

Written response to the Constitution Unit from Sinn Féin

Sinn Féin is an Irish Republican political party organised across the island of Ireland.

Our priorities;

1. Planning is essential – a truly representative, all-Ireland forum, such as a citizens’ assembly or forum, needs to be convened to debate and discuss these processes.
2. As the referendums necessary to precipitate constitutional change are mutually dependent and politically linked, the Irish government, and by extension Irish civic society, must have an intricate and considered input to the process of shaping future referendums.
3. The responsibility of the British government is to facilitate Irish self-determination from a neutral standpoint. The reference to, “present wish of the majority of people in Northern Ireland”, in section 1(iii) of the constitutional issues was written in 1998. Its status degrades with the passage of time and significantly altered circumstances. The Irish government is permitted, indeed obliged, to pursue the constitutional goal of reunification in accordance with Bunreacht na hÉireann and the Good Friday Agreement.
4. The rights and protections afforded to citizens in the north must only be built upon and improved.

“...it is for the people of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a United Ireland...”¹

The Good Friday Agreement

1. How would any referendum process be triggered?

a. The Secretary of State for Northern Ireland is legally required to call a referendum in Northern Ireland if it ‘appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland’. How should it be determined whether that threshold has been met?

There are a number of possible indicators which may determine if the threshold, ie. the possibility of the north voting for unity, is reached.

The first is electoral. In the last five elections held in the north of Ireland (Assembly 2017², Westminster 2017³, Local Government 2019⁴, European 2019⁵, Westminster 2019⁶), political unionism failed to secure an electoral majority.

For the first time since the creation of the state, Irish nationalist and republican MPs outnumber unionists in Westminster. Whilst there is no clear pro-unity electoral majority at this time, there is also no clear unionist electoral majority. Therefore, it is feasible that, given the absence of a unionist political majority, a referendum on reunification could be won by the pro-unity side.

Demographic trends show that those from a traditionally Catholic/Nationalist background are likely to form a majority in the north in the coming years. This is a crude and unscientific measure of constitutional preference but

¹ <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf>

² <http://www.eoni.org.uk/Elections/Election-results-and-statistics/Election-results-and-statistics-2003-onwards/Elections-2017/Ni-Assembly-Election-2017-Result-Declarations>

³ <http://www.eoni.org.uk/Elections/Election-results-and-statistics/Election-results-and-statistics-2003-onwards/Elections-2017/UK-Parliamentary-Election-2017-Results>

⁴ <http://www.eoni.org.uk/Elections/Election-results-and-statistics/Election-results-and-statistics-2003-onwards/Elections-2019/Local-Council-Election-Results>

⁵ <http://www.eoni.org.uk/getmedia/2d393c0e-ba88-48da-af69-fec342d34be0/European-Election-2019-Result-Sheet>

⁶ <http://www.eoni.org.uk/Elections/Election-results-and-statistics/Election-results-and-statistics-2003-onwards/Elections-2019/UK-Parliamentary-Election-2019-Results>

nonetheless probably continues as the most accurate predictor. Yes, not all Catholics are pro-unity, but demographics, combined with electoral trends, detail a distinct decline in support for the constitutional status quo.

The current popularity of the issue is another indicator that the threshold is close to being met. We are seeing an almost daily intervention on the issue of Irish unity from people representing a variety of backgrounds. The debate is live.

In summation, a holistic approach is required to establish whether the threshold is met or not. No single indicator is accurate in itself as factors beyond the constitutional question impact on the evidence. We can state categorically, however, that political unionism no longer commands an electoral majority.

b. The Secretary of State has discretion to call a vote even if the threshold above has not been met. Are there circumstances in which it might be desirable for him/her to do so?

The threshold is ill-defined and there exists hitherto no quantifiable means of gauging it.

There is no doubt that the next few years will bring significant constitutional and political challenges for the British government. Whilst the result of the 2019 British General Election makes Brexit in 2020 almost an inevitability, significant victories for pro-independence Scots and pro-Irish unity parties in the north demonstrate what challenges remain for the British government. It is entirely feasible that a second referendum on Scottish independence takes place. In this volatile political reality, with the north being dragged out of the European Union against its democratically expressed will, public pressure for a referendum on Irish unity may be considerable.

The Secretary of State may see fit to call such a referendum, irrespective of whatever nominal and arbitrary threshold previous administrations may have clung to. It is worth noting that neither the Good Friday Agreement nor the 1998 Act is intended to, or does in fact, operate as a constraint on the holding of a referendum in the north on Irish unity.

c. What role, if any, would be played by the government of the Republic of Ireland in these processes?

As the two referendums are intricately linked, and mutually dependent (both must pass), the respective authorities should cooperate. In the south the proposal will, in all likelihood, have to be drafted by the Attorney General, adopted by the cabinet, then approved by the Oireachtas and finally by the electorate. Uniformity must be established in relation to the exact nature and content of the referendum campaigns. As such, an independent, all-island referendum commission should be established to monitor and guarantee this uniformity.

A decision by the Irish government to hold a referendum on Irish unity would have considerable political weight and should meet with a reciprocal undertaking by the British government, particularly if international support was sought for this.

The Good Friday Agreement requirement is for concurrent referendums. The discretion to hold a referendum is not conferred solely on the Secretary of State for the north. The clear implication is that the population's desire is to be acted upon. The poll provisions are about enabling change rather than restricting it.

2. What issues would need to be addressed in the processes leading up to and following any referendum?

a. What options for Ireland's and Northern Ireland's future governance could be considered, and what implications would these have for the nature of the decision-making process?

Again, these questions should form part of the discussion in a representative, all-island citizens' forum. In any future constitutional arrangement, the rights and protections of all citizens across the island should only be built upon.

Sensitive issues in relation to identity and culture must be comprehensively addressed, as should the role of the institutions of the Good Friday Agreement.

b. What policy matters would need to be addressed in preparation for any referendum?

There are a number of outstanding policy issues that would need to be resolved in advance of any referendum. Uncertainty and chaos must be avoided at all costs. We would need to have certainty in relation to the processes that would be initiated in the event of a successful referendum on Irish unity. These should be discussed and adopted by an all-island and representative citizens' assembly or forum well in advance of a referendum being held.

3. How would referendums North and South be structured?

a. At what point or points in the decision-making process would referendums take place, both in Northern Ireland and in the Republic of Ireland?

Planning is imperative to avoid the chaos and confusion prevalent in the years following the Brexit referendum. As such, a truly representative, all-island, forum or citizens' assembly needs to be urgently convened to address these issues. Once a clear picture has been derived from that forum, the Irish and British governments must negotiate the terms of a referendum. It is essential that the Irish government have an intricate say in this process. Once the parameters for the referendum and the processes to be initiated immediately following a successful referendum are clear, then the referendums can be held.

b. In particular, would referendums take place before detailed negotiations on the form that a united Ireland would take or afterwards or both?

Citizens need to know what they are voting for and what processes would be initiated by the holding, and winning, of a referendum. Therefore, referendums must take place after considered discussion as to the form a new and united Ireland would take. This can be achieved by the Irish government following the lead of a citizens' forum or assembly. This would be focused, in part, on the sort of Ireland that would be created in the event of a successful referendum on Irish unity. Bi-lateral negotiations between the Irish government and the British government (with additional actors involved) in relation to a number of inter-state matters would need to be convened both in advance of the calling of the referendums and in the immediate wake of a successful vote on reunification.

c. Would referendums take place simultaneously both north and south on the same matters, or would there be differences?

The referendums should take place simultaneously, under the same conditions. This should be done in order to avoid the result of one referendum in one jurisdiction influencing the result in another. Both referendums are mutually dependent so it would make sense that both are as similar as possible, if not identical.

The questions should be as close to identical as possible to ensure uniformity of campaigns and to regulate the conditions of the vote. It is essential that the positive answer to Irish unity in the two referendums is the same. A precedent for this has been established with the 1998 referendums on the Good Friday Agreement. In the 1998 referendums the questions were slightly different, but the endorsement of the proposal was "yes" in both jurisdictions.

Mark Bassett and Colin Harvey suggested in their paper 'The Future Of Our Shared Island: A Paper On The Logistical And Legal Questions Surrounding Referendums on Irish Unity', "The 1998 concurrent referendums posed different questions but were, it is submitted, clearly understood in both jurisdictions as "yes" for the GFA. The same approach

should inform the unity referendum: we suggest a scenario where “yes” signifies unity and “no” signals the status quo.”⁷

4. What processes of discussion should surround any referendum(s), including before a referendum is called and before and after any referendum is held?

a. What talks/negotiations should be held among key political actors? Who should be invited to participate? Should there be requirements for consensus, as in the Belfast/Good Friday Agreement negotiations?

Political representatives should be invited to attend and participate in/present to the established all-island and representative citizens’ assembly or forum. Consensus, whilst preferred, should not be a requirement, as it is not a requirement in advance of any other referendum.

b. How should civil society and members of the public be engaged? Should, for example, citizens’ assemblies be held? If so, at what stage(s) in the process on what questions? How should any processes north and south be related to each other?

Civil society should be fundamental to this process. A representative, all-island forum or citizens’ assembly should be immediately convened with the objective of debating and discussing this process. Such a forum should be convened in advance of a referendum being called and should provide direction on a range of issues, including, but not limited to; the referendum practicalities (date, franchise etc.) and the steps following a successful referendum (new constitution, new all-island legislature, the creation of a new Ireland). This forum could follow the successful models adopted during the Citizens’ Assembly 2016 - 2018⁸ but must be extended to include a proportionate number of representative individuals from the north.

5. Design features of the votes themselves

There is no clear direction given by the Good Friday Agreement or 1998 Act as to the exact design features of the votes themselves. As the holding of a referendum on the reunification of Ireland will have immediate and massive consequences for both the British and Irish governments, it is imperative that both are involved in the designing of the features of the referendums. The referendums should be held on the same day, with as close to identical questions being asked as possible, with the same campaign parameters and the same electoral franchise.

a. Which franchise should be used for a referendum in Northern Ireland?

All Irish, British and European residents on the island of Ireland, over the age of 16, appropriately registered, should be entitled to vote in the two referendums.

b. What role should the Electoral Commission play in a referendum in Northern Ireland?

A new, bespoke, independent and representative all-island Referendum Commission should be established to oversee the referendums in both jurisdictions.

c. Are there any specific campaign rules that need to be put in place? Government neutrality? London and Dublin?

⁷ *The Future Of Our Shared Island: A Paper On The Logistical And Legal Questions Surrounding Referendums On Irish Unity*, Mark Bassett and Colin Harvey - <https://brexitlawni.org/assets/uploads/Our-Shared-Island-A-Paper-on-Unity-CCG-2019.pdf>

⁸ <https://www.citizensassembly.ie/en/previous-assemblies/>

The Good Friday Agreement charges the government with responsibility for the north to act with rigorous impartiality. It also states that, “it is for the people of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination”.⁹

It is clear that the Good Friday Agreement envisioned a situation whereby the London government would remain neutral in any referendum campaign.

There is absent any such direction or restriction for the Dublin government. In fact, there is a constitutional obligation for the Dublin government to seek Irish unity as per the Good Friday Agreement. Bunreacht na hÉireann states, “It is the firm will of the Irish Nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island.”¹⁰ In recent times the Irish government has adopted positions on constitutional referendums.

This is an issue that should be considered by a citizens’ assembly or forum in advance of the referendum being called and may be subject to negotiations between London and Dublin in the process of calling the referendums.

d. How long should the campaign run for?

A number of months, but the date should be set well in advance – a number of years, to allow for the most detailed and considered debate possible.

e. What roles should the British and Irish governments play in these referendums?

Facilitators (also see 5C)

f. Are there any issues around who should lead the respective campaigns? & g. Are there any issues around the dissemination of public information, campaign finance and general regulation of campaign activity that we should consider?

The referendum campaigns should be conducted to the highest possible standard of best practice in relation to campaign conduct, financing and the distribution of public information. As such, a regulated leader of each campaign is preferred, in keeping with recent referendums held in Ireland. The aforementioned, bespoke, all-island, Referendum Commission should monitor and regulate this activity.

h. What thresholds should be used?

As with all referendums, a very close result, a slim win or loss, is a possibility. As both opinions on the constitutional question are acknowledged as equally valid, a simple majority is demonstrably the fairest threshold over which the successful campaign must pass. As per the Good Friday Agreement, there should be no additional threshold based on demographics, turnout, geography or any other factor, “...recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland.”¹¹

⁹ <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf>

¹⁰ The Nineteenth Amendment to The Constitution Act, 1998 <http://www.irishstatutebook.ie/eli/1998/ca/19/enacted/en/print>

¹¹ <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/good-friday-agreement.pdf>