



A response from the British Academy to Scotland's Constitutional Future: A consultation on facilitating a legal, fair and decisive referendum on whether Scotland should leave the United Kingdom.

The British Academy, established by Royal Charter in 1902, champions and supports the humanities and social sciences across the UK and internationally. It aims to inspire, recognise and support excellence and high achievement. As a Fellowship of over 900 UK scholars and social scientists, elected for their distinction in research, the Academy is an independent and self-governing organisation, in receipt of public funding.

The British Academy welcomes the opportunity to respond to this consultation on facilitating a legal, fair and decisive referendum on whether Scotland should leave the United Kingdom.

General comments

1. The Academy is concerned with the practical aspects of the referendum process and ensuring that it is legal and fair. We have not responded to the questions that relate to the timing of a referendum or on the specifics of the question or questions to be asked in a referendum.

A legal referendum

2. The Academy believes that the UK Government should, with the agreement of the Scottish Parliament, make a Section 30 Order under the Scotland Act 1998 to allow the Scottish Parliament to legislate for a legal referendum in an Act of the Scottish Parliament. We do not think that the UK Parliament should legislate directly to deliver a referendum on independence; and, given the late stage of the Scotland Bill, it does not seem feasible to use this draft legislation to give the Scottish Parliament the power to legislate for a referendum.
3. As a further alternative to a Section 30 Order, the Scottish Government maintains that it is competent to hold its own advisory referendum. However, the legal grounds for this are at best inconclusive, as would be the constitutional consequences of any such advisory referendum. Only a Section 30 Order offers a failsafe legal basis and the prospect of a clear constitutional roadmap.

A fair referendum

4. The British Academy agrees that the referendum should be held under the Political Parties, Elections and Referendums Act 2000 (PPERA).

5. The referendum should be supervised by the Electoral Commission and the Commission should have the right to determine the wording of the question, to nominate any lead campaigning groups, and should be absolutely preserved from any possibility of political interference. It is also important that the Electoral Commission is adequately resourced for this purpose and is able to conduct any research which it considers to be appropriate.
6. We believe that a pre-existing franchise should be used for a referendum on independence rather than creating a new franchise. The franchise that elected the Scottish Parliament and that was used in 1997 for the referendum that established the Scottish Parliament seems to be the most appropriate.

A decisive referendum

7. As indicated above, the Academy has no views on the timing of a referendum.
8. We agree that any question to be asked in a referendum must avoid all sorts of bias, including the “affirmative response bias” that might affect the validity of answers to the question currently proposed by the Scottish Government - “Do you agree that Scotland should be an independent country?”
9. As outlined above, we believe that the Electoral Commission should have the right to determine the wording and appropriateness of the referendum question.
10. There are valid arguments both for restricting the referendum to a single question, and for allowing a three-option referendum, and there are no decisive reasons drawn from academic evidence supporting one view or the other. Therefore we express no view on that component of the consultation (question 8).

The draft section 30 Order

11. We approve the wording of the draft Section 30 Order, except that we express no opinion on paragraph 3(4).

In preparing its response to this consultation the Academy has drawn on the expertise of a number of its Fellows who are eminent scholars in this area, in particular, Professor Iain McLean FBA FRSE, Official Fellow in Politics, Nuffield College and Professor of Politics, University of Oxford. Professor McLean is an expert in Scottish devolution and constitutional reform. The Academy has also had sight of and commends the Royal Society of Edinburgh’s response to the UK and Scottish Governments’ consultation papers. The two academies have recently worked together to bring academic expertise and analysis to bear on the current debates on Scotland’s relationship with the rest of the United Kingdom. Last month, the two academies held a conference in London examining the different options that may emerge from the proposed referendum and exploring the implications of each for the relationship between Scotland, the

United Kingdom, and the European Union. The second stage of the conference will be in Edinburgh, on 27 April 2012.¹

The British Academy has considerable expertise on political and constitutional reform within its Fellowship and would welcome the opportunity to work with government and others in the future to strengthen our understanding of these very important issues.

A response from:

The British Academy
10-11 Carlton House Terrace
London
SW1Y 5AH

For further information contact:

Helen Haggart
Senior Policy Adviser
h.haggart@britac.ac.uk
020 7969 5233

¹ Further details of the London conference can be found at https://www.britac.ac.uk/events/2012/Scotland_and_the_United_Kingdom.cfm. For more information on the Edinburgh conference go to <http://www.royalsoced.org.uk/events/event.php?id=272>