



Working Group on Unification Referendums on the Island of Ireland

Bob Posner
Chief Executive
Electoral Commission
3 Bunhill Row
London, EC1Y 8YZ

20 May 2020

Dear Bob,

Working Group on Unification Referendums on the Island of Ireland

As you may be aware, we at the UCL Constitution Unit have teamed up with partner institutions in Belfast and Dublin to establish the Working Group on Unification Referendums on the Island of Ireland. This is examining how any future referendum on the constitutional status of Northern Ireland (often known as a 'border poll') would best be designed and conducted. We aim to produce an interim report in the autumn and a final report early next year. Full details of the Working Group are available on our [website](#).

I should like to emphasise that the project is not looking at, and will not take a view on, whether such a vote would be desirable or what the outcome should be. Rather, its starting point is that a referendum of this kind might happen in the coming years, and it is important to consider in advance how it might be conducted. The Northern Ireland Act 1998 provides very few details, but the risks associated with a badly designed process are severe.

In connection with this work, may I ask whether the Electoral Commission would be happy to answer a number of questions that have arisen in the course of the Working Group's deliberations relating to the practical running of any referendum on this topic? The questions that we have are the following:

1. Deviations from PPERA
 - a. Given the Electoral Commission's experience of operating the current PPERA rules relating to referendums, what changes would the Commission now recommend be made in advance of any referendum, whether in Northern Ireland or elsewhere?
 - b. In particular, to what extent is the Commission concerned about the susceptibility of referendums in the UK to foreign interference, and what measures would it propose to address this?
 - c. To what extent would the rule changes that the Commission advocates require primary legislation?
2. Rules for a referendum in a part of the UK

The Constitution Unit

The Constitution Unit, Department of Political Science, UCL, 29-31 Tavistock Square, London WC1H 9QU
Tel: +44 (0)20 7679 4977 constitution@ucl.ac.uk www.ucl.ac.uk/constitution-unit

Project Lead: Dr Alan Renwick, Deputy Director of the Constitution Unit

Research Assistant: Conor J Kelly | **Research Impact Fellow:** Charlotte Kincaid

Working Group on Unification Referendums on the Island of Ireland

Queen's University Belfast
Dr Katy Hayward
Prof Christopher McCrudden
Prof John Garry

Ulster University
Prof Arthur Aughey
Prof Cathy Gormley-Heenan

University College London
Prof Robert Hazell
Dr Alan Renwick
Alan Whysall

Trinity College Dublin
Dr David Kenny
Dr Etain Tannam
Dr Oran Doyle

University College Dublin
Dr Paul Gillespie
University of Pennsylvania
Prof Brendan O'Leary

- a. Did the Commission conduct any analysis in preparation for the 2004 North East referendum, the 2011 Welsh referendum, or the 2014 Scottish referendum as to how the PPERA rules might need to be adapted for a referendum taking place in only part of the UK?
 - b. If so, what conclusions did it reach?
 - c. Has the Commission done any planning for the possibility that a referendum might at some point in the future be called under the terms of the Northern Ireland Act 1998 section 1?
3. Question testing for a referendum on Northern Ireland's constitutional future
 - a. Would the Commission envisage taking the same approach to question testing for a referendum on Northern Ireland's constitutional future as it has in previous referendums, in terms of both methodology and assessment criteria?
 - b. Has the Commission previously conducted question testing in Northern Ireland? If so, have any particular circumstances been encountered there that might affect the process?
 - c. A referendum in Northern Ireland could happen simultaneously with a referendum on a closely related question in the Republic of Ireland. Referendum questions in the Republic of Ireland take the form, 'Do you approve of the proposal...'. Previous Commission recommendations suggest that there could be concerns about using such a question in the UK. Yet having different questions either side of the border – particularly, questions with different response categories – could cause confusion for voters and difficulties for campaigners. Does the Commission have views on how such tensions could be resolved?
4. Campaign donations and spending in a referendum on Northern Ireland's constitutional future
 - a. Could the Commission clarify who, under current legislation, would be permitted to register as a permitted participant and who would be a permissible donor in relation to a referendum in Northern Ireland? In particular, would the provisions contained in section 12 of the Northern Ireland (Miscellaneous Provisions) Act 2006 apply, such that any Irish citizen would be a permissible donor. If so, would we be correct to understand that the rules are more inclusive in respect of Irish than of UK citizens (as the latter must appear on an electoral register)?
 - b. It has been suggested to us by some that, for the purposes of a referendum on Northern Ireland's constitutional future, permitted participants and permissible donors should be limited to those resident in or on an electoral register in Northern Ireland or the Republic of Ireland. Would the Commission envisage any practical difficulties or other implications arising from such a move?
 - c. What approach would the Commission expect to take to making recommendations regarding the appropriate limits for spending by the various categories of permitted participant in a Northern Ireland referendum?
 - d. What approach would the Commission expect to take to deciding the appropriate level of grants for any designated lead campaigners in a Northern Ireland referendum?
5. Enforcement of campaign rules
 - a. A referendum on this topic is likely to attract considerable interest across the UK, the island of Ireland, and beyond. In the event of simultaneous referendums north and south, cross-border campaigning is likely. Would the Commission envisage any

regulatory difficulties in this circumstance? If so, how would it recommend they be resolved?

b. In particular, would the Commission envisage a need for different donation or spending rules, different enforcement and sanctioning powers, or different levels of resourcing for enforcement work?

6. Public information in a referendum on Northern Ireland's constitutional future

a. Some have suggested to us that, were referendums conducted both north and south of the border on the question of Irish unification, public information campaigns akin to those conducted by Ireland's Referendum Commissions would be needed on both sides of the border. Does the Commission have views on whether this would be desirable in the UK and on how it might be done?

b. The Commission has some experience of providing such information from the 2011 referendum, when descriptions of the two voting systems were provided in the leaflet to households. Are there any relevant lessons that the Commission would draw from this experience? Would the Commission itself be content to have a role in such information provision?

c. Some have suggested to us that the Electoral Commission (or another body in the UK) could act jointly with an Irish Referendum Commission in the development of information materials. What view would the Commission take of such a proposal?

We fully appreciate that it may not be possible or appropriate for you to answer all of these questions. But we would be grateful for any information or reflections that you could provide. In addition, if there were other relevant matters that you thought you should bring to our attention, we would be grateful for that.

Yours sincerely

A handwritten signature in black ink that reads "Alan Renwick". The signature is written in a cursive, slightly slanted style.

Alan Renwick

Deputy Director of the Constitution Unit and Chair of the Working Group