



Law Society
of Scotland

Consultation Response

Scottish Independence Referendum Bill

January 2017



Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

This response has been prepared on behalf of the Society by members of our Constitutional Law Sub-Committee ('the Committee'). The Committee is comprised of senior and specialist lawyers (both in-house and private practice).

General Comments

The Committee notes that the Scottish Government has published the draft Scottish Independence Referendum Bill for consultation in order to be ready for introduction should the Scottish Government conclude that seeking the view of the Scottish people on independence the best or only way to protect Scotland's interests in the wake of the EU Referendum.

The Summary to the Consultation document states that "it would then be for the Scottish Parliament to consider the Bill and decide whether a referendum should be held." The Scottish Government acknowledges that if it decides to formally introduce the Bill to Parliament it would expect a Section 30 Order would be sought and agreed as in 2014. The agreement for a Section 30 Order is a matter of politics but the Section 30 Order is itself a legal issue.

In that context we believe that any Section 30 Order that might be agreed between the United Kingdom Government and the Scottish Government should be in similar terms to the agreement concluded in Edinburgh on the 15 October 2012. The conditions agreed in the Edinburgh Agreement were that the referendum should:-

1. Have a clear legal base.
2. Be legislated for by the Scottish Parliament.
3. Be conducted so as to command the confidence of parliaments, governments and people.
4. Deliver a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect.

The Society believes that these conditions should be reiterated in any future agreement between the United Kingdom and Scottish Governments. An Order in Council under Section 30 of the Scotland Act 1998 will be an essential prerequisite for a lawful referendum to be held.

The current draft bill

The changes to the draft Independence Referendum Bill which make it different from the 2013 Act include changes to the law on elections, particularly the individual electoral registration and Scottish legislation for lowering the voting age to include persons aged 16 and 17 years old for local and Scottish Parliament elections. We note that other updates are permissible participants and changes to reflect the Electoral Commission's Report on the 2014 Referendum.

Provided the Section 30 Order is passed by both Parliaments there would be no doubt it would be competent to introduce such a Bill into the Scottish Parliament.

The need for proper preparation

One issue which has been thrown into sharp relief since the EU Referendum is the preparedness of the parties for the outcome in the event of a vote for independence.

In 2014 the deadline for completion of Scottish Independence from the UK in the event of a yes vote was 18 months from the date of the referendum. At the time many cast doubt on the practicability of such a deadline.

We recommend that before introduction of the Bill the Scottish Government publish a White Paper detailing the key milestones and general approach upon which it will proceed from the result of any referendum in the event of a yes vote to completion of independence. It would be important for the process to be set out providing a reasonable period for meeting all objectives and including details of the mechanics for achieving independence and also any transitional arrangements which may be required. This information should be made known in advance of the vote.

It will also be necessary for the United Kingdom Government to also detail how it would intend to facilitate the achievement of Scottish Independence in the event of a yes vote.



For further information, please contact:

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