

Referendum: Recent Proposals

Research Paper 97/10

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This Paper briefly examines some recent proposals for the use of referendums in the UK. It considers the recent, detailed report by the Constitution Unit, and the Electoral Reform Society, and also lists the various pledges and proposals made by the political parties for referendums on a number of issues such as Europe, devolution, Northern Ireland and the voting system. A general briefing on the theory and practice of referendums is provided by Research Paper 95/23, 21.2.95, *Referendum*, and these issues are *not* considered here, except where they have arisen in the reports/statements cited.

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Summary

The referendum has re-emerged in recent years as a device in the British political process, especially in relation to 'constitutional' issues. This Paper seeks to complement the general briefing of Research Paper 95/23, 21.2.95, *Referendum*, in two respects.

The recently published Report of the Commission on the conduct of referendums deals, in great detail, with many of the political and practical issues of the referendum debate, and its analysis and recommendations are examined.

The second section of this Paper sets out the pledges and proposals of the political parties to hold referendums on a number of issues. Inevitably such policies are constantly being refined in line with developments in the substantive issues themselves. As such, this description should be seen as no more than a 'snapshot' of the current position.

This Paper does not consider the theory and practice of more novel developments in 'direct democracy' such as citizens juries.¹ Nor does it repeat or analyse the general arguments about referendums, such as their 'constitutionality', their political and administrative practicality and so on. These are addressed in Research Paper 95/23, and in the references cited therein.²

¹ on which see, eg, D. McNulty, *Referendums and citizens' ballots*, Commission for Local Democracy; J. Stewart *et al*, *Citizens juries*, IPPR, 1994; *Lean democracy*, Demos Quarterly issue 3, 1994; "Survey of democracy", *Economist*, 21.12.96

² See also, for example, V Bogdanor, *Power and the people: a guide to constitutional reform*, 1997, forthcoming

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A. Report of the Commission of the Conduct of Referendums

1. Background

The Commission was established in April 1996, by the *Electoral Reform Society* and the *Constitution Unit* "to prepare for the possibility that referendums may, in the future, be invoked as an instrument of decision making in the United Kingdom, by examining the problems involved in the conduct of referendums, and setting out organisational and administrative guidelines for the conduct of referendums." It was chaired by the former senior civil servant, Sir Patrick Nairne and its membership included academics, Parliamentarians from the main parties, and representatives of the media. The Commission stressed that it remained "strictly neutral on whether referendums should be held on any specific question as well as on the desirable outcome of any given referendum".

Its report was published in November 1996, as was a detailed summary of its findings in the form of a briefing note. This section of this Research Paper briefly summarises the Report's findings and recommendations, as it covers most, if not all, the major issues which are likely to be discussed inside and outwith Parliament in the context of proposed referendums for constitutional and other questions.

The Report began by noting the "striking transformation" in the British attitude to referendums in the last 25 years, from generally regarding them as 'unconstitutional' to the present position where the main political parties propose referendums on various important policy areas. "The argument that they have no place in our constitutional tradition is hard to sustain. Yet their use remains controversial. The UK constitution is 'unwritten', with the doctrine of Parliamentary sovereignty at its heart. Referendums will therefore continue to have an uncertain place within our system of government".³ Of relevance to the work of the Commission was the fact that "there are no established rules, accepted by the main political parties, for the efficient and fair conduct of referendums. If referendums are to be held in the future and their results accepted, they should be conducted efficiently and ensure the fair presentation of competing views" (para 10).

There were two categories of issue: "Organisational, administrative and procedural matters might be settled by a code or statute for use with every referendum. Questions of a more political character will be decided by the Government and Parliament in the circumstances of each referendum". There might be a generic *Referendum Act*, at some future date. "In all referendums, however, there will be some common elements and it would clear the ground

³ para. 1. The Report did not deal with local referendums or the "citizens' initiative" form of referendums. The main previous examination of practical referendum issues was the Hansard Society's 1981 publication *Referendums: guidelines for the future*. On the constitutional system generally, see Research Paper 96/82, *The constitution: principles and development*, July 1996

for the discussion of the central political issues in any future referendum if the organisational and administrative framework was agreed in advance" (para. 12).

2. Use of referendums

The report examined the **UK and international precedents**, noting that referendums have been used in almost every major democratic country.⁴ Some countries employ the technique frequently; Switzerland alone accounting for half of all nationwide referendums:

18 In general, referendums have been used to solve a particular crisis or to endorse a new constitution (see Table B, Appendix B). A history of nationwide referendums provided in Butler and Ranney's *Referendums around the World* shows these key facts: how infrequent they have been, how constitutional and moral questions have predominated, and how seldom they have had close results." Some polities have enabling legislation setting out the conditions for calling and conducting a referendum (Quebec 1980, Australia 1984). Others have provisions in their constitutions requiring a referendum to validate any constitutional change (Australia, Ireland and all U.S. states other than Delaware). Most democracies have used referendums on an ad hoc basis, holding them when a particular crisis called for a popular verdict (Canada 1992, to approve constitutional accord; Belgium 1950, on the return of Leopold III) or when internal party divisions required the public endorsement of Government policy (UK 1975). Referendums have a particular appeal when devolution of powers or territorial separation or fusion is involved (Australia 1890s, League of Nations 1919-21, Scotland and Wales 1979). Most referendums are initiated:

- a. when a Government deems it expedient. This is usually because (i) the Government wants to consult the electorate or, by securing its endorsement, to legitimise or entrench a particular policy (France 1992, Maastricht Treaty) or (ii) when the governing party or parties are split and wish to settle an important issue of policy, and also resolve their divisions, by referring the issue to the electorate (UK 1975, continued membership of the EC; Sweden 1955, driving on the right).
- b. when a Government has committed itself to a referendum in a general election manifesto (New Zealand 1992, electoral reform).
- c. when they are mandated by law as the only means of constitutional change (Australia, Ireland).
- d. when there is a legislative or constitutional provision empowering citizens to demand a referendum either to promote new legislation or to pass judgement on a specific act (Switzerland, Italy).
- e. as a result of pressure from the legislature. (A backbench amendment to the Scotland and Wales Bill 1976-77 providing for referendums in Scotland and Wales was conceded by the Government to overcome opposition to the Bill).

The UK precedents were examined, namely the 1973 Northern Ireland border poll; the 1975 EC referendum (the only nationwide referendum in the UK), and the 1979 devolution referendums in Scotland and Wales.⁵ It concluded (para. 27):

Thus Governments have held referendums for political purposes on an ad hoc basis with no agreed criteria as to when to hold them. The Northern Ireland Border Poll was regarded as

⁴ although six countries including the USA, Germany, India and Japan have never had a nationwide referendum

⁵ see generally Research Paper 95/23

an extraordinary event necessitated by the exceptional circumstances of that province. The referendum of 1975 on the European Community was regarded as a unique issue necessitating a one off departure from constitutional practice. When, four days after that vote, Sir John Eden, a Conservative backbencher, asked the Labour Prime Minister, Harold Wilson, "Will he keep to his determination not to repeat the constitutional experiment of the Referendum?" Wilson replied, "I certainly give the Right Honourable Member ... the assurance he seeks". The 1979 referendums were forced on the Government by backbenchers during the Parliamentary debates on the Scotland and Wales Bill 1976-77.

The report analysed the **constitutional nature** of referendums, with the difficulties the UK's 'unwritten/uncodified' constitution creates for the identification, for example, of 'constitutional issues': "In the UK there is no statutory authority by which to decide what should be referred to the electorate, and no accepted way of defining a 'constitutional issue'" (para. 29). While the subject matter of the four 1970s referendums could be seen as 'constitutional issues', many other 'constitutional' matters (eg *Parliament Acts*) in modern times have been legislated or decided upon without a referendum. The report concluded that "given the UK's uncodified constitution, the question of whether a referendum should be held, and its timing, are likely to continue to be determined by the Government and Parliament in the light of the policy factors or political expediency" (para. 31).

The doctrine of **Parliamentary sovereignty** was relevant. Before 1975 it was generally believed that referendums were inconsistent with the doctrine "since Parliament could not delegate its decisions to another body". It considered the development of this new thinking (para. 32):

That view appears to have lost its validity. If Parliament has sovereign power, it must have the power to call a referendum. The referendums so far held in the UK have been advisory, with Parliament formally retaining its right to reject the verdict. In practice, however, it has been accepted that Parliament could not ignore a decisive expression of popular opinion. Perhaps the best formulation of the constitutional position was made by Edward Short, as Lord President of the Council and Leader of the House, before the 1975 referendum. He declared that "The Government will be bound by its result, but Parliament cannot be bound".

And:

33 The use of referendums is likely to remain controversial. It has been argued that referendums divide parties and produce inconsistent government, and are likely to be invoked as a weapon against progressive legislation. A further argument made against referendums is that, by giving decision making to the electorate, they detract from MPs' representative role. It can be claimed that this not only undermines Parliamentary sovereignty, but removes the responsibility of the executive for policy and thus destroys the ability of the electorate to hold the Government to account.

34 On the other hand, a referendum can, theoretically, provide a limited means of entrenchment not otherwise provided for in our constitutional arrangements. Precedent or convention may make it difficult for a Government to reverse a measure, or to implement a future measure without holding a referendum, or a measure can be entrenched by a statutory requirement that a referendum be held before a change may be made.

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35 Any such entrenchment provided through a referendum is a political, rather than a legal, safeguard. In theory Parliament could ignore precedent or pass legislation reversing any formal requirement to hold a referendum. The political difficulties of doing so may mean that the referendum can help guard against hasty or unwanted change. A referendum cannot, however, settle issues once and for all. At best it can provide a considered measure of the electorate's views at the time it is held. It can give a decision an immediate legitimacy, but it cannot settle any matter permanently as the 1975 referendum on Europe and the 1979 devolution referendums have shown.

The Commission noted that "concern about referendums has perhaps been more extreme in the UK than in any other democracy. Yet even the most institutionally conservative politicians look favourably on the device when they calculate that it may further their policies" (para. 36). There was no "single 'right' way to initiate and conduct a referendum" (para. 37). It warned that:

38 Referendums are not a political panacea. Some powerful arguments can be deployed against them. For example, political expediency rather than democratic principle has been the dominant factor in past UK referendums. Unless rules or conventions for the use of referendums are developed, it is likely to remain so. There are also no guarantees that a Government will get the referendum result it wants, or that Parliament will accept legislation that gives effect to the outcomes of referendums. Results may, in part, reflect the current popular standing of the Government, not the considered view of the voters on the referendum issues. Referendums may also over-simplify issues. They require a 'Yes' or 'No' answer and thus cannot reflect shades of opinion. The choice and precise wording of the question are crucial and their outcome may be affected by an unequal provision of information and resources. Referendums have also in the past been criticised because of their use by some authoritarian regimes to confer legitimacy on their policies.

39 Some of these difficulties can be minimised by the way in which questions are formulated, by adequate provision for the dissemination of information, and by the application of effective guidelines for their efficient and fair conduct. Referendums should, nevertheless, be recognised as blunt, but often effective, instruments with which to seek a resolution to complex political issues.

3. Guidelines

The rest of the substantial report considers a number of political, practical and administrative issues, which can be summarised in the twenty guidelines it produced. For relative brevity, the following is taken from the summary briefing note:

The Guidelines

The need for rules or guidance for the conduct of referendums is implicit in the Commission's task and explicit in its terms of reference. There are no agreed rules relating to either the circumstances under which referendums are to be held or to their organisation and conduct when they are initiated. In previous referendums rules of conduct have been prepared in an ad hoc manner, although guided in part by UK

and international precedents. It is, however, essential that future referendums should be conducted in a manner that is regarded by all sides as efficient and fair. Administrative and organisational guidelines - acceptable to all political parties, and adopted in an appropriate form by the Government of the day - can effectively fulfil this need. To that end, in the light of a wide survey of referendum experience, we commend the twenty guidelines set out below.

1 Need for Rules or Guidance

Guidance should be drawn up dealing with organisational, administrative and procedural matters associated with holding a referendum. Established guidelines should include fixed rules for some matters (for example, the organisation of the poll, the election machinery and the count). For other matters, on which it is impossible to determine rules in advance (for example, wording the question), the guidance should state how a decision should be reached.

2 An Independent Statutory Commission

The decision to initiate a referendum would normally be taken by the Government. But the conduct of referendums, i.e. their organisation and administration, should in future be independent of Government and party political interests in order to ensure maximum confidence in the legitimacy of their results. An independent statutory Commission should be established. Its members would serve for a period of years, but it would be activated ad hoc for each referendum. The Chairman should be personally accountable to Parliament for the efficiency and consistency with which referendums are conducted.

If an Electoral Commission were established, the functions of such a 'Referendum Commission' should be brought within its remit.

3 Legislation

If a Government is planning a series of referendums, it has the option of establishing a statutory framework for the conduct of referendums through the enactment of a generic Referendum Act. Such an Act would demonstrate the Government's commitment to the efficient, fair and consistent conduct of referendums. It would provide for the establishment of an independent 'Referendum Commission' and include fixed rules for some matters (for example the organisation of the poll and the count). For other matters, on which it is impossible to determine rules in advance (for example, the wording of the question), the Act should set out how a decision should be reached. Those matters which will be different in each referendum and are likely to be of Parliamentary concern could be dealt with through primary legislation on each occasion.

4 Advisory or Mandatory

Whether a referendum is regarded as advisory or mandatory is a political issue. A referendum can be mandatory only to the extent that a Government binds itself to accept the result. That would depend on the

referendum issue, and possibly on factors such as the turnout or the size of the majority vote. Although a Government could commit itself, Parliament could not be bound by the result.

5 Pre- or Post-Legislative

Whether referendums are to be held before or after legislation will be decided in the light of political factors. It will be important to give voters adequate information and sufficient time for public discussion. For a pre-legislative referendum a White Paper should set out in detail the Government's proposals and their implications.

6 The Electorate

Those entitled to vote should be the same as in general elections, with the addition of members of the House of Lords. Postal and proxy voting should be provided for as at general elections.

7 Nationwide or Regional

The electorate for a referendum may be UK wide or confined to a region, as precedents in the UK and internationally show. This would be a decision for Government and Parliament dependent on the character of the issue.

8 Thresholds

The use of thresholds is a political decision. If a threshold is used, it should be a set percentage of the votes cast and not a percentage of the eligible electorate. If thresholds are set, a clear explanation of the meaning of the threshold for the electorate should be included in the public information provided.

9 Wording of the Question

The wording of the question should be short and simple and should not be open to either legal or political challenge after the result is known. Its significance should be fully understood and it should therefore emerge from a thorough process of Parliamentary and public consultation and media discussion. The exact character of the consultation will depend on the substance of the issue; but the final decision on the wording can best emerge in the context of Parliamentary debate on the legislation which includes the text of the ballot paper.

10 Multi-Option Referendums

The choice of a multi-option referendum or a 'Yes' and 'No' referendum will depend on the nature of the issue (or issues) to be put to the electorate; it will be considered by the Government and by Parliament as

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part of their consideration of the wording of the question. If the electorate is being asked to endorse legislation approved by Parliament, a 'Yes' and 'No' referendum is appropriate. If a multi option referendum is used, it is important that a clear outcome is achieved. Voters could be given the opportunity to record votes in favour of their second or third choice; furthermore, or alternatively, a second confirmatory ballot could be used. Multi-option referendums can be confusing for voters., clear instruction on the ballot paper will be essential.

11 Campaign Duration

Notice of a referendum should allow sufficient time for an effective information campaign, for adequate public debate, and for practical arrangements to be made. It will be necessary to define a formal start to the campaign period (for example, for accounts of expenditure, allocation of campaign broadcasts). The campaign period should be a minimum of three weeks (following general election practice), but should be no longer than six weeks.

12 Public Information

Every household should receive a publicly funded leaflet giving general information on the holding of the referendum and statements of the 'Yes' and 'No' cases relating to the referendum question. The Independent Commission should facilitate, on an equitable basis, preparation, production and distribution of campaign material provided by umbrella campaigning organisations. If no umbrella organisations exist, the Independent Commission should produce the leaflets after appropriate consultation.

Poll cards giving electors notice of the referendum and information regarding the location of their polling station should be issued as with Parliamentary elections.

13 Campaigning Organisations

The Government should formally recognise umbrella campaigning organisations if they emerge and should consider providing them with limited financial assistance. The Independent Commission would be an appropriate body to handle the process of consulting campaign groups, advising the Government on the establishment of umbrella organisations, and administering any financial assistance. Those who do not want to be associated with any of the recognised campaigning organisations, or compose a group which has not been formally recognised, would be free to participate in the campaign, but would not be eligible for any publicly funded assistance.

14 Campaign Expenditure

On balance, it is not considered practical to exercise Government control over the total expenditure by those campaigning on either side in a referendum. Umbrella campaigning organisations should be required to undertake to provide accounts of monies received or spent on the campaign if they are to qualify for public money or services in kind.

15 Scope Of Government Activity

Responsibility for the publication and management of information relevant to a referendum should be exercised outside of Government - by the Independent Commission. The conventions which require the Civil Service to avoid engaging in political or public debate, and which limit its actions to the provision of factual information, should be maintained.

16 Scope Of Party Political Activity

So long as there are no national controls on political parties' spending in general elections, no legal restraint should be placed on political parties' expenditure or activity in referendum campaigns, although they may choose to stand aside.

17 Access To Broadcast Media

A balance should be maintained between the 'Yes' and 'No' viewpoints rather than between the different political parties. Broadcasters should be encouraged to provide a limited amount of airtime for setting out the arguments for each option in the referendum. The content of such broadcasts would be the responsibility of any formally recognised campaign organisations. In the absence of such organisations the Independent Commission should appoint production companies to produce such broadcasts. Party political broadcasts should not normally be transmitted during the referendum campaign.

18 Date and Hours

The date chosen for referendums will turn on political factors. It should allow for full public debate of the issues raised. Referendums should be normally held separately from general elections, European Parliament elections or local government elections. Arrangements for voting hours should follow general election practice subject to any changes made in the future.

19 Organisation Of The Poll

The responsibility for poll organisation at each polling station could be undertaken by the Independent Commission. If that were not established, it would need to fall to a Chief Counting Officer. Independent returning officers should be appointed at the appropriate level. Officially recognised campaign organisations should be entitled to appoint polling and counting agents. In the

absence of officially recognised campaign organisations, political parties should be entitled to appoint polling and counting agents. The total number of polling and counting agents should be at the discretion of the Returning Officer.

20 Vote-Counting and Declaration of the Results

In both nationwide and regional referendums, the votes should be counted and declared at ward level or at Parliamentary constituency level. Exceptions to this practice could be made if the identification of votes with a particular area could undermine the acceptance of the referendum result.

Any formally recognised umbrella campaigning organisations should appoint the equivalent to election agents able to request a recount and to pursue challenges in the same way as at general elections. The Independent Commission should also be able to request a recount.

B. Proposed Referendums

1. Introduction

This section deals with the provisions for referendums in the future, and on various promises by the main political parties and others for referendums on particular issues. These pledges are taken from statements from relevant party leaders and policy documents, and vary in their degree of detail and explanation. Such pledges, linked as they are to various 'constitutional' issues which themselves are often in a continuous process of development, cannot be taken necessarily as complete and final statements of party policy, and this section should therefore be regarded as a snapshot of the current situation.

The *Labour Party's* overall policy on referendums was summarised as follows:⁶

2. Responsive government

We know that people want more of a direct say in the issues facing the country. That is why we will make use of referenda to seek the public's explicit approval for major constitutional changes.

- For Scotland and Wales, pre-legislative referendums will be held to endorse our plans

for a Scottish Parliament and a Welsh Assembly.

- In England, elected regional assemblies will require endorsement by regional referenda.
- A single European currency will only be introduced by a Labour government if there is clear public approval expressed through a referendum or general election.

⁶ *New politics new Britain*, Sept 1996. Press reports have suggested that the party, or some of its leaders, might be considering a general *Referendum Act*, but this is not party policy at this time

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- A referendum on voting systems will be held so that, at long last, the people can have their say on whether they want the existing first-past-the-post system or a change to a system of proportional representation.

The *Liberal Democrats* have stated that they would "seek popular support for any fundamental constitutional changes, including for example, any changes resulting from the 1996 European Inter Governmental Conference".⁷

2. Northern Ireland⁸

In his Commons statement on 28 February 1996, following his talks with the Taoiseach, the Prime Minister said:⁹

There is one other aspect of the communiqué that I should bring to the attention of the House - the suggestion that there could be referendums in Northern Ireland and in the Irish Republic. These could be held on the same day as the proposed election in Northern Ireland. The aim would be to give the people of Northern Ireland the opportunity to speak clearly about their own commitment to peaceful democratic methods and rejection of violence.

The Government will consider further with the parties whether such a referendum would be valuable or not. There is clearly room for debate about what the question or questions should be in such a referendum, but we will listen to the views of the parties, and make our own views clear at the end of the consultation period.

and, following Tony Blair's response, (c.905):

Let me reiterate what the right Hon. Gentleman said about the status of Northern Ireland. I remind the House of the triple lock to which I have referred in the past, one part of which is that, at the conclusion of the all-party negotiations— on the presumption that there is an agreement at the end of those negotiations— that agreement, emerging from the all-party negotiations with the constitutional parties, would be put to a referendum of the people of Northern Ireland. Only thereafter would it be brought to the House.

Ireland, which is widely accepted by almost every party and is self-evidently the will of the House, can be sure to have been met to the satisfaction of the people of Northern Ireland.

The triple lock exists in the agreement among the parties to the negotiations— constitutional parties above all— in the agreement of the people of Northern Ireland in a referendum, and, on the back of those two agreements, in legislation brought before Parliament for its agreement. That is what we have referred to as the triple lock. It is to guarantee that the consent principle for Northern

⁷ *Policy briefings 1996-7*, Oct. 1996, no. 6, "The heart of our democracy". They also proposed 'citizens' initiatives' when called for by 1.5% of the relevant (ie. local, regional and national) electorate, or 650,000 if UK-wide

⁸ see generally Research Paper 95/23, section VII

⁹ HC Deb vol 272 c.901

The Ulster Unionist leader, David Trimble, said that "we have grave reservations about the use of referendums, particularly any referendum that might give the false impression that the relevant political unit is the island of Ireland" (c.906). The former Northern Ireland Secretary, Kevin McNamara, said (cc.910-1):

What consideration has the Prime Minister given to the idea of a referendum? A referendum throughout the whole of Ireland would be of the utmost importance, because it would knock away the spurious theology of Sinn Fein that it owes its spurious legitimacy to the fact that it claims descent from the last time that there were democratic elections throughout the whole of Ireland. If the people of Ireland as a whole speak in a referendum, that would remove the last vestiges of strange legitimacy that Sinn Fein can claim.

The Prime Minister responded (c.911):

I must tell the House that I can only be concerned with a referendum held in Northern Ireland. The Irish Government may decide to hold a parallel referendum in the south, but my responsibility would be for a referendum in the north. We are looking at whether that would be appropriate, and, if so, what the question might be. It clearly has to be a relevant question and one where there would be some net advantage in placing it before the people, most obviously on the date of the elections themselves.

I can think of a number of examples of what the question might be, and other hon. Members will have their own views. We will discuss it with the political parties. I am not yet convinced that that is the route down which we will go, but I am prepared to go down that route if there seems to be a will for it, and some advantage to be gained from it.

Section 4 of the *Northern Ireland (Entry into Negotiations etc) Act 1996* is as follows:

Referendums 4.-(1) The Secretary of State may from time to time by order direct the holding of a referendum for the purpose of obtaining the views of the people of Northern Ireland on any matter relating to Northern Ireland.

(2) An order under subsection (1) shall be made by statutory instrument; but no order shall be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.

the (3) An order under subsection (1) may include such provision relating to conduct of the referendum as appears to the Secretary of State expedient, including provision -

- (a) setting out the wording of the question to be put;
- (b) as to the persons entitled to vote;
- (c) applying, with or without modifications, any enactment (and in particular any enactment relating to elections) or any provision made under an enactment.

1973 c.36 (4) Nothing in this section shall be construed as authorising the Secretary of State to direct the holding of a poll otherwise than in accordance with Schedule 1 to the Northern Ireland Constitution Act 1973 in relation to the matters dealt with in section 1 of that Act (status of Northern Ireland as part of United Kingdom).

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This provision ceases to have effect "at the end of May 1999" (s7(5)). The April 1996 *Notes on clauses* to the Bill, produced by the NIO, stated:

Clause 4 provides for the holding, with parliamentary authority, of referendums in Northern Ireland. By clause 7, this power expires at the end of May 1999. This power reflects paragraph 11 of the paper published on 21 March:

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11. The Bill will also provide a power, by subordinate instrument subject to affirmative resolution in Parliament, to hold a referendum in Northern Ireland on a question or questions connected with the negotiations. This will enable the Government to meet its undertaking that any outcome from the negotiations agreed by the parties would be put to the people of Northern Ireland in a referendum before being submitted to Parliament.

That paper also recorded that a strong case had also been made for holding a referendum in Northern Ireland in advance of the negotiations and with a parallel referendum held by the Irish Government in its own jurisdiction on the same day: the purpose of such a referendum would be to mandate support for a process to create lasting stability, based on the repudiation of violence for any political purpose. The Government has concluded, on careful consideration, that it would not be right to hold such a referendum at present.

See also Sir Patrick Mayhew's second reading speech:¹⁰

Clause 4 provides for referendums. Its provisions are broadly cast, sufficiently to permit consultation on any arrangements emerging from the negotiations. Any such proposals for a referendum would need to be approved by Parliament, and there is no encroachment on the provisions for a poll in section 1 of the Northern Ireland Constitution Act 1973.

After careful consideration, we have concluded that the case has not been made for a referendum to be held at the same time as elections.

The purpose of the proposed referendum was explored by both Houses. The junior Northern Ireland Minister, Michael Ancram, emphasised that, as stated in what is now s4(4) - then clause 4(6) -. "in relation to the constitutional guarantee that nothing in the clause will alter the effect of schedule 1 to the *Northern Ireland Constitution Act 1973* ... Let me repeat that the constitutional guarantee is protected under subsection (6). That is why it is there".¹¹

The provision refers to the 'views' of the people of Northern Ireland. There was some debate on how this differed, if at all, from the 'consent' of the people as used, for example, in the *1973 Act*. Mr Ancram explained" (c.141):

The word "views" is used in clause 4 (1) because, while a referendum under the clause might be held to assess agreement or consent, and that would be set out in the question, a referendum might be held on a matter that was not suitable for such a response. The hon. Member for Foyle (Mr. Hume) suggested a question that might be part of a referendum to be held simultaneously with the election. In declaratory questions, consent would

not be an issue, whereas the views of the people of Northern Ireland would. Where agreement or consent is required, that has to be made clear in the question, and the form of the question would ensure that consent was a factor.

I listened to my hon. Friends the Members for Spelthorne (Mr Wilshire) and for Stafford (Mr. Cash). None of us is trying to avoid the question

¹⁰ HC Deb vol 275 c.860, 18.4.96

¹¹ HC Deb vol 276 c.139, 22.4.96

of consent because we have made it clear that any outcome of negotiations can proceed only if it has the consent of the majority of people in Northern Ireland. If a question were framed in relation to the outcome of negotiations, it would have to cover that point or it would not match the firm commitment that has been given many times.

Note that two crucial issues - the wording of the question¹², and the relevant electorate - would be set out in delegated legislation (s4(3)). Both these issues were explored in debate. The *Notes on clauses* had stated that the Secretary of State's power was "intended to be broad, so in particular as to encompass any aspect of any agreed settlement. The power in the clause might be exercised more than once".

On the issue of the question, Eric Illsley, for the Opposition, said that "we look on the holding of referendums under clause 4 of the Bill as giving the Secretary of State the opportunity to hold referendums periodically in Northern Ireland on topics other than the issue of constitutional change ... We look on it not as a clause which authorises a referendum on the constitutional future of Northern Ireland arising out of those negotiations but as one which gives the Secretary of State the power to hold a referendum on issues that may arise from time to time - perhaps on the use of violence, as was suggested by the SDLP recently" (cc.135-6). Sir Patrick Mayhew confirmed that any order he made would contain the wording of the referendum question (c.145), and he admitted, when questioned by Bill Cash, that the terms of the legislation ("... on any matter relating to Northern Ireland", s.4(1)) could, in theory, be applied to a question on EU/EMU matters, although he gave "a very firm expectation that a referendum, if any, connected with any European matter would be introduced on a United Kingdom basis and not on a Northern Ireland - only basis" (c.146).

On the issue of the electorate, Sir Patrick stated (c.145):

In principle, it might be thought more that the franchise for any referendum to reflect the potential implications for local residents. On that basis, the local government register rather than the parliamentary franchise would be more appropriate, which perhaps illustrates the value of leaving the issue to be dealt with by order rather than on the face of the Bill.

In the Lords, Baroness Denton of Wakefield, for the Government, expanded on this point:¹³

Apart from the general desire for consistency with the 1973 Act, it is possible that referendums held under Clause 4 arising from negotiations could affect different groups of people in Northern Ireland or different parts of the Province in different ways. In those circumstances, it is conceivable that it might be thought desirable to seek the views of those groups of people resident in those areas rather than the views of all the people of Northern Ireland. If the amendment were

accepted, the measure would lose that element of potential flexibility.

We are working for much of the time in uncharted waters. In all the circumstances, I stress that the Committee can be confident that the delegated power will not be abused.

¹² It is not clear if the use of the singular is intended to exclude 'multi-option' referendums or whether it is intended to encompass, as implied in the *Notes on Clauses*, the question(s) including any preamble

¹³ HL Deb vol 571 cc.1308-9, 25.4.96

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She stressed that "the clause was drafted to ensure the maximum amount of flexibility ... There was no intention of any abuse of power" (c.1309).

An unusual amendment was proposed by Lord Monkswell to require the Secretary of State to invite MPs for Great Britain constituencies "to signify their answers to the question put in the referendum on the same day as the referendum is put to the people in Northern Ireland". Lord Monkswell admitted that, while a full referendum in Great Britain "might hold some attractions" it would be "quite costly and I am not sure it would find favour with the population of Great Britain" (c.1311). Baroness Denton replied (cc.1311-2):

The noble Lord's amendment raises an interesting point. However, I doubt that another place would welcome this Chamber telling its Members how they should register their views on any question put to the people of Northern Ireland under this clause.

I must stress that Members will have an opportunity to debate the order directing any referendum. Any implementation of agreement

reached in the talks and endorsed in a referendum would almost certainly require primary legislation at Westminster. That would give as Members of both this House and another place an opportunity to make their views known. I must stress that it is the determination of this Government to ensure that the future of the people of Northern Ireland is chosen by the people of Northern Ireland.

There was also discussion, for example, of the role of the Irish Republic in any referendum, such as consultation on the subject matter and questions.

3. Europe and a Single Currency

The Government's policy: On 3 April 1996 the Prime Minister issued a statement that the Cabinet had agreed to hold a referendum on a single currency under certain circumstances:¹⁴

The Cabinet met in political session this morning. We noted that, at the time of the General Election, no one will know for certain whether a single currency may go ahead at all in the next Parliament. Furthermore, even if it does, no one will know which countries will be eligible to participate in it or what the circumstances might be at the time.

Britain has an option, negotiated at Maastricht, of deciding whether or not to join a single currency even if others go ahead. Because we will be keeping our option open at the next General Election, we have decided to make a commitment in our Manifesto that, if the Government decided to join a single currency during the course of the next Parliament, that decision would be subject to confirmation in a referendum.

Cabinet would make the decision whether or not to join. If they decided it was in Britain's national interest to do so, they would prepare legislation to this effect and present it to Parliament. This legislation would include a clause providing that it would not come into effect until confirmed in a referendum.

This would be Government legislation, and normal collective responsibility would apply. The referendum would be held as soon as possible after passage of the legislation, and a simple majority of those voting would be taken as confirmation of Parliament's decision.

The wording of the referendum would be a simple, neutral question on the lines "should the UK take part in a single European currency as from (the appropriate date)?"

This commitment only applies to the next Parliament. A decision on what if any action would be taken in the Parliament after that would be made before another General Election.

¹⁴ It was also announced at a Central Office press conference that day, attended by senior Ministers. There was much press speculation that the Chancellor, Kenneth Clarke, had insisted on the imposition of collective responsibility as part of the Cabinet decision that day.

Thus a referendum would only take place (i) in the next Parliament, (ii) if the Cabinet supported the UK joining a single currency, and (iii) after the passage of the single currency legislation. There would only be one "simple neutral" question, a simple majority of those voting would be sufficient, and collective responsibility would apply (presumably for both the passage of the legislation and for the referendum campaign itself).¹⁵

'Euro-sceptic' approaches: Bill Cash sought leave to introduce his *Referendum Bill* on 11 June 1996.¹⁶ He denied that it was a proposal about membership of the EU itself:... "it is about the national and European interest and about what sort of Europe we are in, where we are going and whether the British voters should be allowed to have their say before it is too late." He believed that "there are fundamental reasons for holding a proper referendum in the United Kingdom before the intergovernmental conference is concluded, after our general election next year," (c.117) and that, as the main political parties refuse to seek fundamental anti-federal treaty amendments, "a proper referendum is required of those who will be most affected -- the voters themselves. The judgment of the people is now required" (c.119).

On 21 January Teresa Gorman was given leave to introduce, under the ten minute rule procedure, a bill to provide for a referendum (to be held by 1 May 1997) on the UK's membership of the EU.¹⁷ She explained the purpose of her bill (c.741):

The question I propose is whether we should renegotiate our membership, limiting it to trading arrangements, or pursue full integration, probably with a single currency. The Bill does not advocate leaving Europe.

and (c.741):

It is 22 years since the last referendum on this subject, and a great deal of water has gone under the bridge since then. The issues that concern us today were not even mentioned then. Then it was about trade, but today the issues are far more political, and impinge far more on the everyday lives of our constituents...Parliament is no longer sovereign as it once was. However the small print of Rome was written, it was not explained in detail to the British people at the time, and now the chickens are coming home to roost..

She concluded:

We cannot run away from or keep a lid on the issue of Europe. A referendum may not be ideal, but it is the only way I know of finding out what people want and giving them that outlet. When all the parties have similar views on Europe, Dicey tells us that extremist parties arise. He says that, to solve the problem, we would have a referendum, and that is what I am calling for today.

¹⁵ on 'collective responsibility' see Research Paper 96/55. Sir Julian Critchley wrote a letter to the *Times* on 2 April stating that he had told his whip that "under no circumstances would I vote for the Government were it to bow to pressure from the Euro-sceptic wing of the party and include a promise of a referendum on a single currency in the party's election manifesto. A single currency will be for the Cabinet and the House of Commons of the day to decide whether or not entry should be in Britain's interest."

¹⁶ HC Deb. vol 279 cc117-121, 11.6.96

¹⁷ HC Deb vol 288 cc741-5, 21.1.97; Bill 73, 1996-97. A division was called off as there were no tellers for the 'Noes'

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Opposing the Bill, Denis MacShane thought it a "paradox" that Mrs Gorman "in defending the sovereignty of Parliament, is proposing to remove from Parliament its sovereignty to decide a great question". He believe that her motion was "the opening shot of a campaign to get Britain out of Europe" (c.743).

Labour policy: Over the weekend of 16-17 November 1996, the Shadow Chancellor, Gordon Brown, set out the Opposition's position. The fullest description probably came in his interview on BBC1's *Breakfast with Frost* on 17 November:¹⁸

GORDON BROWN:

Yes we've always said the decision required the act of consent of the British people, that would come either through a general election or through a referendum and of course what has happened is we now know that the Dublin Summit next month will not make final decisions about economic and monetary union, indeed final recommendations from Europe will not come 'til after the general election, therefore you've got to consider what would happen during the course of the next Parliament if a decision was being recommended about going in, say in the first wave and therefore it is right to say that a referendum would be the appropriate way of consulting the British people. There's got to be active consideration by the government of this big decision and there's got to be active consent from the British people and that's what the policy locks in.

DAVID FROST:

Right and when does it happen, this referendum, exactly in the process between setting up an independent central bank, through the debate in the House of Commons, well where in this process does the, do you plan for this referendum to take place?

GORDON BROWN:

Well if you were to have a, a referendum on a big issue such as this there would have to be a recommendation from the Cabinet, it would have to come through the House of Commons, there would have to be legislation in the House of Commons and then you would have the referendum and you would look for a majority vote in that referendum and I think it's true to say that this position will be included in our manifesto and of course when Parliament votes on this it will be by a majority vote in Parliament as well and I think there'll be collective Cabinet responsibility.

DAVID FROST:

Collective Cabinet responsibility which means that people can't go off and like happened the last time there was a referendum, and put their own point of view that anyone in the Cabinet who stays in the Cabinet must support this?

GORDON BROWN:

Well if you look at the procedure the Cabinet will have to recommend to Parliament, it will be a collective decision of that Cabinet, Parliament will then be asked to pass the legislation and then we will have the referendum and it's precisely because we've got to look at what might happen during the next Parliament, spell it out very clearly to people in the manifesto, that we're announcing this now. It's now absolutely clear that Dublin next month is not going to make these major decisions and therefore the decisions will have to be made either in the next Parliament or afterwards.

DAVID FROST:

So that if you had a situation where you therefore, as you said because you could do the referendum at the beginning but you do it at the end of the process, after the legislation, so you could have a bit where, a situation where we pass legislation, for instance to create an

¹⁸ transcript pp 2-3

independent central bank, then the country votes against going into EMU, would you then repeal the legislation on an independent central bank or would you keep it?

GORDON BROWN:

Well that depends what actually the vote is on and what the referendum actually says. We've got to decide what the question is. I think it should be a simple and neutral question that would allow people to see that this is being done fairly and squarely and then we would have to make the decision about what would happen if the referendum was lost. My own view is that if the Cabinet recommended and the government of the day persuaded Parliament that there's a very good chance of persuading the public as well.

A briefing note on 20 November from Mr Blair's office stated that one of the guiding principles set out in the *Road to the Manifesto* was that "any decision to join [a single currency] will require public consent, either in the form of a general election or a referendum", and continued:

Labour announced this weekend that Labour will hold a referendum on the single currency if the cabinet chooses to recommend membership of Emu during the lifetime of the next parliament.

In the *Road to the Manifesto* we said a referendum or election should be the means of securing public consent. But in recent weeks and months, it has become clear that we will now not have all the information we need to make a judgement about whether the UK should join the single currency in advance of the election manifesto. The Dublin summit in December looks unlikely to agree the details of the stability pact which concern budget rates in stage 3. And there is still uncertainty about which countries, including France and Germany, will meet the convergence criteria and whether the timetable can be kept to. These questions are unlikely to be answered until the second half of next year.

In these circumstances, our principle of achieving public consent once we have made a judgement will necessarily imply a referendum if we decide to recommend membership in the first wave or during the next parliament. This is the logical extension of Labour's policy on Emu, as set out in the *Road to the Manifesto*. If a Labour cabinet decides to recommend membership, then this decision will be put as a decision of the government to parliament and then to a referendum.

Liberal Democrat policy: This is neatly summarised in Policy Paper 19, *Meeting the European challenge*¹⁹

2.3.2 Liberal Democrats are unambiguous about the need for Britain to take its rightful place in affecting the changes needed in Europe. We are determined to ensure that these changes have popular support: if the IGC agrees to a new constitutional settlement within the European Union states, then Liberal Democrats believe British people have a right to voice their support for the changes through a referendum.

Scottish National Party: The European policy document passed at the 1996 special conference states that "we therefore reserve to the Scottish Parliament, after consultation of the people in a referendum, any decision to participate in a single currency" (para. 4.1(a)).

¹⁹ p.10, March 1996

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*Referendum Party*²⁰: The *raison d'etre* of the party is "to obtain a fair referendum on Europe. Once the referendum has been held, the Party will dissolve itself. This is explicitly written into the Party's constitution. The Referendum Party has no other agenda or purpose". A 'fair' referendum is defined by the Party as follows:

The question has to be fair and the terms of the debate have to be fair. The question should cover the Maastricht Treaty and its proposed subsequent amendments. The Treaty provides for Inter-Governmental Conferences (IGCS) which are empowered to alter its terms. The next IGC is scheduled for 1996.

The public should be allowed to vote on the broad issue and not granted a pseudo-referendum restricting the question to technical issues.

Insofar as the debate is concerned, the time and money allocated to each side should be split between those in favour and those against. Maastricht is not a left-right issue. It is one of yes or no. It transcends the traditional party groupings. As all the established political parties are in favour of the Europe of Maastricht, they cannot be expected to determine the terms of the question or the rules of the debate. Both need to be settled independently.

A group of respected citizens whose members would consist, in equal proportions, of those in favour and those against the Europe of Maastricht, should consider the issues publicly and put forward proposals to the Speaker of the House of Commons.

The Referendum Party will stand down if the question and the terms of the debate are fair and the result is binding.

The Referendum Party would then dissolve itself and supporters could then return to voting for their traditional parties. If the result of the referendum were to return sovereignty to Parliament, then our supporters would know that at least, their traditional parties would have the legal power to honour their electoral promises.

At the end of November the Party published terms of its referendum question:²¹

Do you want the UK to be part of a Federal Europe? OR

Do you want the UK to return to an association of sovereign nations that are part of a common trading market?

This was further defined:

By "a Federal Europe" it is meant a European Union with supranational politicals, including The European Parliament, The European Commission, and The European Court of justice, and in which every nation must apply European Law, and which would bring about Economic and Monetary Union.

A common trading market would allow the free movement of goods, services, labour and capital, whilst limiting the power of the Community institutions exclusively to ensuring that that marketplace would be efficient, competitive and fair.

The Party stated that "the precise wording of the question to be put to the electorate and the conditions necessary to obtain a fair debate and vote should be established by Parliament".

²⁰ Information taken from the Party's web site <http://www.referendum.org.uk>

²¹ Newspaper advertisements, 28.11.96

*UK Independence Party*²²: The UKIP summary manifesto states that "the Government has been taking Britain even further into the EU without the consent of the British people. A UK Independence Party government will ensure that never again can a major constitutional change take place without consulting *you* the people by means of a referendum." On a single currency referendum its briefing note states (appendix 4):

The Conservative government has promised that if in the future it decides in favour of joining the single currency, it will call a referendum before proceeding. This is indeed an odd way to do things. Having decided in principle to go ahead, the government will have shown its interest in a 'yes' vote, and it will not be difficult for it to present the referendum question and the related information in a favourable light. There is also no shortage of EU money to help in this persuasion. A publicity campaign by the Commission is already in hand.

Even if there were a referendum without the government having taken a prior position, can we really expect voters to be aware of the consequences of EMU for centralisation of interest rates and public finance? Many voters have thought no further about the single currency than the savings on currency conversions for European holidays. Nor do they want to think further. A referendum on the single currency would not be a good idea. Nor, for similar reasons, would a more general referendum on our overall involvement with Europe. The referendum in 1975 in which British voters approved our membership of the Common Market is an example of how official "information" on a complex and ill-understood issue can be so persuasive.

4. The Government of Scotland and Wales

Labour has promised to legislate for a Scottish Parliament and a Welsh Assembly within its first year.²³ The Scottish Constitutional Convention - an umbrella body comprising of Labour, Liberal Democrats and other political and social groups in Scotland - produced proposals in November 1995 for a Scottish Parliament,²⁴ and the Labour Party in Wales published proposals in May 1995.²⁵ No mention was made in these documents of any referendum or otherwise.

Scotland on Sunday reported in February 1996 that the shadow Scottish Secretary, George Robertson had responded to calls from Tam Dalyell by stating that "we have no proposals for a referendum because we want to legislate early and quickly for this outstanding commitment, and that is the clear party policy".²⁶ A report in the *Scotsman* in April claimed that "senior figures in the Labour Party" had ruled out the idea of referendums on devolution, and quoted one source as saying that "a Scottish Parliament will be in the manifesto and the electorate can vote for it in the general election. That is all the mandate that is needed".²⁷

²² material taken from the party's Web Site <http://www.binternet.com/ukip>. The index to its manifesto describes the party's raison d'etre as "to achieve the withdrawal of the UK from the European Union"

²³ e.g. *New Labour New Scotland* states that one of 'new Labour's early pledges' is: "we will legislate for a Scottish Parliament in the first year by holding a referendum on devolution and campaign for a 'yes' vote"

²⁴ see *Scotland's Parliament, Scotland's right*, and generally, Research Paper 95/131, *The government of Scotland: recent proposals*, 18.12.95, section I

²⁵ *Shaping the vision*, Labour Wales PN 12.5.95. See also *Preparing for a new Wales*, May 1996

²⁶ "Dalyell calls for special vote for self-rule", 11.2.96

²⁷ Labour rejects home rule referendum", 25.4.96

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In press conferences in Glasgow and Cardiff on 27 June 1996, the shadow Scottish and Welsh Secretaries announced that Labour proposed to hold pre-legislative referendums. Mr Robertson said:²⁸

Part of the task Tony Blair gave me was not just to ensure the package itself was sound but to work on the details of implementation. In recent months I have been working with Shadow Cabinet colleagues on plans to make sure a Scottish Parliament was enacted as soon as possible after the election.

Let me set out what I personally recommended and what Labour will do.

As soon as Labour is returned to power, a White Paper will be published setting out the details of our plans.

The people of Scotland will be asked to endorse the proposals in an early referendum to pave the way for legislation.

There will be no tricks. No fancy franchise. The test will be a straightforward majority of the votes cast.

It is right that a democratic Parliament should be founded on a democratic vote.

There is now overwhelming support for a referendum in Scotland which should no longer be ignored. Politicians should trust the people.

We want to be sure that the democratic system we put in place is stable and durable.

The best security a Scottish Parliament can have is the support of the people

Michael Forsyth recently said this "As Scottish Conservatives we would put up candidates, we would argue our corner and if the Parliament had had the endorsement of the Scottish people, we are not going to abolish it".

Today I challenge him to stick by his word and to repeat his commitment to abide by the view of the Scottish people.

That is the case for a referendum.

He then turned to the question of the proposed Parliament's financial powers:

There is clear evidence that Scotland does support this power but given its importance in the argument we believe this too should be put to the test.

We therefore propose that there should be a second question on the referendum ballot, dealing with the question of taxation. It will give the people the chance to speak. Even the most prejudiced of opponents would surely hesitate to defy a clear expression of popular support.

There is a clear difference between the power of an institution and a pledge from a political party to exercise that power. In the event of the Scottish people voting yes to the taxation power, political parties will still want to think long and hard before entering an election pledged to raise taxes. What matters is to establish firmly and explicitly the principle and we believe Scotland will back it. The Prime Minister and the Secretary of State remain implacably opposed. Let the people decide.

He pledged that the Labour Party would be campaigning for a 'yes' vote on both questions: "The Labour government, led by Tony Blair, will spearhead our principled fight for a more democratic Scotland". He claimed that "the referendum and the popular endorsement it would bring is in itself an important part of [the devolution] process. The intention is to speed to the course of change. There must be no delay. The pledge that a devolution Bill will be on the statute book within the first year of a Labour government will be honoured ... Responsive government closer to the people is a great prize and we believe that today's announcement brings it very much closer".

Ron Davies repeated the party's pledge to legislate for a Welsh Assembly in the first year of a Labour government. In order to prove that the Conservatives were wrong in saying that the people of Wales do not want devolution, a Labour government would publish a white paper "as soon as possible after the election and hold a referendum here in Wales before legislation passes through the House of Commons. The Labour government led by Tony Blair will

²⁸ Scottish Labour press notice 12.6.96

campaign for the full hearted support of the Welsh people for our proposals. The test will be a straightforward majority of the votes cast". He described the consequences of a 'yes' vote:²⁹

If the Welsh people say yes, as I am confident they will, let the Tories accept the will of the people and not stand in the way of legislation.

A positive referendum result will sweep the opposition of the Conservatives aside and make it much more difficult for any hostile government to wreck devolution in the future. It is the best security a Welsh Assembly can have.

These proposals for devolution referendums have been the subject of much press and political debate since June. The Prime Minister confirmed, shortly after these announcements, that there are no existing statutory provisions which could be used to hold a constitutional referendum in Scotland.³⁰

At the end of August it appeared that Mr Robertson and the Scottish executive of the Labour Party had refined the policy by adding a second referendum (if the first received 'yes' majorities to both questions) which would be called by the Scottish Parliament on the question of activating its tax-varying powers. This would be made clear on the ballot paper for the first referendum. Mr Robertson described this as a 'double lock' mechanism on the tax power. Tony Blair was quoted as fully supporting the policy: "I welcome the mature and sensible decision of the Scottish executive committee. This decision brings a Labour Government and a Scottish Parliament that much closer".³¹ However, a week later, this 'second referendum' plan was dropped, as, in Mr Robertson's words, 'clearly, there is no support [for it] and I am saying today to the party and to the Constitutional Convention that a second referendum is not necessary and will not be pursued by the Labour Party'.³² In an interview with the *Scotsman* on 9 September, Mr Blair said that "what we've actually now got is a policy that is completely firm, as it has been all the way through on the principle of Scottish devolution". He added, on the attempt by some party members to remove the tax-varying question from the proposed two-question referendum, "they have now accepted that that can't be done".³³

Plaid Cymru: Dafyd Wigley, in a pamphlet in September 1996, considered the need for a referendum on the future of the Government of Wales:³⁴

A Fair choice for Wales

We are told that within a few weeks of a Labour Government coming into power, Wales is to be given a pre-legislative referendum - or a "preferendum" as it has been aptly described by one Welsh Labour MP. It is essential that the people of Wales are given a fair menu of choice on which to vote. They must be empowered to indicate, in a meaningful way, their personal preference. That is what a preferendum should be all about.

²⁹ Labour Wales press notice, 27.6.96

³⁰ HC Deb vol 280 c.505w, 4.7.96

³¹ *Scotland on Sunday*, 1.9.96

³² *Scotsman* 7.9.96

³³ see also his speech in Aberdeen on 9 September. In an interview on the ITV *Jonathan Dimpleby* programme on 19 January Labour's chief whip, Donald Dewar, said that he believed that their devolution plans "will be endorsed very heavily by the people of Scotland" (transcript, p.14)

³⁴ *A real choice of Wales*, Sept. 1996, pp11-12

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The initial indications which came from the Labour Party in London when it was executing its instant policy U-turn in June, 1996, was that it intended holding a simple one-question referendum in Wales, giving the electorate a straight "Yes/No" option to its own proposals for an executive assembly (Option B above). This would constitute a virtual re-run of the 1979 Referendum and is wholly unacceptable.

A simple "Yes/No" to an inadequate assembly is no choice at all. Such a restricted referendum disenfranchises a large proportion of the Welsh electorate that have a firm opinion on the future government of Wales.

There can be little doubt that holding such a referendum would put Wales at a crossroads with regards to its future. There are four clearly defined routes which could be taken. The Labour Leadership has placed a firm "No Entry" sign on two of those options - a London veto on the range of choice Wales is permitted to exercise. It augurs badly for Wales if this is the general attitude towards out country of an incoming Blair Government.

New Labour are not only offering Wales a much weaker assembly than the parliament which they are offering Scotland; they will not even allow Wales the opportunity to vote for such a parliament. This cannot be right, fair or democratic.

New Labour leaders argue that they have the right to choose the question by virtue of winning the General Election. But their whole logic of holding a referendum is based on their belief that the General Election cannot determine such constitutional questions, since voters' opinions on constitutional issues do not necessarily follow party lines. Labour have no more right to cut out questions on other plausible constitutional models, than they have a right to prevent other political parties from standing in a general election. Their arrogance in limiting the choice offered to the people of Wales is astounding. If the government of the day takes unto itself the right to tell the people what is the permissible range of choice open to them in an election or a consultative referendum, it is a very black day for the future of democracy.

Some might argue that a meaningful multi-optional referendum cannot be constructed because it would be difficult to interpret the results. This is nonsense. The use of a preferential vote asking the electors to mark their ballot papers 1, 2, 3 and 4, in the order of their personal preferences for respective alternative policies, is the ideal voting system for a "preferendum". The votes would first be counted on the basis of first preferences. The proposal coming bottom, in terms of first preference votes, would then be eliminated and the votes redistributed to their second preference. In such a way a winner is easily established in a manner which has allowed everyone to participate and feel that their voice has been fairly heard....

There are clearly other methods of holding a multi-optional referendum and interpreting a meaningful result. There is only one possible explanation why Labour is unwilling to allow such a multi-optional vote. It knows in its heart, that there is a majority in Wales in favour of having the same type of parliament as now being promised Scotland. For their own reasons the London Labour bosses are not prepared to countenance that possibility.

and [p.16]

Conclusions

It will be the campaign leading up to the next general election, together with its outcome, which will determine the nature of the alternative options for its constitutional future on which Wales may thereafter vote in a referendum. The strength of public opinion in Wales will decide whether or not:

- Wales is to be treated as fairly as Scotland by a Labour Government or is to have second class status;
- The people of Wales will be allowed to choose from amongst a number of options or restricted to one party's proposals;
- The rules of the referendum are to be fair, or are a re-run of the sham of 1979;
- A Labour Government is serious in keeping its promise of legislating for a Welsh assembly during its first year in office, or is using the referendum to play for time.

In Scotland it is the strength of the SNP which has led to the promise of a law-making parliament and the creation of a Scottish government which could transform the prospects for that country within the EU. In the coming general election the one sure indicator of a similar pressure from Wales will be the size of Plaid Cymru's support. If the referendum leads to the establishment in Wales of a powerful parliament as in Scotland, it will be a worthwhile step forward albeit short of Plaid Cymru's aim of full self-government in Europe. If it is used to deny Wales a fair choice, it will be a tragedy of monumental proportions.

For it is not Wales which is on trial in this referendum process. Rather, it is the fair working of democracy itself which is at stake and that must be of concern to every citizen in Wales, whatever their political allegiance.

Scottish National Party: The November 1995 document, *Citizens not subjects: the Parliament and constitution of an independent Scotland* contained various proposals on referendums. It stated that "a written constitution will be incorporated in the Independence settlement to be placed before the Scottish people in a referendum"³⁵. The detailed proposals are as follows [p.6]

The SNP propose to place a written constitution before the people of Scotland as part of the Constitutional settlement in the referendum that will take place after an SNP victory in a General or Assembly election. Acceptance of that settlement, including the constitution, will result in the declaration of Independence and the first general election for the Independent Parliament. The process of negotiating that Independence Settlement is presently being examined by an Independent Working Party which will report in the first part of 1996.

The proposed Parliament's procedure could include a referendum process as one option within "a constitutional mechanism to defer and delay contentious legislation".

The party has stated that it can have no firm view on any devolution referendum, such as that proposed by Labour, until it can examine the full details of the relevant legislation.³⁶

5. Regional/London government

Labour: In July 1995 consultation document, *A choice for England*, Labour proposed that English regional chambers, initially composed of nominated representatives of elected local authorities, could, after they had been "properly established over a reasonable period of time," develop into "directly elected regional assemblies ... for those regions where public demand for them is strong" (p2). This development from nominated to elected bodies would be undertaken under strict conditions (p3):

Elected regional assemblies

The second step would lead, in the future, to the establishment of directly elected regional assemblies in those regions where public demand for these is evident. A precondition for these would be the establishment of a predominantly unitary system of local government. The timescale for moving to elected regional assemblies would vary from one region to another and there may be some areas which do not want to move at all to this second phase.

³⁵ summary, para. 1

³⁶ Information from Party Press and Research Office, December 1996

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To ensure that there was clear support for any elected regional assembly there would be three safeguards. First, the plan for a directly elected assembly would have to be drawn up and approved by the regional chamber, and therefore enjoy the support of most local authorities in the region. Second, it would have to be approved by Parliament. Third, there would have to be clear evidence of public agreement which could include, if Parliament approves, a region-wide referendum. It is no part of Labour's plans to impose regional assemblies on those areas which do not want them. These safeguards will ensure that directly elected regional assemblies will only be established where there has been consultation, consideration, and consent.

The document claimed that London was a special case, and that "the case for establishing an elected strategic authority for London stands on its own." Labour proposed the creation of "a new authority which would combine city-wide and regional functions. The final plans for this authority could be subject to a confirmatory test of public consent such as a referendum. This would strengthen the position of the new authority by demonstrating that it had the active support of Londoners". (p3)

The 'need for consent' for these proposals was examined in some detail (pp16-17).

It has been a long-standing principle of the Labour Party that no major change of this kind should be made without the consent of the people affected.

We do not therefore believe that it would be appropriate to move towards such elected assemblies, including the strategic authority for London, without there being a test of consent. There is a broad consensus for establishing new, more representative arrangements, for holding the existing regional government in England to account, in a way which does not disturb the present system of local government. But there is much less agreement as to the need to move to directly-elected regional assemblies and the coincidental abolition, in most cases, of the shire counties.

Some may argue that no separate test of consent in any region for a move from step one to step two should be necessary. On this argument, a commitment in the manifesto on which the general election was fought and won would suffice.

This argument *is* a compelling one in respect of devolution to Scotland and Wales. In both those nations the question of national level constitutional arrangements has been at issue for over three decades. At the forthcoming general election the electorates will be presented with explicit constitutional alternatives by the Labour, Conservative, and Nationalist parties. The issue will be high on the political agenda. The party which wins the general election in Scotland and Wales can fairly claim a popular mandate for its constitutional proposals for those nations.

But this argument does not run within England. A manifesto commitment for elected regional assemblies would certainly give authority to legislation to that effect; but it could not, in truth, be used as a proxy for popular consent, for two reasons.

First, within England, the general election is likely to be fought - and won - on issues which have a higher salience than proposals for elected regional assemblies.

Second, the degree of support for elected assemblies, and the abolition of the shire counties, would appear to vary considerably across the country. This argument seems to us to be conclusive. It would be very difficult to divine from electoral victory in England as a whole popular consent for an elected regional assembly in, for example, the North, the North-west, or the South-west; but not in East Anglia or the South-east. The problem of inferring consent from a general election is compounded by the fact that in some regions there is no consensus as yet even about the boundaries which an elected regional assembly should have.

This lack of a clear consensus about the English regions is illustrated by the relative volatility of public opinion as measured by opinion polls, suggesting that voters' views are far from stable....

In those countries with formal written constitutions or "basic laws" there are usually special procedures for making changes to the structure of government. Typically these require a

weighted majority of two-thirds or three-quarters in the Parliament, and/or approval in a plebiscite.

The United Kingdom has no such arrangements. Changes to its basic constitutional law can be made, in principle, as easily as changes to some obscure aspect of company law - by a simple majority of both houses of Parliament.

It was the potential abuse of this power by government which led the Conservative former Cabinet Minister Lord Hailsham to describe the British system as an "elective dictatorship" [Granada Guildhall Lecture, 14 Oct 1976].

There is, therefore, little point in making major change of this kind without public consent. The test of that consent best comes either through a general election, where there are clear alternatives on offer, or through a referendum or some other objective measure of popular opinion.

There are strong practical grounds for this approach, as well as democratic arguments. New institutions, like elected regional assemblies, will only take root if they are seen to have a degree of permanence and if their establishment is beyond most partisan argument. Without this, they will not attract the best both of elected representatives and of appointed officials.

In its September 1996 document *A new voice for England's regions* the two-stage policy was set out in detail (summary, pp 2,3):

Regional chambers

Labour's proposals will make the existing tier of regional administration more accountable, coherent and democratic. As a first stage, we propose to establish regional chambers in each of the current Government Offices of the Regions areas. These will draw on the experience of existing local authority regional associations. The chambers would consist of local councillors nominated from local authorities within the region. These nominees would meet regularly as a plenary and would elect an executive committee to co-ordinate policy on an ongoing basis. Chambers would have the power to establish specific sub-committees (for example for transport, or environment) drawing together relevant committee chairs from member authorities.

Elected regional assemblies

In those regions where there is clear popular consent expressed through a referendum directly elected regional assemblies will be established. In those regions without a predominantly unitary system of local government, this transition would also require public consultation on the local government reorganisation that might be required by a new regional assembly. Responsibility for drawing up external boundaries for the assemblies would lie with the Secretary of State. Internal constituency boundaries would be drawn up by the independent electoral commission which Labour plans to establish to combine the existing functions of the elections unit in the Home Office and the Parliamentary Boundaries Commission.

'Stage two' was further explained: "The move from indirectly elected bodies to directly elected assemblies represents a qualitative change in status" (p.11). The process would be as follows (pp11-12):

Ensuring popular support for directly elected assemblies

For 17 years the Conservatives have governed in a rigid, centralised and top-down manner. A constant stream of legislation has been imposed from above with little real consultation or local involvement. As the poll tax fiasco showed, all too often the result has been disastrous.

Labour has no wish to govern in this way. It is in no-one's interest that we impose unwanted new structures of government on areas of the country that have no great wish to change. We are determined to work in partnership with the people - with their active support and

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understanding. As Charter 88 points out in endorsing our approach to this issue: "It is Conservative methods just as much as Conservative policies that have failed the towns, the counties, the cities, the regions, and the nations of Britain. It would be disastrous for Labour to reproduce them." (Charter 88 response to *A Choice for England*).

New institutions, like elected regional assemblies, will only take root if they are seen to have a degree of permanence and if their establishment is beyond most partisan argument. Without this, they will not attract the best elected representatives or appointed officials.

Labour plans to establish an independent Electoral Commission which would combine the functions of the elections unit in the Home Office with those of the Parliamentary Boundaries Commission to take responsibility for all aspects of electoral administration. The Commission would be asked to draw up proposals for the administration of referendums in the English regions.

Our advocacy of referendums to measure popular support for elected assemblies is not intended to be a blocking device to prevent progress, but rather is a means of ensuring that these assemblies have their own legitimacy amongst local people.

The 1995 consultation document and the 1996 paper *A voice for London* proposed a referendum on a proposed new Greater London authority. The September 1995 document states that "the final plans for this authority would be subject to a referendum. This would strengthen the position of the new authority by demonstrating that it had the active support of London" (p.13).

Liberal Democrats: The August 1996 *Constitutional declaration* states (art. 9):

England

2. *Greater London Assembly.* A Regional Assembly will be established in the first year of the next Westminster Parliament for Greater London.

3. *Regional Assemblies:* Assemblies for the administrative regions of England apart from London will be established when the citizens of each region determine that they wish to elect a Regional Assembly. Until then the Westminster Parliament will remain responsible for the regions.

4. *Boundaries:* The boundaries will be determined as soon as possible after full consultation by an Independent Commission established by the Westminster Parliament. The boundaries will come into force when they are approved by a resolution of both Houses of the Westminster Parliament. The boundaries will be kept under periodic review by the Commission. The Commission will put any change proposed by a principal local authority to the electors of the regions affected by the proposal in a referendum provided that proposal is supported by half the local authorities affected or is to be funded by the local authority making the proposal.

5. *First Elections:* Elections for Regional Assemblies in England (outside London) will be held following a determination by the people of the Region that they wish to elect an Assembly for themselves. The determination will be made in a regional referendum. A referendum will be held (at any time after the Commission's report on boundaries has been approved by the Westminster Parliament) at the request of 5% of the electors of the Region or of a majority of the local authorities in the Region.

The party's proposed *Great Reform Bill 1997* contains the following:

First Elections for Regional Authorities

23(1). The first elections for the Regional Assemblies for England shall be on the first Thursday in May following a determination by the people of the Region that they wish to elect an Assembly for themselves.

(2) The determination shall be made by the electors of the Region in a regional referendum.

(3) The referendums shall be supervised by the Electoral Commission.

(4) A referendum shall be held by the Electoral Commission if 5% of the electors of electors of the Region requests it by signing a petition addressed to the Electoral Commission or at the request of a majority of the local authorities in the Region, provided that the Westminster Parliament can by resolution of both Houses determine the date of such election.

6. Voting System

Labour: During consideration of the Plant Commission report on electoral reform by the NEC of the Labour Party, John Smith, then Leader, promised that a Labour government would hold a referendum on the issue, although he was personally unconvinced of the need for change to the voting system for the Commons:³⁷

However, I firmly believe that the contents and conclusions of the Plant Report merit the widest possible debate both within and beyond the Labour Party. That national debate must be extensive and wide ranging. Ultimately it is a matter of such constitutional significance that it should be for the people to decide. Any decision on the retention or change of the electoral system for the House of Commons must carry the demonstrable consent of the public. That is why I firmly believe that the final decision on this issue must be taken by means of a referendum and why I propose that such a referendum be held during the first Parliament of the next Labour government. It would be held at a time when the Labour Government had begun the most radical programme of constitutional reform this century. There could be no more appropriate time for the public to be given the opportunity to settle the long standing debate on the future of our electoral systems.

There was immediate reaction to this proposal in the Commons. The Prime Minister made a pointed reference to it during question time on 20 May:³⁸

The Prime Minister: I can certainly confirm that I remain in favour of the first-past-the-post system. I am against proportional representation, and I do not need a referendum to tell me what my view on the matter should be.

The different Labour positions on referendums on Maastricht and on electoral reform was noted during the third reading of the European Communities (Amendment) Bill that evening.³⁹

³⁷ Press Notice, 19.5.93

³⁸ HC Deb vol 225 c.366, 20.5.93

³⁹ See, for example, the exchange between Peter Shore and John Cunningham at c.401

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Recent Labour party conferences have backed the proposal for a referendum on electoral reform. The 1995 resolution was as follows:⁴⁰

- (1) This Conference recognises that Labour's policy to hold a referendum on the issue of electoral reform for the House of Commons, as initiated by John Smith and endorsed by the last two national conferences, can unite the party and is the right way to involve the people of this country in the discussion about change. This referendum is a symbol that Labour will not simply replace the Conservatives at the next election but form in government a new contract with the citizens of this country as part of the new democracy Labour is promising. This issue will be one of the most important constitutional questions facing an incoming Labour administration.
- (2) Conference urges the next Labour government to seize the historic opportunity to consult the British people about their views on the electoral system. Conference believes that the British people need to be given a genuine choice in this referendum.

In his *Economist* article on 14 September 1996 Tony Blair wrote⁴¹:

Effective democracy depends, above all, on the quality of the House of Commons. Electoral reform for the Commons has a totemic status among some of Britain's constitutional reformers. I appreciate the reasons for this, not least 17 years of 'elective dictatorship' by Tory governments returned on minority votes, pushing through divisive and destructive policies such as the poll tax and rail privatisation, which is why I have confirmed John Smith's pledge to hold a referendum on the issue.

However, I personally remain unpersuaded that proportional representation would be beneficial for the Commons. It is not as some claim, a simple question of moving from an "unfair" to a "fair" voting system. An electoral system must meet two democratic tests: it needs to reflect opinion, but it must also aggregate opinion without giving disproportionate influence to splinter groups. Aggregation is particularly important for a parliament whose job is to create and sustain a single, mainstream government.

Doug Henderson, in a talk to a Constitution Unit on 12 November, reaffirmed Labour's pledges on constitutional reform including "a referendum on the voting system in the UK."

Liberal Democrats: The Party's proposed *Great Reform Bill 1997*, published in September 1996, contained the following clauses:

Referendum on proportional representation

8.A referendum shall be held within 6 months from the passing of this Act to determine whether elections to the House of Commons should be by a system of proportional representation.

The question

9. The referendum shall ask the following questions:

⁴⁰ Composite 37, *Record of decisions of 94th conference*, p.36. The 1993 resolution had been approved on a card vote 45.5% -42%

⁴¹ "Blair on the constitution", pp 34-5. In his 19 January *Jonathan Dimbleby* interview on ITV, Donald Dewar was closely questioned on Mr Blair's attitude to electoral reform, as Prime Minister during such a referendum. He also said, when asked about collective Cabinet responsibility over such a referendum, that "I always believe in collective responsibility in Cabinets but we'll have to see obviously as we go along.... I certainly believe that Cabinets should stand together.. but that may be dependent on what emerges from the discussion" (transcript, p.11)

Question 1. *Should elections to the House of Commons be by a system of proportional representation?*

Answer yes or no.

Question 2. If elections are by a system of proportional representation would you prefer them to be by:

- a.) the single transferable vote *system?* or
- b.) the additional member system?

Answer:

- a.) the single transferable vote system, or
- b.) the additional member system, or
- c.) I have no preference.

The single transferable vote system is defined in Schedule 3. The additional member system is defined in section 41 below.

Supervision of the referendum

10. The referendum shall be supervised by the Electoral Commission established by Part 9 of this Act. The Electoral Commission shall make all necessary regulations for the conduct of the referendum. The regulations shall be laid before both Houses of the Westminster Parliament and shall not take effect until approved by a resolution of both Houses.

7. Other Recent Proposals

During the two-day debate in the Lords on the Constitution in July 1996, the Leader of the Opposition, Lord Richard stated that Labour's plan to reform the Upper House was in two stages: first to remove the right of hereditary peers to sit and vote, "the second is a major exercise in public consultation. We want to ensure that so far as possible the whole country should be involved in the consideration and determination of the precise nature and form that our second Chamber should finally take. That is our long term aim".⁴² Winding up that day's debate for the Opposition, Lord McIntosh of Haringey, described the proposals as a 'three stage approach': "... and the third is with the mandate of the people, and only with the mandate of the people, to proceed to the final composition of the House."⁴³ This was interpreted by some as a hint of a referendum on 'House of Lords reform',⁴⁴ although Labour leaders have never suggested or acknowledged this interpretation.

Tony Benn's *Commonwealth of Britain Bill*, a comprehensive written constitution, would be implemented by a post-legislative referendum (which would also be a consultative referendum on the electoral system for Parliament), as would amendments to the constitution.⁴⁵ Paul Flynn presented a bill on 25 April 1996 "to make provision for referendums to be held on the future constitutional status of the Sovereign as Head of State and on the means of electing any future elected Head of State."⁴⁶ Bill Walker obtained a brief second reading debate for his *Constitutional Change Bill* on 26 April 1996,⁴⁷ which sought to require any legislation

⁴² HL Deb. vol 573 c.1594, 4.7.96

⁴³ c.1683, 4.7.96

⁴⁴ See "Public vote on future of Lords" *Independent* 5.7.96

⁴⁵ Bill 57, 1995-96, clauses 50-51

⁴⁶ HC Deb vol 276 c.605

⁴⁷ HC Deb vol 276 cc732-40, 26.4.96

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implementing constitutional change (defined as any "change, redirection or transfer" of the power of Parliament) to be put to a referendum before implementation:

Clause 1(1) of the Bill states clearly that any change, redirection or transfer of Parliament's powers agreed by both Houses of Parliament must be put to the people in a referendum. This Parliament, with all its shortcomings - it has a number - is still the finest democratic Parliament anywhere in the world. A cornerstone of the unwritten constitution is the fact that no Parliament can bind future Parliaments. In recent years, constitutional change has undermined that cornerstone. I believe that proposals now under discussion will continue that process. I believe that Members of Parliament hold the leasehold for our unwritten constitution during their time in this place. While it is in their care, they may make changes that can be altered next week, next year, in five or 10 years or at any time in the future. However, they should not alter the constitution in such a way that it may be impossible for future Parliaments to change it back if they so wish. Hon. Members hold only the leasehold; I believe that the freehold for the unwritten constitution of the United Kingdom is the property of the people. Only the people should change the constitution. Sometimes that is called sovereignty: the power of Parliament. The right to create and repeal legislation, to raise taxes, to borrow and to spend, and the right to block supply are powers of Parliament.

Examples of constitutional changes he cited included a single currency, devolution and 'electoral reform'. His bill included the '40% threshold', a provision which ensured the defeat of the 1979 Scottish devolution referendum. (cl 1(7)).

Replying, the junior Home Office minister, Timothy Kirkhope, defended the role of Parliament and Members in constitutional matters (c.736):

The Bill seeks to put in place a statutory requirement for consultation through the referenda process. But consultation-a readiness to be open to the advice of the electorate and the responsibility of representing the views of the electorate-is the very business of the House and of Members of Parliament. The role of the constituency Member of Parliament is the very bedrock of the system of representative democracy that we have created in this country over very many years, and we are responsible for maintaining it as an effective and valued service.

He was "struck by the way hon. Members have occasionally have been seduced by the propaganda about referenda. There is a tendency to think that a referendum will provide an instant 'fix' when Governments are faced, as they must be on occasion, with difficult decisions". (c.736) He believed that "parliamentary democracy, as practised in the United Kingdom, is precisely about the need to ensure that decisions are taken by Governments in the light of and with the mandate of the population. That mandate is exactly what is tested at every general election, when the people of the United Kingdom are invited to consider clear statements of policy set out in the party manifestos By comparison a referendum can

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