF7]:** Generally speaking, referendum materials must not be convoluted (consider, language of the referendum e.g. Should Northern Ireland withdraw from the UK and join Ireland?)

**Commented [KF8]:** Significant emphasis on citizens assemblies and deliberative democracy mechanics.

**Commented [KF9]:** Everyone knows where they stand prior to voting

**Process of Decision-Making:**

19. Coordination and planning of the referendums and the processes surrounding them would be essential, particularly between the British and Irish governments. Lack of preparation ahead of the 2016 referendum on the UK's EU membership was clearly detrimental to the referendum process, and subsequent developments. Such planning would need to cover such matters as: when referendums would take place relative to each other and to other steps in the decision-making process; the conduct rules for the referendums; what matters would be discussed or negotiated by whom, at what stages, in what fora; what the process and timetable would be for implementing the results; and what would happen in the event of divergent outcomes between North and South.

**Commented [KF10]:** These are all great starting points. Provisionally I would argue this could be a setting agenda for when actual conversations on UI from relevant actors can begin. However, I understand this is mapped within C10, feedback which I will provide later.

21. The terms of the transfer of sovereignty, if that was what voters chose, and of future British-Irish relations would be for negotiation between the UK and Irish governments. The constitutional form of a united Ireland would be for the Irish government to propose: the UK could have no veto. But the UK could be seen as a guarantor of the interests of British citizens in Northern Ireland, reflecting the role currently played by the Irish government, working through the same Strand Three institutions, the BIIGC and British-Irish Council.

**Commented [KF11]:** If Unionists/UK Gov were willing to facilitate preliminary discussions, this may be considered an action plan so that if it ever was to happen, the UK Gov can place their demands on the table. This is a mistake which the UK Gov should reflect upon from Brexit. If UI takes from of negotiations taking place in the wake of a vote (i.e. Brexit) then this may serve as a plus for both (1) unionists in NI and; (2) Providing an approximate time frame for how long negotiations may take but also; (3); Anglo-Irish relations post unity.

22. Discussions should also involve politicians from Northern Ireland, and engage with civil society and the general public. Citizens' assemblies could help to identify the considered views of voters on important elements of the process and the choice on offer at any referendum.

**Commented [KF12]:** Organisers of a UI should draw upon the processes of both IndyRef and Brexit but also upon the successful utilisation of deliberative innovations in Ireland. Considering their success in ROI and UK (Brexit), this could provide a solid framework for opening dialogue both on the topic, with other voters and between voters and politicians. Would facilitate with the strategic organisation of what a UI would look like also.

### Delineating the Two Referendum Options:

26. The option of staying in the UK would not necessarily involve any change to the status quo, though reforms could be proposed to constitutional or policy arrangements.

**Commented [KF13]:** Particular emphasis on the reforms of NDNA papers of 2020 and further recommendations for reform. When a referendum is held (as it will be held when SoS thinks a majority want it), there must be significant reform to NI to ensure continuation of the peace process after a referendum but to also make way for ample opportunities for future dialogue on a second ref (if relevant).

27. The option of a united Ireland would need to be delineated at some stage if unification was to occur. Matters needing to be addressed would include:

- a. **The terms of the transfer of sovereignty.** Northern Ireland currently receives a substantial subvention from the UK Exchequer. Ireland is richer than it used to be, with higher per capita income than Great Britain; but a united Ireland would have a much smaller population to bear the costs of those policies and

**Commented [KF14]:** This would be a consideration where IGR reform is important to ensure that both govts are communicating on the future standing of what UI may look like (this will help with the campaign too in further delivering clarity to voters on what each vote will look like)

programmes supported by the subvention, if it continued. The division of UK assets and liabilities would need to be decided.

- b. **The shape of a united Ireland.** Would a united Ireland
- o retain devolved institutions in the North
  - o be a unitary state, with a single central legislature and government
  - o be a federal state, with the North perhaps being one of the elements
  - o or be a confederation, with Northern Ireland as an independent sovereign state?

There is scope for variation within each option.

#### Calling a Referendum:

30. In assessing public opinion, the Secretary of State might draw on six possible sources of evidence: votes cast in elections; the results of surveys and opinion polls; qualitative evidence; a vote within the Assembly; the seats won at elections; or demographic data. The Secretary of State must take all relevant evidence into account. We do not think it possible to define in the abstract the weight that should be attached to each type of evidence, except that demographic data could provide only contextual information.

**Commented [KF15]:** How to present the case to the SoS that this data has been leaning increasingly towards a UI?

#### Campaign Conduct Rules:

46. These rules relate to four key matters: campaigners and campaign finance; the role of governments during the campaign; information, misinformation, and the media; and the duration of the campaign.
48. Public information provision also needs to be addressed. UK practice provides little such information, while provision in Ireland is narrowly focused on the constitutional implications of the vote. On a matter of such import as the unification question, voters would deserve better.

**Commented [KF16]:** This should also be prioritised and fully accountable in reflection of the distrust and tensions introduced in the wake of the Brexit ref.

**Commented [KF17]:** Again, aid to wider understanding for all voters on what the referendum means for them and how it will impact them. Everyone knows where they stand by the decision they make (This may be aspirational, but voters should be as informed as possible and aware of all ready consequences because of detailed and comprehensive planning between all relevant leaders.

#### Conclusions:

- 53(a): It would be highly unwise for referendums to be called without a clear plan for the processes of decision-making that would follow. Such a plan would need to be agreed by the governments, working closely with the full range of actors in Northern Ireland, across the island of Ireland, and in the UK. When planning should begin is a political rather than a procedural matter, on which we do not take collective view. But it should be completed by the time any referendum was called.

**Commented [KF18]:** I strongly agree with this.

#### Chapter 5 – Criteria for Assessing Possible Processes:

5.3. Within this context, and drawing on both international experience and evidence relating to Northern Ireland and Ireland, we have identified five key criteria for evaluating referendum processes. These criteria, which may overlap, are as follows:

- **Procedural legitimacy** should be maximised, in the eyes of both the public and the law.
- **Stability** throughout the island of Ireland should be protected by the referendum processes, in both the short and long terms.
- **Simplicity** in the referendum processes should be sought to limit the risk of confusion among voters north and south.
- Voters should be able to make an **informed choice** among the options that are available.
- **Inclusivity** should be sought. The options put to voters should be generated through a process that is inclusive, and that facilitates and encourages the participation of unionists, nationalists, and others. Inclusivity should also be sought in the relevant preparations leading up to any referendum. Inclusivity is a vital principle of genuine engagement, but it allocates no veto to any party and cannot be invoked to override the majoritarian procedure of the referendums themselves.

**Commented [KF19]:** I agree with this and that the role of citizens assemblies and deliberative innovations should be stressed in the case of a UI referendum. Successfully doing so could allow for the other characteristics here to be achieved i.e. procedural legitimacy, stability, simplicity and inclusivity.

#### **Simplicity:**

5.12. Simplicity is not an absolute requirement: complex choices sometimes require complex processes of decision-making. However, any referendum processes should be as simple as is reasonable to limit the risk of confusion among those who participate in them. We have said that referendums would need to be held in both Northern Ireland and Ireland for unification to take place. Differences in the conduct of the referendums should, unless there is good reason, be reduced to limit possible confusion: see Chapter 14.

**Commented [KF20]:** The best way to achieve simplicity would be through conducting referendums with as close a vision as possible to what the outcomes will actually be. Instil confidence with voters and promote successful relations beforehand.

#### **Informed choice:**

5.13. Voters should be able to make an informed choice among the options. The Venice Commission views voters' freedom to form their own opinion as they see fit as one of the four key values that are core to the integrity of any democratic election or referendum. This freedom requires that campaigns be run to ensure a balanced airing of different views, and that public authorities should 'provide a certain amount of necessary information in order to enable voters [in a referendum] to arrive at an informed opinion' (Venice Commission 2007: 17). In 2019, the Parliamentary Assembly of the Council of Europe proposed revisions to the Venice Commission's guidance. It identified three core general principles, one of which was that 'the conduct of the campaign should ensure balance between the sides and allow voters to have access to balanced and quality information on the options in order to be able to make an informed choice' (Parliamentary Assembly of the Council of Europe 2019: 3). The Independent Commission on Referendums (2018: 9), which was established by the Constitution Unit to consider the role and conduct of referendums in the UK, recommended that referendums should be designed to 'empower voters to find the information they want from sources they trust, so that voters feel confident in the decisions they reach'.

**Commented [KF21]:** Agree. Priority must be to ensure that the referendums are not at all convoluted and information can be dissected and digested easily for voters of all constitutional alignments north and south.

#### **Inclusivity:**

5.17. The decisions to be made would have major implications for the lives of people throughout the island of Ireland. It would therefore be important for these decisions to be shaped by a broad and diverse range of people. Elected representatives would be central at every stage. Enfranchised persons from multiple perspectives (such as different localities, ages, religion, ethnicity, sectors of employment, and education levels) should also have opportunities to contribute. A range of mechanisms of wide and substantial public engagement could be used. Citizens’ assemblies, for example, have become useful forums for enabling deeper public discussion of major constitutional or policy decisions before they are made. Other mechanisms could focus on bringing in the voices of disadvantaged or marginalised groups.

**Commented [KF22]:** In the planning process, governments should seek private companies (i.e. RED C [constitutional convention(s)]) to plan and conduct citizens assemblies across the island.

**Table 5.1. Summary of Criteria:**

Criterion		Description:
Procedural Legitimacy:	Public:	People on all sides accept the results as fair
	Legal	The process respects the principle of legality
Stability:	Short-Term:	The process itself does not generate destabilising tensions
	Long-Term:	The outcome is likely to stand the test of time
Simplicity:		The process is as simple and clear as is reasonable
Informed Choice:		Voters have access to full and reliable information on the options
Inclusivity:	General:	The process of designing the options allows for inclusion of diverse groups from across all parts of society, north and south
	Specific:	That process facilitates and encourages unionist, nationalist and non-aligned engagement

**Commented [KF23]:** Should be presented as key aims and priorities for a UI ref. Basic framework of ensuring legitimacy within both campaigns.

**Chapter 7 – Delineating the Two Referendum Options:**

7.2. The first option would require elaboration: a united Ireland would necessarily take a particular shape, which would have to be defined. As discussed in Chapters 9 and 10, such elaboration could take place before a referendum, after a referendum vote for unification but before the transfer of sovereignty, or after the transfer of sovereignty. Whatever the timing, this chapter sets out what matters would need to be decided. We emphasise that our purpose is limited to identifying the sorts of issues that would need to be addressed, so as better to gauge the breadth of work required. It is beyond the scope of this report to explore the substance of the issues in detail. We do not argue for any particular outcomes, beyond indicating what appears to be within the scope of the 1998 Agreement. As in Chapter 6, we divide these matters into four areas:

- the terms of Northern Ireland’s transfer from the UK to the Republic of Ireland
- the constitutional form of a united Ireland
- arrangements for public services and other policy matters in a united Ireland

- post-unification relations between Ireland and the remaining UK, with special reference to Northern Ireland.

**Commented [KF24]:** This framework could present key priorities within negotiations (if they are to take place prior to ref(s)).

### The Option of a United Ireland: Sketches without Blueprints:

7.13. In drawing attention to the limited thinking so far undertaken about plans for unification, or any pro-Union offering in a referendum, we are making no criticism of those who have not carried out such planning. They may believe that the prospect is a distant one or that there are more pressing challenges to engage with. But the consequence is that we are a very long way even from having a full list of issues that would need to be addressed in the context of Irish unification; nor are there any developed alternatives involving a reformed UK Union.

**Commented [KF25]:** I would argue that a referendum cannot s continuation of the status quo. There has to be clear reform of either the devolved nations place in the UK or governance within these nations. However, I feel that this would if anything fuse further political tensions within the power-sharing agreements. I doubt Unionists will argue for a reformed UK but will argue against unity. This could however work to a strategic advantage to nationalists.

### The Option of a United Ireland: Matters Relating to the Transfer of Sovereignty:

7.14. We deal here with the issues immediately associated with the transfer of sovereignty over Northern Ireland from the UK to Ireland. These issues are small in number, mainly around finance, but they could be crucial to the delivery of unification and would feature prominently in debate. As discussed in Chapter 6, they are principally matters for intergovernmental negotiation, but many in politics and civil society would wish to put forward views on them. There would be a significant EU dimension too: Northern Ireland would, as confirmed by the European Council Statement of 23 June 2017, on becoming part of the Irish state also become a part of the EU (European Council 2017).

**Commented [KF26]:** IG relations should seek significant reform to lay the gauntlet for legitimate negotiations on the planning and preparing for a UI referendum/Union reform to take place.

#### *Northern Ireland's Public Finances:*

7.16. There are diverse views on how unification would affect the public finances. One view emphasises that the Northern Ireland Exchequer receives substantial transfers from London. The UK government contribution, calculated as the amount by which public expenditure in Northern Ireland exceeds the amount raised there in taxes, is about £9 billion annually in a normal year (FactCheckNI 2016; McGuinness 2019). That is roughly a third of Northern Ireland's public spending. The need to plug this gap leads some to say that the costs of early Irish unification would be extremely high for the Irish state (Fitzgerald and Morgenroth 2019): a united Ireland would have a much smaller population (one tenth that of the UK) to bear the cost of the shortfall, if it continued. If unification were achievable only by substantial reductions in public services in the North, or substantially increased taxation across the whole island, as Fitzgerald and Morgenroth argue, there might be a significant impact on public perceptions of unification, north and south.

**Commented [KF27]:** Undoubtedly a key concern for voters in ROI. Meagher (2016) in his book 'A United Ireland', makes a number of compelling cases on the economic outlook of a UI ref.

7.19. We have heard that a move to Irish unity might attract international support. Past initiatives have included the International Fund for Ireland, latterly sustained by US public funds; and the European Union PEACE programmes. With Northern Ireland returned to the EU, applications would again be possible from there to the European Regional Development Fund. But international contributions in the past were relatively small. The EU PEACE IV programme, for example, provided an average of €39 million a year, compared to annual public spending in Northern Ireland of almost £22 billion per year (Special EU Programmes Body 2020; HM Treasury 2019: 5).

**Commented [KF28]:** Brexit with its own impacts on the UK/Ni is one thing to take into consideration. However, Brexit arguably opens a number of windows of opportunity for Ireland's key strategic international relationships. Post-Brexit and in the case of UI, the EU will support Ireland and protections (i.e. funding) can be expectedly sourced from an Irish-American President Elect.

**Trade, Boundaries and the European Union:**

- 7.23. ...most notably fishing rights in response to changing sea borders, might also require renegotiation.
- 7.24. Other consequences of Northern Ireland rejoining the EU would be that the euro would become the official currency, as it is in the South; and Northern Ireland would again be eligible to apply to the European Regional Development Fund.

**Commented [KF29]:** Surprisingly, UI organisers should seek full clarity on this matter in preliminary negotiations (if they are to take place prior to ref.) Must reflect upon the challenges of Brexit.

**Commented [KF30]:** Campaigns should highlight how NI has previously benefitted from ERDF. However, adequate reform of public spending (particularly on matters such as infrastructure investment from the NI Exec) must be a priority in the counter-argument of a reformed place in the UK (should ref vote to remain in the UK).

**Citizenship:**

- 7.26. The Agreement, in our view, provides for equal respect for the British identity, even after unification. Most residents of Northern Ireland, if born there, are already under Irish law entitled to Irish citizenship. But, under existing Irish constitutional arrangements, certain rights are only available to citizens. Some in the unionist tradition may not wish to take up Irish citizenship, and certainly not wish to have it foisted upon them. The 1998 Agreement (see Chapter 4) provides that British citizens in Northern Ireland cannot be compelled to become Irish citizens but must nevertheless be permitted to exercise full political rights without becoming Irish citizens.
- 7.27. The matter is further complicated by EU citizenship questions. The status of EU citizenship, and the rights associated with it such as freedom of movement and voting in European elections, depend on citizenship of an EU Member State. How might it be possible for British citizens resident in Ireland to acquire EU citizenship without first becoming Irish citizens? Negotiation would be needed on this.
- 7.28. In addition, British citizens resident in Northern Ireland may wish to have guarantees of continuing entitlement to British citizenship for their descendants born there (or across the island of Ireland).

**Commented [KF31]:** Key concern which should be highlighted in unionist outreach efforts prior to campaign.

**Commented [KF32]:** See point above and also an issue of IGR reform. Assurances and clarity must be in place on the protection of unionists in the case of Irish unity.

**Commented [KF33]:** I would argue that citizenship in a new Ireland should reflect Ireland's remarkably outward looking approach to Irish citizenship (i.e. provision of Irish passports). However, it would be difficult to legitimise British citizenship in the context of access. With this, if granted 'British' citizenship in a new Ireland, would these citizens be treated the same way Irish citizens (EU Nationals) are presently treated in GB. A more efficient way of protecting and upholding unionist interests may be through the autonomy of Irish or Northern Irish citizenship (or perhaps identity reflecting the federal outlook of Nua Éire?).

**The Nature and Length of a Transition to Irish Unity:**

7.32. Others make the case for a long transition on political grounds, saying that it would soften the shock for opponents of unification. Richard Humphreys in *Beyond the Border* suggests that nationalist Ireland might itself volunteer that there should be:

a lengthy transitional period of joint authority (that is, joint management), over the initial few decades of the transition. Such a managed transition—initially within UK sovereignty and subsequently within Irish jurisdiction—might provide a less fraught and, in the end, more flexible transitional mechanism to avoid the abrupt discontinuities of the 50 per cent + 1 approach of the Good Friday Agreement.

**Commented [KF34]:** Humphrey's presents a compelling argument here for a lengthy transition period. However, this may also enfranchise political exhaustion amongst voters (potentially of both constitutional alignments). Transition of sovereignty should be completed as quickly as possible (1-2 years max?).

**Commented [KF35]:** Flexibility is key to both sides diplomatically working to achieve their aims. If this is a concern, this furthers the case for efficient provision of citizens assemblies.

7.33. Such proposals raise questions about sovereignty in the interim: would Northern Ireland be under continuing British sovereignty, under Irish sovereignty, or some hybrid state?

**Commented [KF36]:** See annotation 7.28. on provision of citizenships and passports.



7.36. The second difficulty of a long transition is that it would bring no early finality, which could be destabilising politically and economically. It would enable people to make choices but leave the difficult decisions and painful consequences they would entail until later. And it would increase the possibility that attempts could be made, through political or violent means, to prevent unification from happening.

Commented [KF37]: Very strongly agree.

### How Far Does or Should, the 1998 Agreement Govern a United Ireland?

7.44. {...} The SDLP's 2005 plan for a united Ireland involved a large element of replicating the Northern Ireland devolution model.

Commented [KF38]: Such an approach (i.e. federalism) could be an efficient way of softening the blow as it were for unionists. I would support this model and be happy to review future research into how this would manifest itself.

7.47. Taking to the extreme the argument that the Agreement principles would endure, could it be suggested that Northern Ireland's position within a united Ireland was dependent on the continuing consent of a majority there—given that the Agreement says that the exercise of the right of self-determination is on the basis of consent in both parts of the island? [...]

Commented [KF39]: Self-determination should be expanded upon the four kingdoms to ensure no divisions between north and south (or as minimal as possible).

### Adapting the Architecture of Irish Government to Accommodate Northern Ireland:

#### The Core Models:

7.52. A state with devolved institutions in the North—as far as possible a mirror image replication of the current arrangements within Northern Ireland under the Agreement, but with sovereignty transferring from London to Dublin—would involve the least departure from the Agreement structures (Garry et al. 2018; see also Garry et al. 2020a, 2020b). This model would lessen the shock to those in Northern Ireland who oppose unity, since the same institutions would continue; and under the various minority protection arrangements written into the Northern Ireland structures, would provide safeguards for their interests. But it would introduce complications into the government of the Irish state, discussed in paras 7.59–61 below.

Commented [KF40]: This should be prioritised.

7.54. A federal Ireland, with the northern institutions constituting one element, is a further model. There would be several options as to the constituent units of such a federation: Northern Ireland on the one hand and the South on the other; the four historic provinces of Connacht, Leinster, Munster and Ulster as in Éire Nua (1972); or some other configuration, more in tune with current patterns of population and economic activity, such as grouping around city regions. A federal model would avoid some of the governance complications of lopsided devolution. But a two-unit federation would be imbalanced, and the record of two-unit federations is not encouraging (Vile 1982). And there would be significant cost and disruption in establishing federal structures.

Commented [KF41]: The Belfast Regional City Deal (BRCD) could provide a very basic framework into whether this would be a feasible way to work in a new Ireland.

Commented [KF42]: I would be interested to see a PESTLE analysis of post ref federalism model to see in more detail the strengths and weaknesses of this model. Ensuring as peaceful a transition of power as possible and protection of the 1998 Agreement is priority.

#### Variance within the Core Models:

7.60. Would the answer, as at Westminster currently, be to provide for Northern Ireland members not to vote at certain stages on questions that are devolved in the North—'Southern Votes for Southern Laws'? Embodied in such a restriction would be a risk of an Irish government being selected on the basis of its majority across the island of Ireland, but then

Commented [KF43]: Surely this contradicts the very premise of UI? Local issues for local people is a valid concern but only at the local level i.e. local gov (constituency matters), (e.g.) Ulster federal gov, issues for local people, Dáil Éireann matters for island wide issues?

finding itself unable to enact its agenda in the South, having no majority amongst southern TDs. The numbers involved would mean that the risks were much greater than at Westminster, where Northern Ireland has 18 members out of 650; if the current Dáil were enlarged to accommodate Northern Ireland members on the same population basis, as provided for in the Constitution, it would have about 62 seats in addition to the present 160.

Commented [KF44]: This is v interesting!

7.62. Other aspects of government would need to be considered. Under a devolved model there might be an Irish government minister responsible for the North, as the Secretary of State for Northern Ireland currently is, though the role might be different in various respects in the new context.

Commented [KF45]: Would this not be more efficient in having leadership roles within the four federal establishments or the new cabinet could have e.g. Minister for Ulster, Minister for Leinster etc (arguably however this would have to be a representative of this region and not a member of the majority party i.e. Fine Gael member not from relevant area?) How is this achievable though? Could the Taoiseach choose at their discretion a member from each historical kingdom and rep regardless of their party?

#### *Identity issues and other Characteristics of the Irish State:*

7.66. Some will argue that a new agreed Ireland should review the approaches taken to certain issues in the current Irish Constitution and by long-standing Irish governmental practice. Examples can be briefly stated, but they are potentially of great political sensitivity:

- *Language:* There would be particular focus on Irish constitutional and other provisions that accord the Irish language special and sometimes primary status, whereas in Northern Ireland for most purposes it has no similar legal recognition and English has primacy. The treatment of Irish and Ulster Scots in Northern Ireland is yet to be settled.
- *Flag, national anthem, other symbols:* Regarding the flag, some would argue for continuation of traditional Irish practice, and point out that the Irish tricolour of green, white and orange was itself designed as a symbol of the uniting of identities within Ireland. Others might favour a comprehensive revision to reflect the creation of a fundamentally new state. Similar debates will occur over the anthem and other symbols, though the harp may be less controversial.
- *The Commonwealth:* Might Ireland re-join the Commonwealth? This idea is often discussed, but would raise significant sensitivities.
- *Monarchy:* Should there be some recognition of the British monarchy, even if falling short of any material role, as an institution valued by some of the new state's people (who may retain British citizenship)?
- *Neutrality:* Northern Ireland by virtue of its membership of the UK shares in full membership of NATO; the Irish state has a history of neutrality, and is not a member of NATO, though it is a member of its Partnership for Peace programme.
- *Capital:* Should Dublin be the capital of the unified state; or Belfast; or would it be appropriate to choose a new location? If Ireland federalises, or if there is devolution, would the institutions of government and law be shared among Belfast, Dublin, and other locations?

Commented [KF46]: This is an issue which organisers could seek valuable insights into via citizens assemblies. Presumably Irish would be prioritised however cultural reassurances must be provided.

Commented [KF47]: A new flag for a new Ireland? Worthwhile considering this also within the context of citizens assemblies.

#### **A new Irish Constitution?**

7.69. Historically, that Constitution was a product of a nationalist outlook, and, although adopted in the name of 'the people of Éire', defined to include the entire island of Ireland, was approved only by voters in the South (by 57% to 43%) in 1937. It has been amended many times since, often reflecting markedly different values from those of the initial drafters. Some, notably Leo Varadkar as Taoiseach, have suggested that a wholly new Constitution would be necessary in the context of a new Ireland (Moriarty 2019a). The hope would presumably be

Commented [KF48]: This would require comprehensive discussion to appease sceptical Irish folk who may be on the fence on Ul. Constitutional reform could use the present constitution as an advanced framework and seek to revise this. \*I'm not well read on this matter but interested to learn more\*

that citizens from the North would be involved in making the new constitution, and hence could feel as much part of the new structure as those in the South.

### The Option of a United Ireland: Policy Questions:

7.71. Some questions would only arise, or would be more significant, if unification were brought about on a unitary model. But many carry significant political weight.

- *Taxation and finance:* There would be significant questions about the transition of Northern Ireland to an all-Ireland tax system (the Northern Ireland Assembly and Executive at present raises little taxation of its own). It might be found necessary to institute a plan for radical economic change in Northern Ireland, and the Dublin government would likely control the issuance of debt and the setting of all-island taxation rates—with room for marginal changes under devolution, and perhaps for more significant fiscal autonomy for federal units under a federation. There would be other areas in which similar questions would arise.
- *Public administration:* Principles might be established to govern the integration of public services: some fused services might follow the southern pattern, others the northern; or the general rule might be that where services were fused, for example, they would take on a completely a new identity, rather than one of the former ones.
- *Health provision:* The different parts of the island have fundamentally different systems of health provision: the North through the National Health Service, largely funded through taxation and free at the point of use, the South through a model involving greater charging and widespread private insurance of those in work. There are plans for substantial reform of health provision in the South. But change from either model might be a serious upheaval, practically, but also totemically, with enormous political resonance—the NHS is highly valued by many, and for some is an emblem of the British state. Funding the NHS in Northern Ireland within a united Ireland might raise major difficulties and questions of equity, however.
- *Welfare provision:* Again, different systems apply in each part of the island, the North largely observing parity within a UK-wide system, directly funded from the British Treasury; and changes might mean both winners and losers.
- *Education:* Primary and secondary education in the North remains in large measure voluntarily segregated along community lines, under a variety of models of governance and funding, despite energetic attempts to advance integration. Much, however, is conducted under state auspices. The Irish Constitution currently mandates an educational system through which the state largely supports private providers (mostly churches) to deliver education. There are also substantial differences between the jurisdictions in curricula and narratives of history Arrangements would also be needed for universities.
- *The civil and criminal law:* Under devolution, at least, the current law might carry over, and perhaps also under a unitary system—at least for a period of time after unification. Its interaction with the Irish Constitution would, however, need to be looked at; and new rules on internal conflict of laws might be required. A move to full harmonisation of the law across the two parts of the island would require prolonged effort.
- *Rights and equality:* The North currently has substantial provision of its own for upholding, for example, equality of opportunity in employment, different from that in the South, some of it embodied in the Agreement.
- *The courts:* Under devolution, a separate Northern Ireland court system might remain, but with an appeal to a central Irish supreme court—either the existing one or, if a blank

Commented [KF49]: Agree.

Commented [KF50]: I think the best way to make a decision on this would be to conduct a study comparing expenditure on public services. The North is woefully underfunded (i.e. infrastructure as one of many examples). If similar challenges are being faced in Ireland, then a new transformed identity may be worthwhile?

Commented [KF51]: This is a crucial issue in promoting the case for Irish unity for both northern unionists and nationalists and campaigners should seek FULL clarity on this matter prior to ref.

Commented [KF52]: Citizens assemblies could further provide valuable insights into how the people wish their children to be educated. I would argue for the abolition of academic selection and assignment of schools in reflection of geographical proximity similar to US. If parents wish to send their children to academic selection schools or single-faith schools this should be a private matter where they opt out of the geographical allocation. This would be the fastest way to ensure education integration across a new Ireland.

sheet plan of constitutional design were adopted, a new institution. There might need to be provision for a fixed number of Northern Ireland judges on the Court. Under a unitary plan there would presumably be new courts in the North, on an island-wide model.

- *Policing*: This has been an issue of great sensitivity in Northern Ireland: the creation of a Police Service of Northern Ireland with cross-community acceptance was a major achievement of the 1998 Agreement. It is overseen by a Policing Board composed of a careful mix of representatives of the main political parties and independents. Its assimilation into the Garda Síochána, especially if accompanied by the removal or weakening of northern political oversight, might provoke very strong feeling (even though the Garda is currently headed by a former senior officer of the PSNI). Various policing and national security functions are also carried out in Northern Ireland by UK institutions: these would need to transfer to the PSNI, Garda or another new or existing institution.
- *Armed Forces*: The British armed forces recruit in significant numbers in both parts of Ireland. And there are military installations in Northern Ireland, though those working in them are generally part of the wider army capability, rather than having functions relating to Northern Ireland. Given existing recruitment patterns, the British forces might presumably continue to recruit in both parts of Ireland; though there might be options for personnel to transfer if they wished.
- *The civil service*: Currently, most central administration in Northern Ireland is carried out by members of the Northern Ireland Civil Service, a body completely separate from the Home Civil Service, which carries out central government functions in Great Britain. There would be questions about how it carried over into either a devolved or unitary model. Some central government functions in Northern Ireland that are the responsibility of London, notably taxation, are carried out by members of the Home Civil Service. An issue would be on what terms those services, and civil servants, were assimilated into Irish unitary bodies.
- *Other state-owned or regulated services*: Multiple additional bodies would need to be considered. The publicly owned BBC, for example, is the principal public service broadcaster in Northern Ireland, funded through the television licence. Would it continue, would its Northern Ireland operations be assimilated within the Irish public broadcaster RTÉ—or might it continue on a cross-border basis (see below)? And how in that event would be it be funded? Postal services in Northern Ireland are provided by the Royal Mail and Post Office, the former a privately owned company. Government policy and regulation is a matter for London. An Post in the South is a state-owned provider. Would these arrangements in any way be fused?

**Commented [KF53]:** Given the previous sensitivities between SF/PSNI, the creation of a new model of policing may create new tensions. Amalgamation with Gardi Síochána may be the most feasible option.

**Commented [KF54]:** This is an interesting argument but I feel discussion on this should begin between RTÉ and BBC to come to a conclusion before presenting their final case to organisers.

**Commented [KF55]:** Surely makes more sense for them to be fused?

East-West Relations under a United Ireland:

7.74. A prominent example of an organisation providing shared services across the UK, and to some degree in the rest of Ireland, is the BBC, discussed above. It is currently the principal public service broadcaster in the UK, including Northern Ireland and Scotland—and it has been widely viewed in the South. In the event of unification (and potentially Scottish independence), is it possible to envisage there being a demand for it to have a cross-border role?

Political Context After a Vote Against Unification:

7.85. Particularly difficult though unpredictable political consequences might arise if unification were defeated on a split vote: a vote for unification in the North but not the South, or vice versa. This scenario would seriously threaten political stability. If a vote for unification was won in the North, but lost in the South, nationalism would be left orphaned, with the long cherished united Ireland ideal being abandoned by Irish voters in the South. [...]

**Commented [KF56]:** This is a worst case scenario which Dáil Éireann should seek to avoid at all costs.

## Chapter 10: Processes from Start to Finish:

### *Phase 0: Preparation:*

10.6. While arguing that preparatory work would be desirable, we have not taken a view on the timetable that it should follow. This is a politically sensitive matter on which perspectives differ markedly; given our focus on procedural rather than political matters, it is therefore for others to resolve. Some—particularly, but not exclusively, in the nationalist community—see the preparatory phase as having begun already, and have begun to initiate public and private conversations of various kinds. Others are more cautious on beginning preparations, or are opposed to doing so. The Irish government seeks to focus conversation on a ‘shared island’ rather than on the unification question. Many unionists in Northern Ireland, as well as the UK government, wish to avoid discussion of unification entirely. [...]

**Commented [KF57]:** This is a foolish tactic from unionists. However, citizens assemblies and their findings may provide legitimacy for serious conversations to at least begin in the NIE.

### *Phase 1: Deciding whether to Call Referendums:*

#### *Whether to Call Referendums:*

10.11. The Secretary of State *must* call a referendum if it appears likely that a majority would vote for unification. That means that a Secretary of State must always keep an open mind to the possibility that this condition could be met. [...]

### *Phase 2: From Calling Referendums to the Votes:*

#### *Planning the Campaigns:*

10.23. Besides the development of proposals for a united Ireland set out above, phase 2 would also be a period during which campaigners on all sides would develop their referendum campaign strategies. Campaigners for unification would likely base those strategies in part on the plans for what would follow votes in favour of unification. Campaigners for maintaining the Union, meanwhile, might develop proposals for reforming Northern Ireland’s place within the Union and Northern Ireland’s internal system of government. We set out some of the matters that such proposals might address in Chapter 7.

### *Phase 3: Referendums on the Unification Question:*

10.27. One point that we should address here, however, concerns the precise timing of the referendums north and south relative to each other. The 1998 Agreement requires that these votes should be ‘concurrent’. As explained at para 4.29–32, we do not interpret ‘concurrent’ as meaning that the votes should necessarily be simultaneous. Concurrence requires only that the referendums should take place at the same stage in the overall process, on the same

proposals. In principle, there are therefore three ways in which the referendums could be sequenced: they could indeed take place on the same day; or the vote in Northern Ireland could come first; or the vote in the Republic of Ireland could come first.

**Commented [KF58]:** It would make more sense for each ref to take place on the same day. However, this may raise concerns if it is looking significantly likely that two separate results will be wielded.

10.28. As we set out further in Chapter 11, there are arguments relating to both symbolism and practical effect that might affect decision-making on the design of the referendums, including the question of how votes north and south would be sequenced. Many respondents to our public consultation identifying as nationalist argued that the referendums north and south should take place on the same day. [...]

#### ***Phase 4: After the Referendums – If Unification Passed:***

##### ***Configuration 2:***

10.34. Under configuration 2, a great deal would have been worked out before the referendums, during phase 2, leaving less to be decided in the course of phase 3. Voters would have voted for unification with a detailed plan attached as to the form that a united Ireland would take.

10.35. It is likely, however, that the terms of the transfer of sovereignty would still remain to be negotiated between the governments.

**Commented [KF59]:** I agree this would be the best approach.

##### ***Configuration 4:***

10.37. [...] - . In Northern Ireland, these processes would take place under continuing British sovereignty, and so the cooperation of the UK government would also be required. [...]

**Commented [KF60]:** Further argument for substantial IGR reform

10.39. Before that date, the processes for developing proposals for the united Ireland would be concluded, and referendums would be held in both Northern Ireland and the Republic. It should be remembered that these referendums could not overturn the result of the first referendums, in which voters had opted for unification: to allow that would violate the 1998 Agreement. Thus, the choice in the second set of referendums would be between unification according to the proposals that had been developed, and unification on the default terms that had been set out in advance of the first referendums.

**Commented [KF61]:** This would either have to be v accessible public knowledge or ensure that as much as possible is achieved prior to referendums.

10.42. Following the second set of referendums, the transfer of sovereignty would occur on the designated date, according to the terms that voters had chosen.

#### ***Phase 4: After the Referendums – If Unification Did Not Pass:***

##### ***Votes for Unification in the North, Against in the South:***

10.56. Thus, two options would be legally available: to rerun the referendum in the South, but on exactly the same proposition as in the first vote; or to wait at least seven years before holding any repeat votes, during which period work could be done to address southern voters' concerns.

**Commented [KF62]:** If this occurs, it is imperative that NI's place in the Union is significantly revised in the preparations for potential third ref.

10.61. [...] But supporters of unification would likely concentrate their efforts on developing proposals for a united Ireland that would convince sceptical voters in the South.

**Conclusions:**

10.67. If referendums were called, phase 2 would then take in the period from that moment until the votes themselves. The decisions to be taken during this period would depend of which of the referendum configurations was followed. Under configuration 2, the Irish government would lead a process of developing proposals for the form of a united Ireland. Under configurations 4 or 5, the Irish government would lead the development of processes through which such proposals would be drawn up after the referendums, in the event that voters north and south opted for unification. In addition, it would be necessary under configuration 4 to develop default arrangements for the form that a united Ireland would take if replacement arrangements could not be agreed. Under configuration 5, interim arrangements would be required, to operate after the transfer of sovereignty while replacement provisions were settled.

10.69. The configurations would thus differ from each other principally from phase 2 onwards: there would be variation in what would be decided when, and therefore in how long some phases would take. At the same time, the differences should not be exaggerated. Under all configurations, in order to enable an informed choice among voters and to provide clarity as to the paths ahead under different outcomes, much work would be needed before the votes were held. And, if voters opted for unification, some further work would be required between polling day and the transfer of sovereignty as well. It would be highly desirable to plan all of this out during phase 1.