

Draft Independence Referendum Bill

March 2021

Ministerial Foreword

The Scottish Government has been laser-focused over the past year on tackling the pandemic. That will remain the case as we work to keep Scotland safe.

We know, however, that because of the incredible efforts of the people of Scotland and the vaccination programme, better times lie ahead.

The question we face as we come out of the health crisis is this: who has the right to decide the kind of country Scotland should be after the pandemic?

Should it be the people who live here – or Westminster governments?

The Scottish Government believes that the people of Scotland have the right to decide how Scotland recovers from the pandemic and what sort of country they wish to build after the crisis. To ensure the people of Scotland have that right, the Scottish Government believes there should be an independence referendum within the next term of the Scottish Parliament once the public health crisis is over.

The evidence of recent years tells us what will happen if Westminster maintains, and tightens, its control.

The jobs recovery we all want to see will be held back by the permanent hit of a hard Brexit which is already hitting our economy.

There will be no legal guarantee that our NHS will be safe from post-Brexit trade deals.

The steady and systematic undermining of devolution and the Scottish Parliament since the Brexit vote is likely to continue.

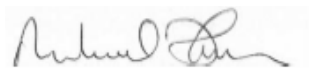
In an independent Scotland we will always get the governments we vote for. As we recover from the pandemic those governments will put Scotland's economy – not Brexit – first.

Protection of our NHS and control of Scotland's abundant resources as well as spending and taxation decisions will be in Scotland's hands.

If there is a majority in the Scottish Parliament after the forthcoming election for this bill there can be no democratic justification whatsoever for any Westminster government to seek to block a post-pandemic referendum.

The timing of that referendum should be a matter for the next Scottish Parliament to decide, taking account of the state of the pandemic. The Scottish Government believes that it should be within the first half of the next parliamentary term, when it is safe to do so.

Scotland's recovery should be made in Scotland by the people who live here and who care most about Scotland. That is why Scotland's future should be Scotland's choice.

A handwritten signature in black ink, appearing to read "Michael Russell". The signature is fluid and cursive, with a prominent initial "M".

Michael Russell MSP

Cabinet Secretary for Constitution, Europe and External Affairs

Introduction

The Scottish Government's Programme for Government for 2021 included a commitment to publish a draft independence referendum bill within the term of this Parliament. This publication includes the draft Bill, and the background.

On the pages that follow is a draft Bill that sets out details of a referendum for independence for Scotland.

Background

Last year the Scottish Parliament passed the Referendums (Scotland) Act 2020. That Act set out detailed conduct and campaign rules that can be used for any referendum on a devolved subject-matter. The timing and the question posed at such a referendum would be set by a further Act of the Scottish Parliament.

Scottish Government Ministers have been clear that a referendum on Scottish independence should be held within the next term of the Parliament, taking into account the COVID-19 pandemic.

Draft Bill

The Bill covers the following matters.

Date of the referendum

The date of the referendum poll will be decided taking account of a range of factors, including the state of the pandemic, the requirements for a proper period of campaigning to allow the people of Scotland to make a fully informed choice and for the necessary administrative arrangements to be put in place once the Bill has been passed.

The final decision on a date for the referendum will be for the next Scottish Parliament to take.

Question and the form of the ballot paper

The Scottish Government proposes that the referendum question should be the same as that used at the 2014 referendum. The draft Bill therefore includes the question and the form of the ballot paper used in 2014. The question continues to be well understood by the Scottish public, giving a high degree of confidence that it remains the most appropriate question to use¹.

Except in certain circumstances, the question should be tested if it is to be used in the next term of the Parliament. The Referendums (Scotland) Act 2020 will require the Electoral Commission to consider the wording of the referendum question and publish a statement of any views of the Commission as to the intelligibility of the question as soon as reasonably practicable after a referendum Bill is introduced.

¹ See, for example, Survation poll from early October 2019.

In 2014, the referendum question was presented only in English. The Scottish Government is committed to supporting and promoting the use of Gaelic. The Scottish Government intends to translate the question into Gaelic, and ask the Electoral Commission to consider the translation as part of any question testing process as described above. The Scottish Government would also engage with electoral stakeholders, including the Electoral Management Board, on how best to make Gaelic-language ballot papers available to voters.

Franchise

The draft Bill includes provision to extend the franchise to include foreign nationals with leave to remain in Scotland (or who do not require such leave). This fulfils the commitment made during the passage of the Referendums (Scotland) Act 2020 to align the referendum franchise with the elections franchise after the passage of the Scottish Elections (Franchise and Representation) Act 2020. The Scottish Government is committed to ensuring those who live in Scotland, and have made their lives here, can influence decisions about the future of Scotland.

It may be necessary to make some additional technical adjustments, including to accommodate the expansion of the franchise. If required, these could be made by separate legislation, for example secondary legislation under section 37 of the Referendums (Scotland) Act 2020.

Scottish Independence Referendum Bill

[DRAFT FOR PUBLICATION]

An Act of the Scottish Parliament to make provision for the holding of a referendum in Scotland on a question about the independence of Scotland.

Referendum

1 Referendum on Scottish independence

- (1) A referendum is to be held in Scotland on a question about the independence of Scotland.
- (2) The question is—

“Should Scotland be an independent country?”.
- (3) The ballot paper to be used for the purpose of the referendum is to be printed—
 - (a) in the form set out in the schedule, and
 - (b) according to the directions set out in the schedule.
- (4) The date on which the poll at the referendum is to be held is [*date to be decided by the next Scottish Parliament*], unless before then regulations are made under subsection (6).
- (5) Subsection (6) applies if the Scottish Ministers consider—
 - (a) that it is impossible or impracticable for the poll at the referendum to be held on [*date to be decided by the next Scottish Parliament*], or
 - (b) that it cannot be conducted properly if held on that date.
- (6) The Scottish Ministers may by regulations appoint a later date as the date on which the poll at the referendum is to be held.
- (7) Regulations under subsection (6)—
 - (a) may include incidental, supplementary or consequential provision,
 - (b) may modify any enactment (including this Act), and
 - (c) are subject to the affirmative procedure.

Franchise

2 Entitlement to vote at the referendum: qualifying foreign nationals

- (1) The Referendums (Scotland) Act 2020 applies for the purposes of determining entitlement to vote at the referendum, subject to the following modifications.
- (2) Section 4(d) (those who are entitled to vote) has effect as if for “relevant citizen of the European Union” there were substituted “qualifying foreign national”.
- (3) Schedule 7 (interpretation) has effect as if—
 - (a) after the definition of “qualifying address” there were inserted—““qualifying foreign national” has the meaning given in section 202(1) of the 1983 Act,”,
 - (b) the definition of “relevant citizen of the European Union” were repealed.

Further provision about conduct of referendum etc.

3 Application of the Referendums (Scotland) Act 2020 to the referendum

- (1) The Referendums (Scotland) Act 2020 applies for the purposes of the referendum.
- (2) That is subject to [*exceptions and modifications*].

Final provisions

4 Interpretation

- (1) References in this Act to “the referendum” are to the referendum to be held under section 1.
- (2) Any other word or expression used in this Act which is also used in the Referendums (Scotland) Act 2020 has the same meaning as in that Act.
- (3) Subsection (2) does not apply where the context requires otherwise.

5 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary or consequential provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
 - (a) modify any enactment (including this Act),
 - (b) apply for the purposes of the referendum any provision of any enactment (either with or without modifications),
 - (c) include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (3) Regulations under subsection (1)—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but
 - (b) otherwise are subject to the negative procedure.

6 Commencement

This Act comes into force on the day after Royal Assent.

7 Short title

The short title of this Act is the Scottish Independence Referendum Act.

SCHEDULE
(introduced by section 1(3))

FORM OF BALLOT PAPER

Front of ballot paper

BALLOT PAPER	[Official mark]
VOTE (X) ONLY ONCE	
Should Scotland be an independent country?	
YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

Back of ballot paper

[Unique identifying number]

Area of [insert council name].

Referendum on [date].

Directions as to printing the ballot paper

- 1 Nothing is to be printed on the ballot paper except as set out in this schedule.
- 2 So far as practicable, the instructions specified in paragraphs 3 to 6 must be observed in printing the ballot paper.
- 3 Words printed on the ballot paper must be printed—
 - (a) in a sans serif font (for example, Arial), and
 - (b) in characters of at least 14 point size.
- 4 The direction to “**VOTE (X) ONLY ONCE**” and the “**YES**” and “**NO**” options must be printed in bold capital letters.
- 5 The ballot paper must be at least 180mm wide.
- 6 The voting boxes where the vote is to be marked must each be 21mm square.



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