

# **The Referendums (Scotland and Wales) Bill** **[Bill 1 of 1997-98]**

**Research Paper 97/61**

**20 May 1997**



The Referendum (Scotland and Wales) Bill was introduced in the Commons on Thursday 15 May, and it is due to have its second reading on Wednesday 21 and Thursday 22 May. This Paper provides some briefing on referendums generally, and on those proposed in this Bill for Scottish and Welsh devolution. More general briefing on referendums is provided in Research Papers 95/23, *Referendum*, 21.2.95 and 97/10, *Referendum: recent proposals*, 24.1.97, and on devolution in Background Paper 291, *The government of Scotland: the debate after the 1992 general election*, 16.6.92; Research Paper 95/13, *The government of Scotland: recent proposals*, 18.12.95, and Research Paper 97/60, *Wales and devolution*, 19.5.97

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## **Summary**

The Referendum (Scotland and Wales) Bill provides for referendums in Scotland and Wales on the topic of devolution. The commitment to these pre-legislative referendums was made by the Labour party in 1996, and the referendums are expected to take place in September 1997. The Bill sets out the questions to be asked; there is an additional question in Scotland on tax-varying powers.

Precedents from the 1960s are examined in this Paper as a guide to the current debate; The Northern Ireland Border Poll 1973, the EC Referendum of 1975, and the referendums in Scotland and Wales in 1979 were all post-legislative referendums, but different provisions applied on the case of the count, the electorate and the financing of the campaigns.

# CONTENTS

	<b>Page</b>
<b>I Background</b>	<b>5</b>
Labour	5
Liberal Democrats	10
Conservative	14
Plaid Cymru	17
Scottish National Party	19
<b>II The Bill</b>	<b>21</b>
A. Immediate reaction to the Bill	24
B. The use of referendums	25
C. Timing	26
D. Thresholds for the Electorate	26
E. The Count	27
F. The possible outcome of the referendums	27
<b>III The Experience of the 1970s</b>	<b>29</b>
Form of Legislation	29
Question	31
Timing	38
Electorate	41
Count	49
Finance	54
<b>Appendix 1</b>	<b>61-63</b>
Results of referendums in the United Kingdom	
<b>Appendix 2</b>	<b>64-65</b>
Queen's Speech background note on the Bill	

# I Background<sup>1</sup>

## *Labour*

Labour has promised to legislate for a Scottish Parliament and a Welsh Assembly within its first year.<sup>2</sup> 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,<sup>3</sup> and the Labour Party in Wales published proposals in May 1995.<sup>4</sup> 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".<sup>5</sup> 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".<sup>6</sup>

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:<sup>7</sup>

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.

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<sup>1</sup> This is a revised and updated version of section B4 of Research Paper 97/10, *Referendum: recent proposals*, 24.1.97. See also P Jones, "Labour's referendum plan: sell-out or act of faith" *Scottish Affairs*, Winter 1997, 1

<sup>2</sup> 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"

<sup>3</sup> see *Scotland's Parliament, Scotland's right*, and generally, Research Paper 95/131, *The government of Scotland: recent proposals*, 18.12.95, section I

<sup>4</sup> *Shaping the vision*, Labour Wales PN 12.5.95. See also *Preparing for a new Wales*, May 1996

<sup>5</sup> "Dalyell calls for special vote for self-rule", 11.2.96

<sup>6</sup> Labour rejects home rule referendum", 25.4.96

<sup>7</sup> Scottish Labour press notice 12.6.96

## Research Paper 97/61

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 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:<sup>8</sup>

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.

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<sup>8</sup> Labour Wales press notice, 27.6.96

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.<sup>9</sup>

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".<sup>10</sup> 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'.<sup>11</sup> 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".<sup>12</sup>

In its British manifesto, Tony Blair pledged that "Over the five years of a Labour Government ... we will .. decentralise political power throughout the United Kingdom."<sup>13</sup> On devolution the manifesto stated (pp33-4):

**Devolution: strengthening the Union**

The United Kingdom is a partnership enriched by distinct national identities and traditions. Scotland has its own systems of education, law and local government. Wales has its language and cultural traditions. We will meet the demand for decentralisation of power to Scotland and Wales, once established in referendums.

Subsidiarity is as sound a principle in Britain as it is in Europe. Our proposal is for devolution not federation. A sovereign Westminster Parliament will devolve power to Scotland and Wales. The Union will be strengthened and the threat of separatism removed.

As soon as possible after the election, we will enact legislation to allow the people of Scotland and Wales to vote in separate referendums on our

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<sup>9</sup> HC Deb vol 280 c.505w, 4.7.96

<sup>10</sup> *Scotland on Sunday*, 1.9.96

<sup>11</sup> *Scotsman* 7.9.96

<sup>12</sup> see also his speech in Aberdeen on 9 September. In an interview on the ITV *Jonathan Dimbleby* 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)

<sup>13</sup> *New Labour: because Britain deserves better*, p5

## Research Paper 97/61

proposals, which will be set out in white papers. These referendums will take place not later than the autumn of 1997. A simple majority of those voting in each referendum will be the majority required. Popular endorsement will strengthen the legitimacy of our proposals and speed their passage through Parliament.

For Scotland we propose the creation of a parliament with lawmaking powers, firmly based on the agreement reached in the Scottish Constitutional Convention, including defined and limited financial powers to vary revenue and elected by an additional member system. In the Scottish referendum we will seek separate endorsement of the proposal to create a parliament, and of the proposal to give it defined and limited financial powers to vary revenue. The

Scottish parliament will extend democratic control over the responsibilities currently exercised administratively by the Scottish Office. The responsibilities of the UK Parliament will remain unchanged over UK policy, for example economic, defence and foreign policy.

The Welsh assembly will provide democratic control of the existing Welsh Office functions. It will have secondary legislative powers and will be specifically empowered to reform and democratise the quango state. It will be elected by an additional Member system.

Following majorities in the referendums, we will introduce in the first year of the Parliament legislation on the substantive devolution proposals outlined in our white papers.

These proposals were not one of the five election pledges highlighted in this manifesto (see p.40). However in its manifestos for Scotland and Wales devolution was the first of its five election pledges: "... legislate for a Scottish parliament in our first year by holding a referendum on devolution and campaigning for a double 'yes' vote" and "... legislate for a Welsh assembly in our first year by holding a referendum on devolution and campaigning for a 'yes' vote"<sup>14</sup> Its Scottish manifesto stated (pp33-4):

Labour will bring a fresh start for Scotland. We will, with the consent of the Scottish people, legislate for a devolved Scottish parliament. Scotland has its own education system, its own legal system, its own structure of local government and a distinct and proud national identity.

We will act to decentralise power throughout Britain. Subsidiarity is as sound a principle in Britain and Scotland as it is in Europe. Our proposal is for devolution not federation. By devolving power, Parliament will be deciding that some parts of the UK should be governed in a distinct manner. A sovereign Westminster Parliament will devolve power to Scotland and Wales. The Union will be strengthened and the threat of separatism removed.

As soon as possible after the election we will enact legislation to allow the people of Scotland to vote in a referendum on our proposals, which will be set out in a white paper. This referendum will take place not later than the autumn of 1997. A simple majority of those voting in Scotland will be

the requirement. Popular endorsement will strengthen the legitimacy of our proposals and speed their passage through both Houses of Parliament.

We will propose the creation of a Scottish parliament with law-making powers, firmly based on the agreement reached in the Scottish Constitutional Convention, including defined and limited financial powers to vary revenue, and elected by an additional member system. In the referendum we will seek separate endorsement of the proposal to create a Scottish parliament, and of the proposal to give it defined and limited financial powers to vary revenue. The Scottish parliament will extend democratic control over the widespread responsibilities currently exercised administratively by the Scottish Office.

The Welsh assembly will provide democratic control of the existing Welsh Office functions. It will have secondary legislative powers and will be

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<sup>14</sup> Scottish manifesto, p40; Welsh manifesto, p40

specifically empowered to reform and democratise the quango state. It will be elected by an additional member system.

Following majorities in the referendums we will introduce in the first year of the Westminster Parliament, legislation on the substantive devolution proposals outlined in our white papers.

Its Welsh manifesto stated (pp33-4):

The Conservatives seem oppose to the very idea of democracy. They support hereditary peers, unaccountable quangos and secretive government. They have debased democracy through their MPs who have taken cash for asking question in the House of Commons. They are opposed to the development of decentralised government. The party which once opposed universal suffrage and votes for women now says our constitution is so perfect that it cannot be improved.

Labour will bring a fresh start for Wales. We will, with the consent of the people of Wales, legislate for a Welsh assembly. Wales has its own distinct national culture, its own institutions and the Welsh Office administers a budget of £7 billion covering key areas of Welsh life.

We will act to decentralise power throughout Britain. Subsidiarity is as sound a principle in Britain and Wales as it is in Europe. Our proposal is for devolution, not federation. By devolving power, Parliament will be deciding that some parts of the UK should be governed in a distinct manner. A sovereign Westminster Parliament will devolve power to Wales and Scotland. The Union will be strengthened and the threat of separatism removed.

As soon as possible after the election we will enact legislation to allow the people of Wales to vote in a referendum on our proposals, which will be set out in a white paper. This referendum will take place not later than the autumn of 1997. A simple majority of those voting in Wales will be the requirement. Popular endorsement will strengthen the legitimacy of our proposals and speed their passage through both Houses of Parliament.

The Scottish parliament will be a modern legislature in tune with Scotland's needs and designed for the 21st century. Its establishment will allow the rolling back of the unelected state. It will also be empowered to give special additional protection to fundamental rights and freedoms in Scots law. In these and many more ways it will bring power closer to the people of Scotland.

The Welsh assembly will provide democratic control of the existing Welsh Office functions. It will have secondary legislative powers and will be specifically empowered to reform and democratise the quango state. It will be elected by an additional member system.

In Scotland we will propose the creation of a parliament with lawmaking powers, firmly based on the agreement reached in the Scottish Constitutional Convention, including defined and limited financial powers to vary revenue, and elected by an additional member system. In the Scottish referendum we will seek separate endorsement of the proposal to create a parliament, and of the proposal to give it defined and limited financial powers to vary revenue. The Scottish parliament will extend democratic control of the widespread responsibilities currently exercised administratively by the Scottish Office.

Following majorities in the referendums, we will introduce in the first year of the Westminster Parliament legislation on the Substantive devolution proposals outlined in our White Papers.

## *Liberal Democrats*

Its national manifesto stated that "our priorities are to ... give government back to the people, decentralising power to the nations, regions and communities of the United Kingdom"<sup>15</sup> and (p44):

### **Giving government back to the people**

Far too much power has been concentrated in Westminster and Whitehall. Democratic government should be as close to ordinary people as possible.

### **We will:**

- **Introduce Home Rule for Scotland**, with the creation of a Scottish Parliament, elected by proportional representation, and able to raise and reduce income tax.
- **Introduce Home Rule for Wales**, with the creation of a Welsh Senedd, elected by proportional representation, and able to raise and reduce income tax.

The party's Scottish leader, Jim Wallace, said in his foreword to the Scottish manifesto (p5):

The cornerstone of our reforms will be the establishment of a Scottish Parliament.

Democratically accountable power will return to Scotland, and Scotland's domestic agenda will reflect the priorities and ethos of the Scottish people. We want home rule. This is not an end in itself. It is a means of achieving better government, delivering better education, health, and housing, and unlocking the full potential of the Scottish people.

The manifesto said (p45):

### **A Home Rule Parliament for Scotland**

Scotland is in a unique position. Home Rule for Scotland will both renew democracy in Scotland and clear the log Jam to reform across the United Kingdom as a whole. It will provide a new focus for tackling the crucial problems of education, health, crime and jobs. The plan for a Scottish Parliament, as agreed in the Scottish Constitutional Convention, reflects a consensus amongst nearly every major civic and political organisation in Scotland (except the Conservatives and the SNP). Liberal Democrats were successful in securing a fair voting system which will prevent the domination of Scotland by the central belt or by one party alone.

This Scottish Parliament scheme represents 'the settled will of the Scottish people'.

**Scottish Liberal Democrats, as the only Scottish political party to have supported Scottish Home Rule consistently, are in the pivotal position of having been the main brokers of the scheme, and are the best guarantors of its implementation.**

### **We will:**

**Set up a Home Rule Parliament in Scotland** in accordance with the 'Convention Scheme' as a first step to a Federal United Kingdom, with a fair and proportional voting system, powers to raise or lower income tax and fair representation of women. We would also establish a Welsh Senedd, create the framework to make existing regional decision making in England democratically accountable and enable the establishment of elected regional assemblies.

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<sup>15</sup> *Make the difference*, p43

**Use the Scottish Parliament to promote Scottish interests** in the European Union, in modernising the Scottish economy, Increasing individual opportunity, rebuilding public services such as education and health, and restoring the social cohesion of Scottish society.

**Make the present functions of the Scottish Office democratically accountable to the elected Scottish Parliament.** We will abolish the office of Secretary of State for Scotland and reduce the number of Scottish MPs at Westminster. We believe that, following these reforms, Scottish Members of the UK Parliament should not participate or vote on matters where there is no Scottish interest.

Its Welsh manifesto said (p.1):

Liberal Democrats will create an elected Welsh parliament: the Senedd. We will give the Senedd legislative and executive responsibilities in Welsh affairs, and the power to raise or lower the rate of income tax. This will rebuild trust between the people of Wales and the political system, It will ensure more responsive, efficient, democratic, and cost effective government.

**We will:**

**Introduce legislation creating the Senedd in the first year of government.**

**Ensure that the Senedd is elected using a fair and proportional system of voting.** We propose the single transferable vote (STV), within multi-member constituencies.

**Transfer powers currently exercised by the Welsh Office to the Senedd.** In other words, the Senedd will decide the policies appropriate for the people of Wales in all other areas

- including planning and development, industry and training, education, health, the environment, law and order, housing, transport and the Welsh language and culture.

**Retain representation for Wales in the Westminster Parliament,** which will be responsible for foreign affairs, defence, social security and overall management of the UK economy.

**Give the Senedd powers to make such laws as are necessary to carry out its policies,** and to determine how funds provided by the European Union and by the Westminster Parliament are spent.

**Enable the Senedd to raise or lower the rate of income tax** by a maximum of 3p in the pound.

**Make Welsh "quangos" accountable to the democratic Senedd.**

### ***The report of the Labour/Liberal Democrat Joint Consultative Committee on Constitutional Reform***

This report of a committee, led by Robin Cook and Robert Maclennan, was published on 5 March 1997. Its forward stated (p.5):

14. In the sections which follow we set out our priorities for reform. This programme represents a transfer of power to make political institutions more responsive to the people. It is a programme which offers Britain a constitution for the future, not the past. It will share power with the many, not preserve it in the hands of the few.

## Research Paper 97/61

15. We have not attempted to spell out in detail the legislative programme for the next Parliament. The programme set out here will be implemented over a period of time. There are some agreed necessary priorities but it would be quite mistaken to suggest that measures of constitutional reform which are not to be implemented immediately, or in the first year of government, are somehow of lesser importance. A reform process must establish momentum and carry through a stage by stage programme of reform.
16. If this programme is enacted, Britain's democracy will have been transformed. We will enter the twenty first century a stronger, more democratic and more open society. It is a prize for which both our parties are determined to work.

On devolution it said (pp8-10):

### Scotland

33. Demand has grown in Scotland in recent years for democratic control over Scotland's domestic affairs and for the Scottish Office to act according to the wishes of the people of Scotland. Both the Labour and Liberal Democrat parties have long standing support for devolution to Scotland.
34. Both parties, with other organisations in Scotland, took part in the Scottish Constitutional Convention which was established in 1989. The Convention has since published its final report, Scotland's Parliament, Scotland's Right. That report sets out in detail proposals for the Scottish Parliament.
35. It recommends a Parliament with legislative competence over those matters which are currently the responsibility of the Scottish Office. These matters include health, housing, education local government and law and order. The Act would include provision for maintaining a strong and effective system of local government and would enable the Scottish Parliament to make accountable to the people the quangos and public bodies operating in Scotland.
36. The Parliament would be elected by the Additional Member System.
37. The principle of equalisation in finance would continue, with resources being pooled at the centre and allocated on an agreed basis. In addition there would be a power to vary revenue within a defined limit, providing the Scottish Parliament with a degree of autonomy over its budget.
38. In June last year the Labour Party announced its intention to hold a pre-legislative referendum and to seek specific endorsement for giving the parliament defined financial powers to vary revenue. Following the election legislation to hold the referendum would be introduced as soon as possible and a White Paper would be produced detailing the devolution proposals.
39. Whilst Liberal Democrats have disagreed with this approach, in particular with the proposal for a second referendum question, they would not seek to frustrate or delay the referendum legislation, which could prejudice the achievement of our common goal - the enactment of the Bill to create a Scottish Parliament in the first session of the next parliament.

40. Both parties have endorsed the Convention's report as the basis for legislation to establish a Scottish Parliament. Both parties would campaign strongly for a positive outcome in that referendum. Following that outcome, both parties would support legislation to establish the Scottish Parliament within the first session of Parliament after the general election.

Wales

41. Both parties support the establishment of a directly elected Assembly providing democratic control over the functions currently devolved to the Welsh Office, being empowered to reform the quango state and providing a democratic forum for the development of policy.
42. Devolution would result in effective powers being transferred from central government to Wales. Those powers should be exercised in a way which provides maximum openness and accountability. The legislation shall place on the Assembly a responsibility to maintain a strong and effective system of local government.
43. There is deep public concern in Wales at the growing influence of quangos and other unelected bodies. The Assembly shall ensure maximum effectiveness and accountability in the operation of those quangos which remain.
44. The Wales labour Party has decided that the Assembly should be elected by an Additional Member system. This development has been welcomed by the Liberal Democrats.
45. Following the election legislation to hold the referendum would be introduced as soon as possible and a White Paper produced detailing the devolution proposals. Both Parties agree that a short time should be allowed to lapse after the Scottish referendum in order to ensure the debate in Wales, with its distinctive form of devolution, is not overshadowed by the process in Scotland.
46. Both parties would campaign for a positive outcome to the referendum and would support legislation within the first session of Parliament after the general election to establish the Assembly.

Its conclusion was as follows (p.18):

86. The proposals set out in our report are presented as distinct measures yet they are closely related. Through them runs the common thread of empowering the people. To make this clear the new Government should make an early declaration setting out the principles behind its programme of constitutional reform and outlining the more open and modern democracy it seeks to create.

# Research Paper 97/61

## *Conservatives:*

The 1997 UK manifesto said:<sup>16</sup>

### **The Union**

The Union between Scotland, Wales, Northern Ireland and England underpins our nation's stability. The Conservative commitment to the United Kingdom does not mean ignoring the distinctive individuality of the different nations. On the contrary, we have gone further in recognising that diversity than any previous government. We are publishing separate manifestos for Wales and Scotland.

While preserving the role of parliament at the centre of the Union, we have given new powers to the Scottish Grand Committee and Welsh Grand Committee enabling Scottish and Welsh MPs to call Ministers to account and debate legislation which affects those countries - something that would be impossible with separate Assemblies. For the first time, Welsh members of parliament can ask their questions to Ministers in Welsh in Wales. Most recently we have similarly extended the basic powers of the Northern Ireland Grand Committee.

We believe this is the right way to go. By contrast, the development of new assemblies in Scotland and Wales would create strains which could well pull apart the Union. That would create a new layer of government which would be hungry for power. It would risk rivalry and conflict between these parliaments or assemblies and the parliament at Westminster. And it would raise serious questions about whether the representation of Scottish and Welsh MPs at Westminster - and their role in matters affecting English affairs - could remain unchanged.

Nor do we believe it would be in the interests of the Scottish or Welsh people. A Scottish tax-raising parliament, for example, could well affect the choice of where new investment locates in the United Kingdom.

In a world where people want security, nothing would be more dangerous than to unravel a constitution that binds our nation together and the institutions that bring us stability. We will continue to fight for the strength and diversity that benefits all of us as a proud union of nations.

In his introduction to the Conservatives' Scottish manifesto, John Major wrote (pp1,2):

When Scots go to the polls in this vital election on 1 May, it will be the 290th anniversary - to the exact day - of the implementation of the Act of Union which created Great Britain and from which so many benefits have derived for both Scotland and England. It would be a tragedy if the votes cast on that anniversary were to undermine and eventually destroy our Union and the stability and prosperity it guarantees.....

Nearer home, the menace of separatism - introduced through the Trojan Horse of devolution - would blight the lives of Scots for generations to come. The failure of the Labour and Liberal Democrat parties to answer the West Lothian Question after twenty years and the prospect of Scottish MPs being excluded from English and Welsh legislation are chilling portents of disintegration.

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<sup>16</sup> *You can only be sure with the Conservatives*, pp50-1

The section entitled 'Unionism & patriotism' said (pp48, relevant extracts):

**Our Record**

Being in favour of the Union does not mean that we have set our face against any change, Far from it. We have a living constitution evolved over many generations and embracing change which strengthens, not weakens, it. That is why we have reformed the systems of parliament and government to make them more accessible and accountable to the people of Scotland. We have:

- **Enhanced the role of the Scottish Grand Committee** - It now meets regularly throughout Scotland; has increased powers to handle Scottish legislation,- and can hold any government minister to account, as has been done with the Prime Minister, the Foreign Secretary and the Chancellor of the Exchequer.

**Our Objectives**

The Scottish Conservative and Unionist Party is the only party in Scotland that remains committed to the maintenance of the Union. We alone recognise the immense benefits gained by our nation as a full and equal partner in the United Kingdom. All other parties risk ending the prosperity and stability we derive from the Union of Scotland and England.

Fighting for Scotland means fighting for the Union.

The Union is our bedrock and our strength. It is the most successful and longest-standing partnership in Europe. It delivers:

**Prosperity** - The Union enables Scotland to enjoy far higher levels of spending on key public services than we would be able to afford as a small separate country, or if a devolved Scottish parliament existed;

**Opportunity** - The Union, both now and throughout its history, has provided Scotland's entrepreneurs, industrialists and businessmen with economic opportunities that would otherwise have been unimaginable;

**Influence** - Scotland in the Union enjoys an influence in European and world forums far greater than we could hope to exert as a separate small nation. The strength of the United Kingdom is far greater than the sum of its parts and its dissolution would fatally weaken all of its member nations;

**Stability** - During nearly 300 years of political union, Scotland has enjoyed freedom and security as an equal partner in one of the most successful and enduring associations in history - a country united against aggressors and progressively more prosperous.

**These advantages would all be fatally undermined by the creation of a separate Scottish parliament.**

**The Labour and Liberal plans to create a Scottish parliament must be rejected because:**

**Scottish influence in the British parliament and government would be weakened** - with the inevitable loss of the office of Secretary of State for Scotland and a large cut in the number of Scottish MPs at Westminster - already admitted by the Liberal Democrats.

## Research Paper 97/61

Scotland's influence in Europe would be devalued - at present Scotland has a strong voice in Europe, with Scottish Office ministers able to lead the entire United Kingdom delegation where appropriate. According to Robin Cook, following devolution, ministers in the Scottish parliament would only have "observer status".

**An extra tartan Tax imposed uniquely on Scotland** - would make Scotland the highest taxed part of the United Kingdom and a less attractive place for companies to locate; penalising those on lower wages; taxing Scottish savings - including pensioners' hard-earned life savings - at a 15% higher rate; undermining the competitiveness of Scotland's financial institutions; creating inflationary pressures as workers seek higher wages to pay the extra tax; and creating an unprecedented tax regime within the United Kingdom - the precursor of separatism.

**Financial tensions would be created between a Scottish parliament and Westminster** - a Scottish parliament, having raised public expectations about what it was capable of achieving, would demand extra money from Westminster. The consequent strife would endanger Scotland's funding, 97% of which would be determined at Westminster.

**The West Lothian Question would poison democrat government** - with Scottish MPs entitled to vote on English matters at Westminster, while English MPs were debarred from voting on Scottish issues. With Scottish affairs dealt with elsewhere, Scottish MPs would become second class citizens in parliament.

**Tensions between a Scottish parliament and local government would be created** - it is inevitable that a Scottish parliament would centralise many of the powers held by councils, reversing our policy of giving more powers to local authorities;

**Checks and balances on Scottish legislation would be removed** - the proposed tax-raising parliament would have no revising chamber.

**Scots would have to pay for another parliament and more politicians** - £80 million to begin with and £40 million every year to be raised through the Tartan Tax or be cut from vital services such as health or education.

### Our Pledges

To continue this evolutionary approach over the next five years, we pledge:

**Never to endanger our Union by introducing constitutional innovations which are ill-thought out and which would corrode the strong bonds underpinning our Union.**

**To develop further the role of the Scottish Grand Committee** and require it to meet on a specified number of occasions throughout Scotland.

**To improve the functioning of parliament** by including provisional plans for two years of legislation in The Queen's Speech. This will allow more draft bills to be brought forward for public scrutiny before they reach the floor of the House of Commons and give select committees more time to take evidence and report resulting in better legislation.

*Plaid Cymru:*

Dafyd Wigley, in a pamphlet in September 1996, considered the need for a referendum on the future of the Government of Wales:<sup>17</sup>

**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.

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 our 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....

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<sup>17</sup> *A real choice of Wales*, Sept. 1996, pp11-12

## Research Paper 97/61

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.**

Its manifesto said:<sup>18</sup>

#### **A Parliament for Wales**

There is one single key to a better Wales, a key to unlock the tremendous potential of the nation and talents of its people. It is a POWERHOUSE PARLIAMENT. It is the tool that will give Wales the things it truly needs. It can offer us real social justice, where our needs in the home and work place are at the heart of government. It offers Wales democracy, a true democracy that comes from the people of Wales.

At present we are ruled over by a Secretary of State answerable to no-one but the Cabinet in London, treated like an Imperial conquest given to a governor-general as a plaything to test out twisted ideology. Wales has become the land of the QUANGO - with the Governor General appointing party cronies to rule almost every aspect of our lives, in education, health care, employment and economic development.

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<sup>18</sup> *The best for Wales*, p2. See also Dafydd Wigley's foreword (p5) and further detail on pp9-10

The need for real democracy, power in the hands of the people and their communities, is clear. And it seems, finally, we are moving as a nation to this vital understanding. But unless we give our democracy - our parliament - real power, it is all worthless talk. While Scotland could control its own laws and finances, Wales could be left impotent to the harmful rule of London.

We need a parliament that can bring forward its own legislation, ensuring the future of our industries, our education, our health and welfare. We need a parliament that could say NO to the poll tax, and NO to nursery vouchers. And a parliament that could say yes to a new jobs programme to give opportunity to the young and yes to a decent pension for our elderly.

But that parliament must also have control of its own finances - or we are left as we are now, with the begging bowl at Downing Street. How can we plan for our future, and ensure the benefits and investments in our communities are met if we cannot take hold of the purse-strings? And a Powerhouse Parliament does more than just hand back democracy to Wales, it also puts us at the heart of Europe. It will mean for the first time Wales can take its place in discussing our European future - and how we can benefit by working together. And the benefits can be huge.

### ***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"<sup>19</sup>. 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.

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<sup>19</sup> summary, para. 1

## Research Paper 97/61

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.<sup>20</sup>

Its election manifesto concentrated on the party's aim of an independent Scotland and to that extent it did not directly address the notion of a devolution referendum in detail.<sup>21</sup> For example it described Labour's proposals in the following terms: "New Labour's scheme for a Scottish assembly is fatally flawed, and will deliver no real power" (p6).

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<sup>20</sup> Information from Party Press and Research Office, December 1996

<sup>21</sup> *Yes we can: win the best for Scotland*, esp pp1-7

**II The Bill** <sup>22</sup>

The Bill contains five clauses. It provides for a referendum in Scotland with the following two questions:

**SCHEDULES**

Section 1(2).

**SCHEDULE 1  
REFERENDUM IN SCOTLAND  
PART I**

**FORM OF FIRST BALLOT PAPER**

Parliament has decided to consult people in Scotland on the Government's proposals for a Scottish Parliament: 5

Put a cross (X) in the appropriate box

<b>I AGREE THAT THERE SHOULD BE A SCOTTISH PARLIAMENT</b>	
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OR 10

<b>I DO NOT AGREE THAT THERE SHOULD BE A SCOTTISH PARLIAMENT</b>	
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**PART II  
FORM OF SECOND BALLOT PAPER**

Parliament has decided to consult people in Scotland on the Government's proposals for a Scottish Parliament to have tax-varying powers: 15

Put a cross (X) in the appropriate box

<b>I AGREE THAT A SCOTTISH PARLIAMENT SHOULD HAVE TAX-VARYING POWERS</b>	
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OR 20

<b>I DO NOT AGREE THAT A SCOTTISH PARLIAMENT SHOULD HAVE TAX-VARYING POWERS</b>	
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<sup>22</sup> This section is provided by Oonagh Gay, Home Affairs Section

**SCHEDULE 2**

Section 2(2).

**REFERENDUM IN WALES: FORM OF BALLOT PAPER**

Parliament has decided to consult people in Wales on the Government's proposals for a Welsh Assembly:

5 Mae'r Senedd wedi penderfynu ymgynghori â phobl yng Nghymru ar gynigion y Llywodraeth ar gyfer Cynulliad i Gymru:

Put a cross (X) in the appropriate box

Rhowch groes (X) yn y blwch priodol

10	<b>I AGREE THAT THERE SHOULD BE A WELSH ASSEMBLY</b> <b>YR WYF YN CYTUNO Y DYLLID CAEL CYNULLIAD I GYMRU</b>	
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OR

NEU

15	<b>I DO NOT AGREE THAT THERE SHOULD BE A WELSH ASSEMBLY</b> <b>NID WYF YN CYTUNO Y DYLLID CAEL CYNULLIAD I GYMRU</b>	
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The questions for Wales are:

The electorate are those eligible to vote in local government elections (Clauses one and two). There are provisions for a cut off date to deal with late additions to the register (Clause 3). The local government electorate includes peers and EU citizens resident in the UK. Scots living in other parts of the UK will not have a vote, unless away from Scotland temporarily, and therefore eligible for an absent vote. Secondary legislation will provide a cut off point for additions to the register, as at present under S.11(3) of the Representation of the People Act 1983 additions can still be made up to the close of nomination of candidates; clearly this provision will not be relevant to the referendums.

The Bill provides for 2 chief Counting Officers - one for Scotland and one for Wales as in 1979, whose vote is to supervise the count and to certify the number of total votes cast in both Scotland and Wales. Clause 4 excludes the possibility of legal proceedings to question the number of ballot papers or votes cast after certification. Finally there are provisions for Orders in Council to settle the details of the referendums, and Clause 5 authorises expenditure in connection with the referendums and preparatory work for the establishment of the Scottish Parliament and the Welsh Assembly. The Explanatory and Financial Memorandum estimates the total cost of the referendums at £8m - £5m for Scotland and £3m for Wales, based on the costs of the 1979 referendums and 1997 General Election costs. The maximum cost of preliminary work for the Scottish Parliament is estimated at between £18 and £25 million and for Wales at £5 - £15 million. The cost of the 1975 referendum on European Community membership was about £5 million or some £22 million at present-day prices. The 1979 referendums on devolution cost about £525,000 in Wales and £880,000 in Scotland, or some £1.6 million and £2.8 million respectively at 1997 prices.

The referendums are expected to take place in September; the Scottish one is expected one or two weeks before Wales, presumably to encourage the Welsh electorate to participate if the Scottish vote for a Parliament with tax raising powers is positive. The Bill does not give the dates of the referendums.

It is important to note that this Bill makes provision for pre-legislative referendums, rather than a referendum to assent to the detailed provisions of an Act. All other referendums in the UK have been post legislative. In the debate on the constitution on 15 May, William Hague Shadow Secretary of State for Wales criticised the use of pre-legislative referendums:<sup>23</sup>

Last year, the right hon. Member for Caerphilly warned us about the dangers of a pre-legislative referendum only three days before he adopted it as his policy. Previous referendums have been held in ways which allowed the electorate to endorse or reject detailed proposals which have already passed by Parliament. The

voters could consider all the detail; they could balance the pros and cons; and they could know exactly what was on offer. Used in that manner, referendums have certainly gained a place in our constitutional arrangements. They are not, however, a substitute for the parliamentary process. Use of referendums does not mean, and must never

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<sup>23</sup> HC Deb vol 294 c.290 Tam Dayell also criticised the use of a pre-legislative referendum (c.294)

mean, that detailed parliamentary debate can be short-circuited. If misused, a referendum can become an anti-parliamentary device and a tool of an over-mighty Government. I believe that pre-legislation referendums are such a misuse.

There is a basic problem with referendums that are held before the passage of legislation. If voters vote yes, it is either possible to amend substantially the draft Bill on which they have voted or it is not. If it is possible to amend the Bill, how will voters know what they are voting on?" What if a legislative Parliament were provided in a draft Bill for Scotland when people voted for it, but it was not a legislative Parliament when the Bill completed its passage? Would there have to be another referendum? Would there be a referendum to approve the amendments? When considering amendments to a Bill, how will Parliament know whether the voters in a referendum that has already been held would be agreeable to the amendment?

If one takes the other option and says that, once a draft Bill is approved in a referendum, Parliament must not seriously amend it, what will Parliament become? If detailed scrutiny of legislation does not take place at that stage, it will never take place. Parliamentary scrutiny of legislation, as we all understand it, will have broken down. That is the irrefutable logic that flows from the concept of a pre-legislation referendum: either voters will have to vote blindfolded or the essential functions of Parliament will be suppressed. The Secretary of State for Wales should have stuck to his instincts and stood up for those instincts, rather than allowing himself to be overruled by a bunch of spin doctors.

### A. Immediate reaction to the Bill

#### Scotland

Donald Dewar Secretary of State for Scotland, announced that the Bill would go through the Commons as quickly as possible while allowing for debate.<sup>24</sup> There appears to be more active support for devolution in Scotland than in Wales, but the veteran opponent Tam Dalyell was reported as saying that he would vote against a Scottish Parliament but for tax-raising powers<sup>25</sup> in the forthcoming election. A new campaign organisation, Scotland First, has been launched to campaign for a Yes, Yes vote in the referendum, which has grown out of the Scottish Constitutional Convention Campaign.

The SNP are expected to press for a question on independence to be included in the Bill and have so far refused to indicate how they would advise their supporters to vote on the questions in the Bill. They are awaiting the publication of the forthcoming White Paper on devolution. The Liberal Democrats would like the second question to be deleted, as they favour a tax-raising Parliament.<sup>26</sup>

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<sup>24</sup> *Times* 16/5/97 "Devolution show is on the road says Dewar

<sup>25</sup> *Times* 16/5/97 "Devolution show is on the Road - Dewar

<sup>26</sup> *Guardian* 15/5/97 "Peers warned on devolution"

The Conservative party in Scotland has no Parliamentary seats, and in the interim list of the Opposition Front Bench there is no Secretary of State for Scotland. There are indications that some members of the Scottish party favour a re-think of existing policy of opposition to devolution.<sup>27</sup> The party chairman Annabel Goldie has suggested that the party should consider giving individual members the freedom to vote and campaign as they wished.<sup>28</sup>

Ron Davies, Secretary of State for Wales said on 15 May "It is a matter of Government policy and I expect all Labour Members of Parliament in Wales to recognise our determination to create a Welsh assembly and therefore improve our democracy in Wales. I do not believe that it is appropriate for any Labour Member of Parliament to take any course of action which would include for example, associating with others in opposition to our campaign or indeed publicly campaigning on their own behalf against our proposals"<sup>29</sup>

However, no action is expected against MPs who abstain on Second reading.<sup>30</sup> Opposition to Welsh devolution is much more muted than the 1970s - a small number of Labour MPs have been known to be critical of the proposals<sup>31</sup> They considered that traditional Labour socialists from the Welsh valleys did not like the proposed voting system for the new Assembly.<sup>32</sup> The Liberal Democrats and Plaid Cymru favour more extensive devolution of power, and it is expected that Plaid Cymru will try to bring forward amendments to include a question on full independence. The Conservatives have no seats in Wales.

## B. The use of referendums

There has been some comment about the new Government's commitment to the use of referendums. *The Independent*<sup>33</sup> noted that Mr Blair had "solved a series of thorny political problems by promising referendums". Geoffrey Marshall<sup>34</sup> noted that the referendum device has not been well regarded in British political discourse. The *Report of the Commission on the Conduct of Referendums* published in November 1996<sup>35</sup> advocated the virtues of a general enabling statute to regulate the conduct of referendums and a non-political commission to establish common guidelines on such issues as formation of campaign groups and control of their expenditure. Geoffrey Marshall has noted however that it is not clear that politicians would be prepared to leave the wording of a question to a non-political commission (*op cit* p.310).

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<sup>27</sup> *Herald* 9/5/97 "Tory home rule U turn"

<sup>28</sup> *Scotsman* 7/5/97 "Goldie urges Tory re-think on devolution"

<sup>29</sup> quoted in *Guardian* 16/5/97 "Welsh Labour MPs told to toe line"

<sup>30</sup> *Times* 16/5/97 "Devolution is show is on the road"

<sup>31</sup> *The Financial Times* 16/5/97 "Welsh remain uncertain over self-rule"

<sup>32</sup> See Library Research Paper no. 97/60 Devolution and Wales

<sup>33</sup> *The Independent* 16/5/97 "Referendums" worth is beyond question"

<sup>34</sup> "The Referendum: What When and How?" *Parliamentary Affairs* April 1997

<sup>35</sup> See Research paper no. 97/10 *Referendum: Recent Proposals*

### C. Timing

In the debate on the constitution on 16 May 1997 Donald Dewar, Secretary of State for Scotland said that a White Paper on devolution would be published 'in good time' before the House rose for the summer recess; he commented that the White Paper "will set out the scheme in considerable detail and will be the basis on which people will consider how to vote in the referendum". He went on "I am chary about mentioning dates at this stage, because there are a number of unknowns, particularly about the parliamentary passage" of the Bill.<sup>36</sup>

### D. Thresholds for the Electorate

The Shadow Secretary of State for Wales, William Hague, indicated in the debate on 16 May that there was a 'powerful case' for a threshold in a referendum (c.286) noting that a 'referendum with a low turnout could be a highly unsatisfactory method of changing the British constitution'. (c.291). He promised to table amendments to the Bill on thresholds (c.291). Later, Michael Ancram also expressed dissatisfaction that the Bill did not provide for a threshold, but Alex Salmond queried whether Conservative policy in thresholds would extend to a referendum on a single currency (c.343):

Mr. Salmond: I find it difficult to believe that the right hon. Member for Devises (Mr. Ancram) is following the route of the leadership candidates, the right hon. Members for Richmond, Yorks (Mr. Hague) and for Wokingham (Mr. Redwood). He surely cannot be suggesting a threshold—a blocking mechanism or a 50 per cent. rule that his party would not apply to other constitutional legislation, such as would be necessary for a single currency. Will he say now whether the Conservative party would insist on a threshold for legislation on a single currency? If not, it is not the Chamber that will be short-changed, but the people of Scotland and Wales, by the Conservative party.

Mr. Ancram: My question, and I am entitled to put it also to the leader of the Scottish National party, is whether a referendum, to have any credibility, should have a minimum requirement for a percentage of the electorate to vote. If not, we could see extraordinary anomalies being created in the constitution that would be justified by the Government through the referendum, even though a majority of the people in the relevant parts of the United Kingdom might not have voted, let alone voted for the proposition. In a democracy, we must take that issue seriously.

In a later press statement Donald Dewar responded "Why should Scotland be singled out for fancy franchises and artificial obstacles?"<sup>37</sup>

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<sup>36</sup> HC Deb vol 294 c.278

<sup>37</sup> *Guardian* 17/5/97 "Tories may set devolution snag"

On the basis of 1997 electorates<sup>38</sup>, and assuming the turnout level in the 1997 general election, some 1.59 million electors (56% of those voting) would have to vote **Yes** to meet a 40 per cent threshold in Scotland. In Wales, the number would be about 890,000 (54% of those voting). For a one-third threshold, the votes required would be about 1.33 million (47%) in Scotland and 740,000 (45%) in Wales. At the actual turnout levels in the 1979 referendums, the shares of the total vote needed to vote **Yes** would be 63% in Scotland and 68% in Wales for a 40% threshold and 52% in Scotland and 57% in Wales for a one-third threshold. (See Appendix for the details of the 1970s referendums and the electorate).

## **E. The Count**

The Bill does not set out in explicit terms the counting arrangements; whether the results will be announced for each local authority area of Scotland and Wales, or whether the totals will be available on a total Scottish or Welsh basis only. In 1979 the results were available for each region in Scotland and county in Wales. Michael Ancram has asked whether results would be available only on an all-Scotland and all Wales basis and has called for regional results.<sup>39</sup> It appears, however, that the count will be conducted according to local Government areas and so published for each area.<sup>40</sup>

## **F. The possible outcome of the referendums<sup>41</sup>**

Public support for a Scottish Parliament appears to be much more solid in Scotland than in Wales. However much depends on the terms of the question asked.

**In Wales.** NOP, for HTV's Welsh Agenda, asked *Are you personally in favour of an elected assembly for Wales?* (fieldwork 5-12 December 1996). 51% said yes, 30% no and 18% don't know. When those uncertain and the don't knows were asked whether they would support an assembly if there were a Scottish Parliament, the proportion in favour rose to 61% with 25% saying no and 14% don't know<sup>42</sup>.

Beaufort Research, for BBC Wales Today asked *Are you personally for or against the establishment of an elected assembly for Wales?* (fieldwork end August 1996). 44% said for, 24% said against, 32% said don't know. It then asked how people would vote on the assumption that, if the Labour Party became the government, it would hold a referendum on

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<sup>38</sup> This section is based on 1997 parliamentary electorates, including those reaching the age of 18 during the currency of the register [Source: ONS Monitor EL 97/1].

<sup>39</sup> HC Deb vol 294 c.343 16/5/97

<sup>40</sup> Source: Scottish Office. Clauses 1 and 2 provides for the appointment of counting officers for each local government area in Scotland and Wales

<sup>41</sup> This section is provided by Rob Clements, Social and General Statistics

<sup>42</sup> Western Mail 23 December 1996 and NOP.

## Research Paper 97/61

an assembly for Wales responsible for the Welsh Office and quangos, with limited law-making and no tax-raising powers. 47% of respondents said that they would vote for such an assembly, 24% against, there were 21% don't knows and 7% would not vote. The don't knows were then asked which way they would be inclined to vote. The result after this was 55% for, 28% against, 10% don't know and 7% would not vote<sup>43</sup>.

**In Scotland.** During the general election campaign, ICM asked regular questions in Scotland about devolution. The latest survey, prepared on 28 April, included the following results<sup>44</sup>.

**For the running of Scotland as whole, which of the following would you most like to see?**

An independent Scotland which is separate from England and Wales but part of the European Union. 27%.

Scotland remaining part of the UK but with its own devolved assembly with some taxation and spending powers. 39%

No change from the present system. 31%

Don't know. 3%

**In a referendum on Scottish devolution, how would you vote on the following question:  
Do you want a Scottish Parliament within the UK?**

Yes 64%

No 28%

Don't know 8%

**If there were to be a devolved Parliament in Scotland, do you think it should be given the power to vary income tax by up to 3p in the pound in Scotland or not?**

Yes 52%

No 34%

Don't know 14%

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<sup>43</sup> Beaufort Research.

<sup>44</sup> Source: ICM Research.

The Conservatives have already indicated that they wish to raise the issue of a threshold of the electorate. In 1979 40% of the electorate were required to vote yes for the referendums in Scotland and Wales in order for the Scottish Parliament and Welsh Assembly to come into effect. In the debate on 15 May William Hague said "it is striking that the Government are not so far proposing any threshold of positive votes or overall turnout. A referendum with a low turnout would be a highly unsatisfactory method of changing the British constitution."

### III The Experience of the 1970s

The rest of this paper discusses the 1970s precedents for referendums in the UK and looks at specific issues such as the question asked, the timing of the referendum, thresholds and majorities for the vote, the form of the legislation used, assistance from public funds, the electorate, and the count. The referendums drawn upon are as follows:

Northern Ireland Border Poll 8 March 1973

Referendum on UK membership of the EEC 5 June 1973

Referendum in devolution for Scotland 1 March 1979

Referendum in devolution for Wales 1 March 1979.

#### Form of Legislation

The current Bill provides an order-making power to permit the Secretaries of State to provide further detail on the organisation and conduct of the referendums. All the four referendums in the 1970s were established by primary legislation (the first two by dedicated Acts), followed by secondary legislation.

The **1973 border poll in Northern Ireland** was given statutory effect by the *Northern Ireland (Border Poll) Act 1972* (c.77), which received royal assent on 7 December 1972, and by the *Northern Ireland (Border Poll) Order 1973* [SI 1973/97], made on 24 January 1973. The Act was brief, containing 2 substantive sections and a schedule. S1 gave power to the Secretary of State (by Order subject to the affirmative procedure) to set the date and provide for the conduct of the poll (including modification of electoral law), and established the electorate and the text of the question (set out in the Schedule). S2 contained relevant financial provisions.

## Research Paper 97/61

The Order, which was approved by both Houses on 23 January 1973<sup>45</sup>, contained 10 Articles and 3 Schedules, applying electoral law, with modifications, to the poll; setting the date of the poll; covering matters such as returning officers, postal and proxy voting, observers, the counting of votes, and publication of the result.

The **1975 EC referendum** was set up by the *Referendum Act 1975* (c.33), which received royal assent on 8 May 1975, and by the *Referendum Order 1975* [SI 1975/801] made on 14 May 1975<sup>46</sup>

The white paper set out the proposed legislative timetable.<sup>47</sup>

### 5. LEGISLATION

41. In his statement on 23 January the Prime Minister announced that the Government proposed to introduce legislation at Easter-time to provide for the holding of the referendum.

42. The legislation will need to make specific provision for various matters which will apply uniquely to the referendum and to adapt the existing electoral machinery as necessary. The Government propose that the Bill itself should authorise the holding of the referendum and include machinery for the determination of the date. It will specify the wording of the question. It will include provision for the appointment of some person to have overall responsibility for counting the votes and announcing the result. It will make appropriate financial provision in connection with the holding of the referendum. It will also include the power to adapt the existing machinery by Order. Because of its importance, the committee stage of the Bill will be taken on the Floor of the House of Commons.

43. The Order will be made as soon as possible after the Bill has received Royal Assent. A draft will be published at the time the Bill is introduced or very soon afterwards. This will enable the Bill to be debated against the background of specific proposals relating to the machinery. The contents of the Order will be technical and seem likely to be uncontroversial. The Government will however take account of any views on matters of detail expressed during the debates on the Bill.

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<sup>45</sup> HC Deb vol 849 cc 388 - and HL Deb vol 338 cc 86- respectively

<sup>46</sup> and by the *Referendum (Welsh Forms) Order 1975* [SI 1975/841], made on 15 May 1975, under powers in s2(1) of the *Welsh Language Act 1967* as extended by s1(7) of the *1975 Act*.

<sup>47</sup> Cmnd 5925, Feb 1975

The legislation was steered through its Commons stages by the Lord President and Leader of the House, Edward Short, and the Referendum Unit of the Cabinet Office. While the Home Office would normally have dealt with 'electoral' matters, it was apparently thought that the Home Secretary, Roy Jenkins, and the relevant junior minister, Lord Harris of Greenwich, were too conspicuously committed pro-Marketeters, and, to some extent, there was a Foreign Office input in the substantive issue.<sup>48</sup>

*The 1979 Scotland and Wales Referendums* were provided for in the *Scotland Act 1978* and the *Wales Act 1978* which both set out the date of the referendum, the electorate and the question (Scotland Act Schedule 17 Wales Act Schedule 12). The Acts specified that it appeared 'to the Secretary of State that less than 40 per cent of the persons entitled to vote in the referendum have voted "Yes"... or that a majority of the answers given in the referendum have been "No" he shall lay before Parliament the draft of an Order in Council for the repeal of this Act'.<sup>49</sup> There were also provisions to allow a delay of three months if Parliament were to be dissolved before the referendum had been held, so that the referendums would not take place immediately after the election. In the event, the 1979 General Election came after the referendums on March 1 1979. Following the failure to meet the necessary threshold of the electorate the Wales Act and Scotland Act were repealed through Orders in Council.<sup>50</sup> The details of the conduct of the referendums were set out in the *Scotland Act 1978 (Referendum) Order 1978* SI no. 1912 and the *Wales Act 1978 (Referendum) Order 1978* SI no. 1915. These were approved without a division on 22 November 1978.

## Question

The 'propositions' to be put forward in the referendums are set out in the Bill in sch 1,2. See p.21 above. This 'proposition' format is more similar to that of the 1973 Northern Ireland border poll, than to the YES-NO format of the 1975 and 1979 referendums (see below).

A crucial practical issue is that of the question or questions in a referendum. Ideally a referendum should be constructed in such a way as to enable voters to exercise a choice that as closely as is possible reflects their personal views of the issue under consideration. The propositions or questions should seek to achieve a balance between brevity, clarity and simplicity on the one hand, and full and accurate descriptions of the issue(s), in order that voters can make an informed choice. Questions can be of a YES-NO format as in the 1975 EEC referendum or the 1979 devolution referendums, or a choice between two or more options as in the 1973 Northern Ireland border poll. From this follows the idea that the final outcome should reflect, as precisely as possible, the aggregated exercises of individual voter

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<sup>48</sup> Butler & Kitzinger, p.57

<sup>49</sup> Scotland Act s.85 Wales Act s.80

<sup>50</sup> *Scotland Act 1978 (Repeal) Order 1979* SI no. 928 *Wales Act 1978 (Repeal) Order 1979* SI no. 933

## Research Paper 97/61

choice. Thus a referendum should (a) allow individual choice to be reflected accurately - 'micro-fairness', and (b) produce a final result which translates, with minimal distortion, the aggregation of individual choices - 'macro-fairness'.

An aspect of question-setting is the notion that a referendum question, or set of questions, should perhaps not be so constructed as to force those with diametrically opposed views to vote the same way. For example, in the 1979 devolution referendums, supporters of independence and supporters of some version of devolution different from that on offer under the Government's legislation had to choose whether to vote YES (ie with the supporters of the Government's plans) or NO (ie with the opponents of any form of devolution). A referendum on some aspect of EU policy could pose such problems. For example, if the UK had conducted a referendum on the Maastricht Treaty in 1993, a simple 'Do you support ratification YES-NO' format could have forced anti-marketeters, Eurofederalists, supporters of Maastricht+social chapter or Maastricht+EMU all into the same camp. The Irish referendum on Maastricht demonstrated that subsidiary issues, such as abortion, can intrude on the referendum exercise, as can, obviously, support for the various political parties, whatever side they are on.

The construction of the question also should perhaps also ensure that in a referendum with two or more options, every significant option which voters are likely to choose is available to them. In the Northern Ireland border poll in 1973 voters were given two options, remaining part of the UK or uniting with the Irish Republic. These options did not directly cater for, say, those who may have wished for a fully independent Northern Ireland, or those who may have supported a redrawing of the border. The option of remaining in the UK did not distinguish expressly between full integration within the UK, that is on the same basis as England, Wales or Scotland, or some form of devolved basis.

Much depends on the nature of the issue which is the subject of a referendum. A decision on what might be termed a 'static' question -- to remain within the EU, or to unite the two parts of Ireland -- is more readily suitable for a simple referendum than one on what may be termed a 'dynamic' or 'process' question, such as the stages of the process of European Union development. A referendum may be an appropriate device for both types of issue. There is no reason in theory why a referendum should not be used at each major step of a dynamic constitutional process, such as the progression to European unity. However, in such a dynamic process the choice of particular developments to be the subject of referendums can be problematic. In the extreme case, if referendums are not granted for any particular stage of such a process on the basis that each stage is not sufficiently constitutionally significant in itself, then it is possible that the overall constitutional change, which may be of fundamental significance, may never have been subject to a referendum. Allowing a series of referendums on a process matter would be a novel approach in the UK, but could have the virtue of enabling voters to decide how far, if at all, they wish a particular process to go.

Another way of solving the problem of subjecting more complex questions to a referendum is to provide more detailed choices in the referendum. This has been suggested for any referendum on the voting system for the Westminster Parliament, for example.<sup>51</sup> Proponents of a 'multi-option' referendum on Scotland's constitutional future, a well-canvassed option following the 1992 general election, claimed that this method would allow supporters of devolution, independence or the status quo to express their view openly and directly. Such multi-choice referendums have to be constructed carefully, so that voters can understand and operate them. This may be by way of a two-part question format, ie 'are you in favour of change, and if so which change?' Or it can be by a preference vote system, grading a range of set options.

The proposed two-question referendum for Scotland could potentially deal with some of these issues as it could allow voters to match their vote more clearly to their particular preference, at least in the context of the proposed tax-varying power. On the other hand it could provide some scope for 'tactical voting', where, for example, some anti-devolutionists and some of those who feel the Government's proposals do not go far enough may split their vote, ie YES-NO or NO-YES.

The recent report of the Commission on the Conduct of Referendums, set up by the Constitution Unit and the Electoral Reform Society contained the following analysis.<sup>52</sup>

### **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 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.

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<sup>51</sup> See generally, section B6 of Research Paper 97/10, *Referendum: recent proposals*, 24.1.97.

<sup>52</sup> Report of the Commission on the Conduct of Referendums - summary November 1996

### 1973 Northern Ireland Border Poll

The ballot paper was in the following form:<sup>53</sup>

See the unsuccessful attempt at Lords committee stage to expand the question to be asked, to involve, for example the agreement of the people of the Republic in any form of political union, and whether a united state would be part of the UK or the Commonwealth.<sup>54</sup>

The nature of the **questions** in the poll; the determination of the qualifying electorate and the methods of voting and counting all demonstrated the artificiality of the poll as a genuine exercise in seeking to ascertain the full range of wishes of all relevant parties on the constitutional future of Northern Ireland. The options given did not provide for the many other forms of constitutional settlement that may have been desired (however unlikely they may have been to be adopted), from full integration of Northern Ireland into the UK, through schemes of 'joint sovereignty' or 'joint authority', or a desire for 'eventual unification'<sup>55</sup>, to forms of British Isles confederation, or even independence for Northern Ireland itself. Both the forms of the questions and the method of counting precluded any form of further partition, by not, for example, identifying areas of Northern Ireland where there could have been a majority for unification with the Irish Republic. There was also no opportunity for voters to express second or further preferences in some form of STV system, which may have identified a cross-community majority (or significant minority) for some other form of constitutional settlement, which could have been the springboard for progress. Ministers admitted that framing the poll questions had been a great problem, but the Secretary of State, William Whitelaw, believed that the simpler the questions were, the better, and that a question based on the idea of 'eventual' unification would be too vague and uncertain for voters. If the second option, for unification were carried, there would still need to be "negotiations to see how an orderly transfer could be made"<sup>56</sup>

### 1975 Referendum

The question was set out in the schedule to the *1975 Act* (see also s1(2)):

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<sup>53</sup> Schedule to the Act

<sup>54</sup> HL Deb vol 337 cc425-31, 7.12.72

<sup>55</sup> That is, presuming various constitutional and other changes in the Republic to accommodate its new citizens. The Opposition proposed such an option, at the Commons committee stage, as a third poll question, believing, for example, that it could prevent a widespread anti-unionist boycott; see the speech by Stan Orme, HC Deb vol 846 cc1663-6

<sup>56</sup> *op cit*, c.1694

The Government have announced the results of the renegotiation of the United Kingdom's terms of membership of the European Community.

DO YOU THINK THAT THE UNITED KINGDOM SHOULD STAY IN THE EUROPEAN COMMUNITY (COMMON MARKET)?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

In the white paper the question of the question was considered:

9. It has been suggested that more than one question should be posed on the ballot paper, and that the questions should include one asking if the voters would prefer to leave the issue to Parliament. But the Prime Minister has made it clear on several occasions that the referendum will ask for a simple "Yes" or "No" to a single straight-forward question about staying in or leaving the Community in the light of the renegotiated terms of membership, and the Government believe that the advantage lies with simplicity. The question will be embodied in the Referendum Bill itself and will therefore be approved by Parliament.

10. Some argue that the precise wording of the question can have a significant effect upon the result. Although there is no reliable evidence to support this view, the Government will seek to ensure that the words on the ballot paper are as free from bias as possible. They are not yet committed to any form of words but following consultations with the political parties represented in Parliament and the leading campaigning organisations they propose for discussion that the ballot paper should read as follows:

The Government have announced the results of the renegotiation of the United Kingdom's terms of membership of the European Community.

DO YOU THINK THAT THE UNITED KINGDOM SHOULD STAY IN THE EUROPEAN COMMUNITY?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

Provision will be made for bilingual ballot papers to be used at polling stations in Wales.

NOP had tested a variety of formulations in early February, which produced a range of results reflecting the wording of the questions put. Butler & Kitzinger reported that "most pollsters believed that although phrasing could make a great difference in a hypothetical situation, at the end of a fully publicised campaign where the issue was clear the actual question wording

would matter little."<sup>57</sup> Nevertheless the matter was closely debated in government, the Foreign Office preferring a long explanatory preamble, and the anti-Marketeers wanting the term 'Common Market' rather than 'European Community'. The final wording reflected that in the white paper, with the addition of '(The Common Market)' after 'European Community'.

### 1979 Scotland and Wales referendums

In the **1979 devolution referendums** the question to be asked was obviously crucial to the outcome, if only because what was being considered was a definite political/constitutional change rather than, as in 1975, the acceptance or rejection of an implemented (if recent) such change. Just as the natural tendency towards the status quo may have been influential in the outcome of the 1975 poll, so the necessity for voters to contemplate an unknown future meant that the question assumed great significance. The most crucial aspect here was probably the distinction that could be made by voters and campaigners alike between support for the principle of devolution, and support for the *1978 Acts*' schemes as presented in the referendum. In this respect, the issue has resonances of the 1973 Northern Ireland poll where the questions could subsume or avoid other formulations of voters' wishes.

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<sup>57</sup> *The 1975 Referendum* (2nd ed 1996)

The question in the Scottish referendum, including its preamble, was set out in the appendix to sch 17, as applied by para 3:

**FORM OF BALLOT PAPER**

Parliament has decided to consult the electorate in Scotland on the question of whether the Scotland Act 1978 should be put into effect.

**DO YOU WANT THE PROVISIONS OF THE SCOTLAND ACT 1978 TO BE PUT INTO EFFECT?**

Put a cross (X) in the appropriate box

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

The question in the Welsh referendum, including its preamble, was set out in the appendix to sch 12, as applied by para 3:

**APPENDIX**

**FORM OF BALLOT PAPER**

**Parliament has decided to consult the electorate in Wales on the question whether the Wales Act 1978 should be put into effect.**

**Mae'r Senedd wedi penderfynu ymgynghori ag etholwyr Cymru ynglŷn â ddylid gweithredu Deddf Cymru 1978.**

**DO YOU WANT THE PROVISIONS OF THE WALES ACT 1978 TO BE PUT INTO EFFECT?**

**A YDYCH AM I DDARPARIAETHAU DEDDF CYMRU 1978 GAEL EU GWEITHREDU?**

**Put a cross (X) in the appropriate box  
Rhowch groes (X) yn y blwch cymwys**

<b>YES YDWYF</b>	<input type="checkbox"/>
<b>NO NAC YDWYF</b>	<input type="checkbox"/>

### Timing

The referendums proposed in this Bill are 'pre-legislative' in nature in that they are planned to take place *before* the substantive legislation is enacted or even brought before Parliament or the public. This is in clear contrast to the devolution referendums of 1979 where the electorates in Scotland and Wales were asked if they wished to see the legislation already enacted to be put into effect. The 1975 EC referendum was, in effect, asking whether the electorate wished to preserve a *staus quo*, and the 1973 Northern Ireland border poll was perhaps so unique as to provide little guidance for any future referendum exercise.

The 1996 Referendum Commission report noted (guideline 5):<sup>58</sup>

#### 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.

As the Commission noted the timing of a referendum will have an effect on the information available to decision-makers, which for these purposes is not only the Scottish and Welsh electorates, but also members of both Houses of Parliament who will be scrutinising the primary and secondary legislation setting up the referendums and establishing the Scottish Parliament and Welsh Assembly. From the point of view of Parliamentarians, therefore, the directly relevant points in the process where information provision is a factor include those (a) when the current referendum Bill is considered; (b) (assuming the Bill is passed) when any related referendum Orders are considered; (c) (assuming 'yes' votes in the referendums) when the substantive legislation -- the *Scotland Bill* and the *Wales Bill* as described in the Queen's Speech briefing reproduced in the Appendix to this Paper-- is considered, and (d) (assuming the Bills are enacted) when any related Orders made under the devolution Acts are considered. In addition there may well be other opportunities for Parliamentary debate on the Government's proposals, such as, say, debates on any devolution white or green papers.

From the point of view of the public, there will be a general interest across the UK in the devolution project, which may be transmitted to their elected representatives at appropriate stages in the process. Of more direct relevance will be the interest of the potential electorates in Scotland and Wales in being given the opportunity to make an informed judgment in the referendums themselves. This will include information from the Government on its detailed devolution proposals, as well as any information campaigns that the parties and/or other organisations may publish during this period.

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<sup>58</sup> Report of the Commission on the Conduct of Referendums - summary November 1996

As a 'pre-legislative' exercise, the devolution referendums have potential implications for the Parliamentary legislative process, and this, to some extent, is wrapped up with the issue of 'mandatory' and 'consultative' referendums within the 'Westminster model' of a sovereign, representative Parliament. In other words, for example, what would be the 'constitutional' and practical effect on Parliament, considering substantive legislation upon which there had been a prior referendum? While theoretically, in constitutional terms, Parliament is not 'bound' by the result of any referendum held at any time (even, strictly speaking, when Parliament itself has enacted it as a 'mandatory' referendum), a Government may not regard it as a practical option to seek to act (by legislation or otherwise) contrary to the expressed wish of the relevant electorate.

### **1973 Northern Ireland Border Poll**

The border poll was noteworthy in its timing, in that it was to take place during, but not be a direct part of, the wider attempts to settle the 'Northern Ireland problem'. The 1975 EC referendum could be seen in this context as, in effect, the final act of the entry process, and the 1979 referendums were held *after* the general policy had been laid out in the existing devolution legislation, and were intended to be the trigger for the implementation of the policy. The border poll was simply intended, given the certainty of the outcome, to rule out one option from future policy. The Opposition tested this by questioning the timing of the poll in relation to statements of Government policy, such as the proposed white paper, so that the electorate could make an informed judgement on the alternatives.

### **1975 EC Referendum**

In his 23 January statement, the Prime Minister set out the proposed timetable for the referendum:<sup>59</sup>

The Government will provide time for a debate on the White Paper on referendum procedure in this House before the Easter recess. That debate will, of course, be separate from, and will precede, the parliamentary debate which will be necessary on the outcome of the negotiations. The debate on the referendum White Paper will enable the Government to take full account of the views expressed by right hon. and hon. Members of this House, and by public opinion generally, in drafting the necessary legislation for the referendum.

The Government propose to introduce the legislation around Easter-time. We shall, of course, propose that all stages should be taken on the Floor of the House. If we are to be able to hold the referendum before the summer holiday, the Bill will need to complete its passage through both Houses and to receive Royal Assent by the end of May.

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<sup>59</sup> HC Deb vol 884 c.1747, 23.1.75

## Research Paper 97/61

The February white paper emphasised that "the period of further uncertainty over our membership of the Community should be kept as short as possible in our own interests and those of other Community Governments."<sup>60</sup>

Mr Short announced the date of the referendum during his second reading speech on 10 April. Claiming that there was "widespread agreement that the referendum should be held as early as possible to keep to the minimum the period of uncertainty over our membership of the Community, to avoid an overlong campaign and to miss the holiday season, if that is possible"<sup>61</sup>, but recognising that the new Scottish regional authorities would not formally take office until 16 May, he announced that, subject to royal assent in time (ie by about 8 May, assuming all Commons stages of the bill were completed by the week of 21 April), the referendum would be held on Thursday 5 June, with the result on the evening of Sunday 8 June. A draft Order, to be approved "immediately after Royal Assent to the Bill" would specify the date. A 5 June date would have the advantage of allowing Members to pay a full part in the campaign, because of the Whitsun recess, then expected to run from 26 May to 6 June. He recognised that this was "a very tight timetable,, but I hope that it is well worth trying to achieve it" (c1421). For the Opposition, Sir Michael Havers said that "the Opposition do not intend to filibuster, but that is an extremely optimistic approach in view of the number of important matters of principle which will have to be dealt with" (c1531). Winding up for the Government, Gerry Fowler said that "we hope that three days will be adequate "for committee, report and third reading of the bill, and, when challenged by Opposition members, asked: "are they suggesting that the proceedings on this Bill should be so long delayed that this referendum should be held well into the holiday period?" (c1534).<sup>62</sup>

During the Commons committee stage the Liberals sought to ensure that Parliament would be adjourned for 21 days prior to the referendum (during which time no party political broadcasts were to be permitted), in order to make the referendum campaign period resemble a general election campaign: "If we are to have a referendum we had better do the thing properly, with campaigns on both sides of the argument, holding meetings and trying to interest people in the subject. It is impossible for hon. Members to do that and attend to their business in the House at the same time."<sup>63</sup> In practice he recognised that an early June date would mean that the Whitsun recess would precede it, and Leader of the House intervened to confirm that a 5 June referendum would mean a 23 May to 9 June recess. Mr Short said that the campaign was not identical to an election as "campaigning for an election does not

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<sup>60</sup> Cmnd 5925, para 4

<sup>61</sup> HC Deb vol 889 c.1420, 10.4.75

<sup>62</sup> As Butler & Kitzinger noted, "in fact with late sittings the committee only took two [days] and the report stage and Third reading only one. The chair was fairly ruthless in selecting amendments for debate but no major points were omitted ..... In fact the Conservative tactics were to make clear their opposition to the principle of a referendum by voting against the White paper on March 11 and against the Second and Third Readings of the Bill, but otherwise to do what they could to speed its passage ... The Opposition virtuously resisted the temptation to consume by obstruction three or four extra days of government time in an overloaded session ...", *op cit*, pp64, 65.

<sup>63</sup> HC Deb vol 890 c1665, 23.4.75

properly begin until Dissolution, but campaigning for the referendum is already in full swing" (c 1666), and believed that it would be wrong to define the length of recesses in legislation.

### 1979 Scotland and Wales referendums

The *Scotland Act 1978 (Referendum) Order 1978* [SI no. 1978/1912, 20.12.78], which was approved by the Commons on 22 November 1978, without a division<sup>64</sup>, and by the Lords on 5 December 1978, also without a division<sup>65</sup>, set the date for the referendum as Thursday 1 March 1979, with polling hours of 7am to 10pm (*Art 4(1) and (2)*), the same day and times as the Welsh referendum.

The *Wales Act 1978 (Referendum) Order 1978* [SI 1978/1915, 20.12.78], the draft of which was approved by the Commons on 22 November 1978, without a division<sup>66</sup>, and by the Lords on 30 November 1978, also without a division<sup>67</sup>, set the date of the referendum as Thursday 1 March 1979 (St David's Day) with polling hours of 7am to 10pm, the same date and times as the Scottish referendum.

### Electorate

The electorate for the Scottish referendum in the current Bill is "the persons who, on the date of the referendum, would be entitled to vote as electors at a local government election in any electoral area in Scotland" (*clause 1(3)*), and for the Welsh referendum "the persons who, on the date of the referendum, would be entitled to vote as electors at an election for a county council or county borough council in Wales" (*clause 2(3)*).

There are two main aspects to the issue of the relevant electorate in a referendum: (1) the geographical extent of the relevant 'catchment area' for the referendum, and the definition of the eligible franchise itself. British practice on referendums, limited as it is, has tended to favour the narrow rather than the broad perception of the electorate appropriate to a particular referendum. So the Northern Ireland border poll was restricted to the 6 counties and the Scottish and Welsh devolution referendums in 1979 took place in these countries only. However there could be theoretical arguments in favour of wider 'catchment areas' in particular referendums. For example, should the voters of the rest of the UK also have a say in the future of the forms of territorial government of the UK, especially if what is at stake, as has been argued by the current Opposition when in office, is the future of the Union itself? Similar arguments could be applied to European Union developments also. Should not

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<sup>64</sup> HC Deb vol 958 cc1270-1337, 22.11.78

<sup>65</sup> HL Deb vol 397 cc26-72, 5.12.78

<sup>66</sup> HC Deb vol 958 cc1338-94, 22.11.78

<sup>67</sup> HL Deb vol 396 cc1416-33, 30.11.78, 30.11.78

## Research Paper 97/61

existing members, as well as applicant countries, have a say through the ballot box, rather than indirectly through the actions of their Governments, on whether to allow any particular country to join the EU?

The case of Northern Ireland is particularly difficult, with the theoretical potential for a joint referendum, or even parallel referendums, north and south of the border over proposals resulting from the current peace process, or some form of border poll as took place in 1973. Are the people of Great Britain, as well as the electorate in Northern Ireland, entitled to participate in referendums dealing with issues such as which countries remain in or may leave the UK itself, as envisaged in the 1970s border poll, especially when one option is to unite it with another country?

In the **1973 Northern Ireland border poll**, the electorate was to be those entitled to vote on the date of the poll at a general election to the Stormont Parliament (*Northern Ireland (Border Poll) Act 1972, s1(a)*). This meant that the number entitled to vote was slightly lower than would have been the case for a UK election.<sup>68</sup>

In the case of the **1975 EC referendum**, the Government's white paper stated that the electorate should "include those on the current Parliamentary election register which came into force earlier this month, together with peers (who are registered for local government elections but cannot vote in Parliamentary elections)."<sup>69</sup> Absent voting, by post or proxy, would be available on the same basis as for general elections, and "special steps will be taken to advertise these facilities" (para 14).

There were demands in Cabinet, and from pro-Market Labour MPs, for arrangements to be made for service personnel and their families, holiday-makers, and for British citizens living abroad. While the government agreed to accommodate the first group, they resisted enfranchisement of the other two groups, despite significant rebellions from back-benches who argued that a unique event such as a national referendum justified a unique approach to the relevant electorate.<sup>70</sup> Ministers pointed out the difficulties, for example, of distinguishing between 'deserving' cases, such as those working on export promotion, from the 'less-deserving', such as 'tax exiles', and generally defending the view that the referendum should, as far as possible, be run on the then usual electoral lines on the basis that "if we abandon well-tried electoral procedures lightly we shall put at serious risk the national acceptance of the referendum result."<sup>71</sup>

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<sup>68</sup> 'UK' register = 1,031,934; 'Stormont' register = 1,030,084; a difference of 1,850: Lawrence & Elliot, *op cit*, para 19.

<sup>69</sup> Cmnd 5925, para 12

<sup>70</sup> See, in particular, the extensive Commons committee stage debate on 22 April, HC Deb vol 1249-1440

<sup>71</sup> Mr Short, c.1411

This was enacted in s1(3),(5) of the *1975 Act*:

(3) Subject to subsection (5) of this section, those entitled to the referendum shall be-

- (a) the persons who, at the date of the referendum, would be entitled to vote as electors at a parliamentary election in any constituency, and
- (b) peers who at that date would be entitled to vote as electors at a local government election in any electoral area.

(5) An Order in Council under this section may make or enable the Secretary of State to make special provision with respect to persons, or any description of persons, who are members of the forces (as defined in section 46 of the Representation of the People Act 1949) or spouses of such members, and may do so differently with respect to different cases; and any provision so made-

- (a) may permit persons to whom it applies to vote in the referendum notwithstanding that they are not duly registered under the Representation of the People Acts, and, if they have or have had an address in the United Kingdom, notwithstanding that the conditions of those Acts as to residence are not satisfied; and
- (b) may enable persons to whom it applies to vote at a date earlier than that appointed under subsection (4)(a) of this section and may also enable them to vote at a polling station set up in accordance with that provision or by post.

In the **1979 devolution referendums**, the eligibility to participate in the referendum was set out in sch 17, para 2 of the *Scotland Act 1978*:<sup>72</sup>

*Persons eligible to vote*

2. Those entitled to vote in the referendum shall be-

- (a) the persons who, at the date of the referendum, would be entitled to vote as electors at a parliamentary election in any constituency in Scotland, and
- (b) peers who at that date would be entitled to vote as electors at a local government election in any electoral area in Scotland.

There were attempts to introduce an all-UK referendum on Scottish and Welsh devolution. Sir George Gardiner (Conservative) moved such an amendment to the *Scotland and Wales Bill* on 16 February 1977. He objected to the way in which England and Northern Ireland had been treated during the bill's passage: "From the very start there has been the pretence that other parts of the United Kingdom are not affected. Each day's debate, particularly the debate on representation in this House, has demonstrated most clearly that they are. Now this sin is being compounded by the attempt to shut six out of every seven United Kingdom citizens out of a consultative referendum on a major piece of constitutional legislation that

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<sup>72</sup> An equivalent provision was contained in sch 12 para 2 of the *Wales Act 1978*

## Research Paper 97/61

may be passed by this House ..... The lord president must stop treating England and Northern Ireland in the way that Lord North treated the American colonies."<sup>73</sup> He argued for a UK referendum on 'West Lothian Question' grounds.<sup>74</sup> Interestingly, he distinguished a devolution referendum from a Northern Ireland border poll on the grounds that the latter involved separation from the UK, whereas the devolution referendums dealt with the constitutional arrangements within the UK (c530).

Willie Hamilton (Labour) attempted a similar amendment to the *Scotland Bill* the following session. He accepted that this would ensure the defeat of the devolution scheme: "There is no doubt that English votes would be overwhelmingly against any such fundamental upheaval in the constitutional machinery of the United Kingdom"<sup>75</sup>, and rejected opposition to his proposal on grounds of costs or time, or that devolution does not involve the whole UK. He described the last point as "patently absurd", "blatant dishonesty" and a "facetious argument" (c.1425). He was supported by, *inter alia*, Tam Dalyell who cited the rights not only of the English but also the expatriate Scots south of the border. For the Opposition, Francis Pym admitted that the bill, while affecting the whole UK, affected Scotland the most: "We are all involved, but the impact on Scotland is greater ... In making a judgment on who should vote, we must bear in mind what will be the continuing unity of the United Kingdom" (c1452). The minister, John Smith, made a similar point, in opposing the amendment (c1456):

The difference is that the proposals in the Bill will affect more directly the people living in Scotland. As it is they who will be most directly affected, we thought it wise to consult them before the Bill, which Parliament has to pass on behalf of the whole United Kingdom, is put into effect.

He thought the Northern Ireland border poll was a precedent, and could recall little objection at that time to the fact that it was confined to the voters of Northern Ireland. The amendment was rejected 122-184.

There was an attempt at the Lords committee stage to extend the right to participate to persons "whose domicile is Scottish but who are resident in the United Kingdom outside of Scotland ..", but this was resisted by the Government, partly on the grounds of the practical difficulties involved in a domicile qualification, and because, in the words of Lord McCluskey, "devolution will directly and specifically concern those who live in Scotland ... In principle, we believe that as this Bill will have an effect only upon the people who live in Scotland, it is those who live there -- whatever their ethnic origins and the circumstances of their birth, where they were born, to whom they are married and so on -- who should be entitled to vote, and nobody else."<sup>76</sup>

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<sup>73</sup> HC Deb vol 926 c.527, 16.2.77. Eric Heffer (Labour) had introduced amendments to extend the proposed referendums to England alone, but these were not selected

<sup>74</sup> On which see Research Paper 95/95, *The West Lothian Question*

<sup>75</sup> HC Deb vol 942 c.1424, 25.1.78

<sup>76</sup> HL Deb vol 392 cc409, 410, 17.5.78

## Thresholds/majorities

Labour leaders have made it clear ever since their referendum proposal was announced last summer that a 'simple majority' in favour of the referendum questions would be regarded as sufficient and that there would be no 'fancy franchises' such as the '40% rule' which operated in the 1979 referendums. While the current Parliamentary arithmetic (as compared to that in the latter years of the 1974-79 Government) perhaps makes it less likely for some form of threshold or special majority test to be inserted into the current Bill contrary to the Government's wishes, it remains possible that such matters could feature in forthcoming referendum debates. The '40% rule' gained, and perhaps to some extent retains, a particular status in the devolution debate, especially in the minds of those pro-devolutionists who regard it as a major reason for the failure of the 1970s scheme. It may also be that commentators will, for comparative purposes, measure the outcome of any future referendum against such a yardstick such as a '40% rule'.<sup>77</sup>

Discussions of the need for, or advantage of, some form of test of this nature usually arises in the context of ensuring the legitimacy and acceptance of the outcome of a referendum exercise. This incorporates the idea that major constitutional change is something more important than the result of ordinary elections, and therefore should be the result of something more than a simple plurality of the votes. There are various forms of special majority, such as requiring an overall majority of voters (if a multi-option question) or of the electorate, or a specified level of support in terms of votes, or again as a proportion of the electorate. It must be borne in mind that special majorities make the issue of the scope of the eligible electorate of particular importance. The accuracy and currency of the relevant electoral register, and the means whereby the total electorate is calculated is crucial, as was seen in the devolution referendums where, for example, the Secretary of State for Scotland was given the task of making such determinations as the number of voters on the register who had died, or were convicted prisoners and so on. This is not a mere technical issue, as the official figure of deductions from the register (c.90,000) was far less than the maximum possible deduction made by some academics of nearly 630,000. Such a difference clearly affects the achievement of the 40% electorate threshold necessary for the devolutionist cause to succeed<sup>78</sup>. Special majorities can also cause confusion about the effect of abstention, again as the 1979 devolution referendum demonstrated. Questions of turnout could be dealt with, in theory, by compulsory voting.

### 1973 Northern Ireland Border Poll

There was also no '**special majority**' required in the poll, beyond a simple majority. In addition to making the outcome totally predictable in advance, it gave (as in a UK-style first-past-the-post election) everything to the majority and nothing to the minority. Some

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<sup>77</sup> or, say, the '33 1/3% rule' proposed by Robin Cook in 1978.

<sup>78</sup> V. Bogdanor "The 40 per cent rule", (1980) 33 *Parliamentary Affairs* 249, pp.252-5

commentators have claimed that this, in effect means that 'the people of Northern Ireland' are in practice the pro-Unionist (mainly Protestant) population, thereby entrenching the so-called 'Unionist veto'.<sup>79</sup> It could also mean that in any one future poll a simple majority in favour of unification with the Republic (perhaps caused by a tactical boycott by a sufficient number of pro-unionists, for whatever reason) may lead the UK Government to decide whether or not to give effect to that decision, and, if so, in what way.

### 1975 EC Referendum<sup>80</sup>

When answering questions following his 23 January statement, the Prime Minister talked of the attitude of Parliament ".. if the country votes clearly one way or the other.."<sup>81</sup>; and also said that the Government were examining foreign precedents for special majorities/thresholds (c1753), and finally noted that "whenever I try to get guidance on this matter from people who feel strongly about it, I get the impression that they would be satisfied with a bare majority if it went their way but not if it went the other way" (c1757).

In the February 1975 white paper, the Government said that they "have considered whether [the] result should be subject to any special conditions in terms of the size of the poll or the extent of the majority."<sup>82</sup>:

7. It may be argued that a verdict of such importance should not depend on a simple majority-theoretically a single vote in an electorate of 40 million.

A poll of a minimum size might be specified. Alternatively it might be laid that the number of votes cast or the number composing the majority should exceed a specified proportion of the total electorate. Some countries have applied conditions of this kind to their referenda, although they are usually intended to make it impossible for constitutional changes to be introduced too easily or by a minority of the electorate.

8. The Government are concerned that the size of the poll should be adequate, and they are confident that it will be so. They also consider it to be of great importance that the verdict of the poll should be clear and conclusive. In the circumstances they believe that it will be best to follow the normal electoral practice and accept that the referendum result should rest on a simple majority - without qualifications or conditions of any kind.

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<sup>79</sup> See, for example, B J Narain, *Public law in Northern Ireland*, 1975, pp79-80

<sup>80</sup> See also section 3, above, on the status of the referendum. Discussion of these matters constantly bore in mind Edward Heath's famous quotation in his 5 May 1970 Paris speech, while still Leader of the Opposition: "Nor would it be in the interests of the Community that its enlargement should take place except with the *full-hearted consent of Parliament and people* of the new member countries."

<sup>81</sup> HC Deb vol 884 c1749, 23.1.75

<sup>82</sup> Cmnd 5925, para 6

Opening the 11 March debate on the white paper, Mr Short expanded on the Government's approach:<sup>83</sup>

It has been suggested that the verdict of the electorate can hardly be regarded as decisive if there is a very low turnout or if those who do vote in favour of one course or the other do so by only a very narrow margin. There have been suggestions that we should stipulate a minimum poll or a minimum majority for the result to be decisive. Some of the groups I have consulted have been worried by the fact that the result of the poll could, I suppose, in the extreme case, be decided by one vote in many millions. But this[Mr. Short] would be the case if there were a requirement for a minimum majority.

If there were a minimum majority, there would also be the problem that a clear majority which was less than the minimum would not decide the issue. I am quite sure that the British electorate would find that extremely hard to accept. Also, the idea of stipulating a minimum poll is just as difficult, and could lead to widespread abstention. If we are to have a referendum, I hope that all would agree that we want a high poll, particularly as it is in the national interest to secure the greatest possible degree of acceptance of the result.

Mrs Thatcher responded (c.315):

I believe that if there is a high poll and a clear majority, the result will in fact be binding on Parliament, whatever one may say in law about parliamentary sovereignty. I cannot envisage that a Parliament, whatever individual Members might have thought, if there were a clear vote against-*[Interruption.]* It is not advisory or consultative in the event of a clear result. It would be binding on everyone. [HON. MEMBERS: " No. "] It would bind and fetter parliamentary sovereignty in practice.

when the revised terms of a free trade area were considered and had been through the House. I am sure that one side or the other would find a method to argue for a second referendum in the event of a low poll, and for not accepting the result. We could get into a difficult position by having embarked upon this first referendum without fully considering the consequences.

But if there were a low poll, and an indecisive result, the question would arise whether the British people had genuinely given their verdict by their vote. The Government might regard themselves; is bound, but the result could not fetter the decision of Parliament. The uncertainty would be likely to be increased and not ended. If the decision were taken to come out on a low poll, it would be possible to argue that a further referendum should be taken

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<sup>83</sup> HC Deb vol 888 cc294-5, 11.3.75

## Research Paper 97/61

The Liberal leader, Jeremy Thorpe, was surprised that the Government would consider itself bound by the result "even if there is only a one vote majority out of 30 million or 40 million .... This is a totally new constitutional concept" (c323).

Winding up for the Opposition John Peyton referred to the Government's apparent attitude that "neither the size of the poll nor the size of the majority is to matter. Should not the Government even now, have further thoughts on that subject before it is too late?" (c439). Similar points were made by Sir Michael Havers, winding up the second reading debate on 10 April:<sup>84</sup>

The hon. Member for Aberdeenshire, (Mr. Henderson) made the point that a big vote was essential. I am sure that every hon. Member will agree with him. That was emphasised by my hon. Friend the Member for Derbyshire, West (Mr. Scott-Hopkins), who asked the question: what would happen if there was a low poll, and would the Government really feel themselves bound if there was perhaps a 30 per cent. turnout? It may be that the Minister of State will give an indication of the Government's feeling as to what sort of figure they expect to be able to act confidently upon—20 per cent., 30 per cent., 40 per cent., or 50 per cent. Certainly, if it is to be a very low turnout it will make nonsense of the whole idea of the House being bound by the result.

The issue was debated at Commons report stage, when Peter Emery (Conservative) moved a new clause to declare the result null and void unless there was a turnout of 60% of the eligible electorate and at least a two-thirds majority 'yes' or 'no'.<sup>85</sup> He suggested that this would "save the Government from the possibility of the greatest constitutional fiasco that this country has ever faced. If there is a small turnout, we may ... find the Government committed to take action which has received support from only a small proportion of the total electorate." (c1772). He recognised that, as a 'yes' vote was in favour of a status quo, his proposal would in effect require a 'no' vote from 40% of the electorate before the UK could leave the EEC, which he did not regard as "such an immense task" (c1774). Sir Michael Havers said the issue had arisen because some Labour Members had constantly said that the House would be bound by the result (cc1781-2):

Sir Michael Havers (Wimbledon): I intervene for only a few moments. As so often happens in these debates, I agree with the hon. Member for Fife, Central (Mr. Hamilton). The real difficulty in this argument arises because of the constant repetition by Labour Members that this House is bound by the result of the referendum. [Hon. Members: "No."] Yes, it is often said that the House and hon.

Members are bound by it. One has only to cite the silly letter written by the Secretary of State for Industry to the Leader of the Opposition last week which sets out that mistaken fact. I was delighted when the Minister of State a few minutes ago said that no Member of the House was bound by the result.

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<sup>84</sup> HC Deb vol 889 c1527, 10.4.75

<sup>85</sup> HC Deb vol 890 cc1772-95, 24.4.75

There is no need to build into the terms of the Bill the fact that the referendum is consultative. It is consultative in any event. The new clause would never have been necessary if that fact had been made clear, instead of things being so twisted that people are led to believe that every hon. Member must be bound by the referendum result. Once that canard is exposed and the true position made clear, the clause should not be necessary.

Mr Fowler, for the Government, said that the debate was "based on a misunderstanding. It is not for the House to attempt to bind, through legislation, the government's attitude to the result of the referendum .... Equally, the result of the referendum, however high the turn out, cannot bind the House in any meaningful way" (c1792). The new clause as drafted may have required one or more re-runs of the referendum if the result was declared null and void, with the risk of even lower turnouts in further referendums. He also said that "it would be difficult to devise any means of deciding, if the turnout were close to the borderlines of the proportions prescribed in the amendment, whether the referendum result satisfied the criteria laid down by the hon. Gentleman" (c1794), especially whether the definition of 'eligible to vote' simply meant those on the register or, for example, those on the register and alive. He also believed that foreign experience suggested the use of special requirements to entrench a constitutional provision of particular importance, but, in the present case, there was much debate about the nature of the decision, ie whether it was an attempted ratification of the initial decision to join, or a decision whether or not to reverse that earlier decision. Mr Emery withdrew his new clause.

## Count

### 1973 Northern Ireland Border Poll

As already noted the **count** was conducted as a single exercise for the whole of Northern Ireland, thus making it impossible to identify officially the views of the population in more local areas such as counties or constituencies. It was argued during the passage of the legislation that this procedure meant that the 'border poll' was a misnomer as it concerned only the status of Northern Ireland as a whole and not a true test of the variety of wishes of people in different localities about their constitutional future, given the way the island had been partitioned in the 1920s. On the other hand it was argued that there could be no objectively satisfactory or acceptable way of dividing Northern Ireland into counting units, and the purpose of the poll was to ascertain whether 'the people of Northern Ireland' as a whole wished to remain in the UK. The Government opposed multiple counting as it would

inevitably imply repartition, which would, it believed, be least acceptable policy in the eyes of all parties"<sup>86</sup>

At the Lords committee stage an attempt was made to have a count in each of the 52 Stormont constituencies, but was resisted by the government on the grounds that it "would very probably be taken by many people ... as an indication that there was a possibility of redrawing the border; and this .. would be unacceptable to a large number of people in both communities in Northern Ireland, and serve only to keep the Border issue alive."<sup>87</sup> A single poll was "an article of faith to the majority community", had been promised by the Prime Minister and Northern Ireland Secretary, and a change of policy would put at risk the confidence of the Protestant majority (c.425).

### 1975 EC Referendum

According to Butler & Kitzinger, initially "the cabinet was inclined to a national count and early in February discussed a Home Office paper on its feasibility; it was plain that political rather than technical considerations were paramount."<sup>88</sup> A national count would avoid the risk of, for example, of Scotland and Wales coming to a different decision from England, or of constituency counts highlighting differences between MPs and their constituents. The method of counting was examined in the White Paper:<sup>89</sup>

#### Counting the votes and announcing the result

18. The votes cast at local polling stations and sealed into ballot boxes there can be counted at various levels. These divide broadly into a choice between a central count and a variety of methods of counting locally.

19. It would be practicable to arrange for the votes to be counted, as they are in local and Parliamentary elections, by local government district and London borough or by Parliamentary constituency. This arrangement would have advantages of speed, familiarity and economy. It would also be possible to arrange for the count to be organised by counties.

20. To arrange for all votes cast in the United Kingdom to be counted centrally would involve the creation of new machinery and would clearly be a major administrative task, involving the transport of ballot boxes from polling stations to the counting centre. The count itself is likely to require at least five working days, including polling day.

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<sup>86</sup> See the speech of the junior Northern Ireland Office minister, Peter Mills, during the committee stage, HC Deb vol 846 cc1554-5, 23.11.72

<sup>87</sup> HL Deb vol 337 c424, 7.12.72, Lord Windlesham

<sup>88</sup> *op cit*, p.55

<sup>89</sup> Cmnd 5925

21. In considering these alternatives the Government have attached particular weight to the character of the referendum as a national poll on a national issue, organised to secure the verdict of the whole British people. The constituency is the whole of the United Kingdom. In this respect the referendum will be fundamentally different from a General Election in which individual members of Parliament are elected by individual constituencies. The Government have taken full account of the views of those who believe that the voting pattern of the different parts of the United Kingdom should be made known. But they believe that the most appropriate arrangement in the special circumstances of the referendum will be to count all the votes cast centrally and to make a single declaration of the United Kingdom result. To announce the result in this way will secure its widest acceptance by the British people.

22. Detailed arrangements for a central count are now being planned. The possibility is being considered of using any mechanical processes which may be of assistance, although a manual count is judged likely to prove the most reliable arrangement. One centre in London may be used for the count in the interests of security and economy of organisation.

23. A national returning officer will be appointed in due course. He will be responsible for the arrangements for counting the votes and certifying the result of the referendum which will be reported to Parliament by the Prime Minister.

At the second reading, Mr Short defended the idea of a central count on the basis that the referendum would determine whether the country as a whole remained within the EC, as the possibilities of parts of it coming out separately were "not real options", so a constituency or regional counting scheme was not relevant: "It is only the total result that will have any practical standing or significance." He accused those who sought a regional count of pursuing a separatist agenda: "To ally this cause with the referendum is a very dangerous distortion of the issue and one which this House should not encourage."<sup>90</sup> He believed that the only sensible alternative to a central count would be a county count, and the Labour benches would be permitted a free vote on this option in committee.

The Liberals sought, in committee, to allow for a constituency count. David Steel argued that a centralised count would be "a big departure from normal election procedure", would be "extremely cumbersome", and would cause "inevitable delay of three to four days", creating "a period of uncertainty" and risk speculation and leaks.<sup>91</sup> He believed that a constituency count would use "normal, local expertise in counting, the normal returning officers and the normal machinery", and generate the maximum potential local involvement, enthusiasm and turnout. The potential for division between the views of Members and their constituents to be revealed by a constituency count was irrelevant to a referendum exercise, and he also thought that 'separatists' would seek to use the referendum whatever its counting method. A back-bench Labour amendment, drafted with government encouragement according to

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<sup>90</sup> HC Deb vol 889 c1426, 10.4.75

<sup>91</sup> HC Deb vol 890 cc1491, 1492, 23.4.75

## Research Paper 97/61

Butler & Kitzinger<sup>92</sup>, was moved by Roderick MacFarquhar to provide for a county/regional count (other than in Northern Ireland, which would be treated as a single unit).

Mr Short responded by repeating his arguments for a central count and criticising constituency or county/regional counts. As the final decision rested with Parliament, which would not wish to "flout the people's wishes", he believed that "the House will wish to be guided by the wishes of the nation as a whole and not by individual parts of it. That is the essence of the case for a central count" (c1546). He also believed that "at the moment the balance of administrative convenience lies very much with a central count" (c1547), as none of the English/Welsh counties had experience of counting votes, and, in Scotland, the new regional councils would not take over until mid-May. He did not, at that stage, rule out a central count, but declaration by county/region.

For the Opposition, John Peyton recognised that some members supported a constituency count from a desire to know how their constituents voted, and rejected the Government's proposal for a national count, describing it as an "administrative horror", which would "be a means of concealing the way in which people voted" (c1551). While the Opposition had a free vote, he personally urged support for the county/regional count amendment.

The Liberal amendment for a constituency count was defeated by 264-131, but the county/regional vote amendment was carried by 270-153. Butler and Kitzinger reported that Mr Short still considered a central count with county/regional declarations, but was dissuaded by the Chief Whip's warning that this could not be carried at report stage, and by county officials' assurances that they could administer the operation.<sup>93</sup>

The detailed provisions were set out in s2(3)-(7):

(3) A separate count shall be conducted of the votes cast at the referendum in each of the areas specified in subsection (5) below, but the votes cast (in accordance with any provisions made in pursuance of section 1(5) of this Act) outside the United Kingdom shall be counted with those cast in Greater London.

(4) The Secretary of State shall appoint a person (in this Act referred to as the Chief Counting Officer) who shall, for each of the areas specified in subsection (5) below, appoint a person (in this Act referred to as a counting officer) to conduct the counting of votes cast in that area in accordance with any directions given to him by the Chief Counting Officer; and the councils of districts and London boroughs shall place the services of their officers at the disposal of the counting officers.

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<sup>92</sup> *op cit*, p.63

<sup>93</sup> *op cit*, pp63-4. An attempt in the Lords to have a constituency count was crushed by 102-5, HL Deb vol 360 cc144-154, 5.5.75

- (5) The areas referred to in subsections (3) and (4) of this section are-
- (i) in England and Wales, Greater London, each county and the Isles of Scilly;
  - (ii) in Scotland, each region and each islands area; and
  - (iii) Northern Ireland.

(6) The counting officer for each area shall certify the number of ballot papers counted by him and of the respective answers given by valid votes, and the Chief Counting Officer shall certify the total of the ballot papers and respective answers; and in certifying the number of ballot papers counted each counting officer and the Chief Counting Officer shall distinguish -between ballot papers issued in accordance with any special provision made in pursuance of section 1(5) of this Act and other ballot papers.

(7) The Secretary of State shall pay to the Chief Counting Officer, to the counting officers and to persons appointed to assist any counting officer such remuneration as he may, with the approval of the Treasury, determine.

### **1979 Scotland and Wales referendums**

The counting arrangements were set out in sch.17, paras 7,8 of the *Scotland Act 1978*:

7. The Secretary of State shall appoint a Chief Counting Officer, who shall appoint a counting officer for each region and islands area, and each counting officer shall conduct the counting of votes cast in the area for which he is appointed in accordance with any given to him by the Chief Counting Officer

8. The counting officer for each area shall certify the number of ballot papers counted by him and the number of respective answers given by valid votes; and the Chief Counting Officer shall certify the total of the ballot papers and the for the whole of Scotland.

For Wales the provisions were set out in Schedule 12, paras. 7, 8 and 9 of the *Wales Act 1978* in similar terms:

7. The Secretary of State shall appoint a Chief Counting Officer, who shall appoint a counting officer for each county in Wales; and each countiiii officer shall conduct the counting of votes cast in the area for which he is apminted in accordance with any directions given to him by the Chief Counting Officer.

8. The counting officer for each area shall certify the number of ballot papers counted by him and the number of respective answers given by valid votes; and the Chief Counting Officer shall certify the total of the ballot papers and the respective answers for the whole of Wales.

## Research Paper 97/61

9. The council of each county in Wales shall place the services of its officers at the disposal of the counting officer for the county . and if the council or the counting officer for a county so requests, the council of any district in the county shall place the services of its officers at the disposal of the counting officer for the county.

The results of the count in both Wales and Scotland were therefore available on a regional or county area. Similar arrangements are expected for the referendums under the current Bill.

### Finance

#### 1. 1975 EEC Referendum

S3 of the *Referendum Act 1975* was as follows:

3.(1) The Lord President of the Council may, with the consent of the Treasury, make to each of the following organisations, namely-

- (a) Britain in Europe, and
- (b) National Referendum Campaign;

a grant not exceeding £125,000 towards the expenses incurred by them or by organisations affiliated to them for the purposes of the referendum.

(2) A grant under this section may be made subject to such conditions as the Lord President may specify and those conditions may include the keeping and making available for publication of accounts showing such particulars as may be so specified of-

- (a) the sums received or spent for the purpose of the referendum since 26th March 1975; and
- (b) the persons from whom any such sums were received and the persons to whom any such sums were paid.

In the February 1975 white paper, the Government said that they would be willing to consider public funding for the two opposing views in the referendum debate.<sup>94</sup>

#### Assistance from Public Funds

40. The Government have received representations that a fair and effective referendum requires assistance from public funds to the campaigning organisations. This would require statutory authority. The Government are prepared to consider providing, limited financial assistance, to be equally divided between the two sides, if it is possible to identify two organisations which adequately represent those campaigning for and against continued membership of the Community.

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<sup>94</sup> *Cmnd 5925* see also paras 24-39

In the debate on these proposals on 11 March, the Leader of the House, Ted Short, said:<sup>95</sup>

We have also considered the campaigns likely to be mounted by the two umbrella organisations, and we have come to the view that, in the interests of a fair contest, there is something to be said for a modest degree of support for the two organisations-particularly as there is likely to be disparity in the funds available to them. A lot will depend on how far the bodies on each side coalesce into a reasonably united umbrella grouping. The Government could not offer to fund every separate body that proposes to campaign. Any money made available would, of course, have to be accounted for by the organisations after polling day.

However, whatever is decided on a direct cash subvention, the Government's major contribution is likely to be paying for the production and distribution, at the same time as the Government's own documents-which I have described-of the brief statement of both sides of the case which the White Paper describes as similar to an election address.

There are precedents in other countries for the production of a document of this kind. I hope that hon. Members will agree that it is a reasonable proposal. It will allow each side to have a statement of its case sent to every household in the country.

**Mr. Cormack:** If the renegotiated terms are achieved in Dublin today, and if the Prime Minister, as he has indicated, commends these to the country, will he sign the election address?

**Mr. Short:** This will be a statement of the case written by the umbrella organisation concerned. It will prepare its own part of the case. Discussions are proceeding with the two campaigning bodies on this matter.

It will be very difficult, and probably impossible to legislate to control expenditure as happens in the case of a General Election, especially as such control could only relate to the very short period between the Royal Assent and the referendum. We take the view that it is probably better to ensure that there are all the normal electoral safeguards against undue pressure on individuals than to try to construct a restrictive framework of control on total expenditure.

Opening the second reading debate Mr Short explained the policy of the Bill.<sup>96</sup>

I turn now to the question of grants to the campaigning organisations. This is another point to which many hon. Members rightly attach much importance -the need for a fair balance in the presentation of the two sides of the issue. Agreement has now been reached with the two main campaigning organisations that each will prepare a short statement of its case. These will be printed at the Government's expense and delivered to every household in the last week of May-at the same time as the popular version of the White Paper on the renegotiated terms of our membership of the Community.

We also think it right to make grants of £125,000 to each of the two organisations. We think this is desirable if we are to achieve a fair balance between the two sides. I know that some Members, including my right hon. Friends the Member for Anglesey (Mr. Hughes) and the Member for Fife, Central (Mr. Hamilton), would have liked a larger sum ; but, on the whole, we think this is probably about right. The conditions to be attached to the grants will include a requirement to disclose all income and expenditure for the whole period from the date of publication of the Bill.

<sup>95</sup> HC Deb vol 888 cc302-3, 11.3.75

<sup>96</sup> HC Deb vol 889 cc 1427-9, 10.4.75

## Research Paper 97/61

If Clause 3 of the Bill is approved in Committee, I shall then make grants to the two organisations from the Civil Contingencies Fund until the necessary Supplementary Estimate can be approved.

**Mr. Michael English** (Nottingham, West): My right hon. Friend said that he wished the expenditure of money to be voted. If, as the Press suggests, the popular version of the White Paper will cost £1¼ million of the taxpayers' money, it means that more than £1¼ million will be spent on one side but only £125,000 on the other. That represents a distortion of finance of 11 to 1 by the Government alone. Is that fair?

**Mr. Short:** My hon. Friend the Minister of State will be saying something later tonight about the cost of these pamphlets.

**Mr. Norman Buchan** (Renfrewshire, West): An important question arises which requires urgent action before we proceed to the Committee stage. It concerns my right hon. Friend's earlier remark about the need for equity between the two sides. One side claims that money given to it by business firms will be eligible for tax relief. If that is right, it means that the taxpayer is paying for the pro-Market campaign. If it is not true, is there not some element of conspiracy to defraud the customers of those firms?

**Mr. Short:** I cannot answer my hon. Friend's latter point, but I am sure that my right hon. Friend the Chancellor of the Exchequer will bear in mind his first point. In any event, all income must be declared from the date of publication of the Bill if either side avails itself of this grant from public funds.

For the Opposition, John Peyton, responded:<sup>97</sup>

On the second point of detail to which I would refer, I suppose that on balance the right hon. Gentleman is probably right in deciding that money must be given to finance the two bodies who are to take part in the campaign; but I believe that we should not part with the provision without taking note of the very serious precedent we are setting, and at least indicating to the Government it would be desirable if the considerably powers given to the Lord President under Clause 3 were at least subject to effective review by Parliament.

Attempts were made at the Commons committee stage to increase the grant to the umbrella organisations, especially by anti-marketeers anxious to overcome what they saw as the funding advantage of the 'pro' forces. For the Government, William Price said that £125,000 was "not an unimportant sum", which would make it possible "to have a reasonable display of leaflets, to hire halls, employ secretaries and pay for limited Press advertising", and that the public grant "is intended only to supplement the resources which the organisations will rightly seek to raise from other sources. The grant will be more than quadrupled by our decision to print and circulate to every household, at public expense, a booklet setting out two sides of the case."<sup>98</sup> The amount "came about as the result of many discussions with the political parties and the campaigning organisations. We did not get agreement, but as near a consensus as we could get" (c1628). He believed that "we have found a balance between

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<sup>97</sup> cc 1433-4

<sup>98</sup> HC Deb vol 890 c1625, 23.4.75

those who wanted no Government involvement and those who wanted to spend large sums of public money". When challenged on the 'third' document, that of the Government, Mr Price said that "the Government's case is that they have a perfect right to put their view to the people and that is what they intend to do" (c 1626).

The conditions under which grants were to be made were announced on 21 April<sup>99</sup>:

**Mr Edward Short:** The grant to each organisation-Britain in Europe and the National Referendum Campaign-will be made subject to the following conditions, which they have both accepted:

(a) The grant may be used only for purposes connected with the referendum and not for purposes connected with other political objectives.

(b) In accordance with Clause 3(2)the organisation will keep accounts of all sums received or spent for the purpose of the referendum since 26th March 1975, and these accounts will show the persons from whom any such sums were received and the persons to whom any such sums were paid.Receipts and payments of less than £100 need not be separately identified,except when two or more such receipts from a person or organisation together exceed £100.

(c) Accounts for audit for this period will be made available within two months of the date of the referendum.

(d) The accounts will be subject to audit by the Comptroller and Auditor General, who must for this purpose be given all reasonable access he may require to the books of the organisations , and the accounts will be available for publication by the Lord President of the Council.

(e) Any portion of the grant remaining unspent will be repaid to the Privy Council Office.

(f) The grant may be drawn upon as needed as soon as Clause 3 of the Bill has been approved by the House of Commons in Committee. To draw upon the grant the organisation should submit an application signed by Sir Con O'Neill/the hon. Member for Banbury (Mr. Neil Marten) to the effect that it has at least £X of bills or immediate commitments awaiting payment and wishes to draw upon the grant to that amount.

The accounts of the two umbrella organisations, audited by the Comptroller and Auditor General, were published in October 1975.<sup>100</sup> The accounts included lists of contributors of £100 or more.

Butler & Kitzinger's *The 1975 referendum* commented:<sup>101</sup>

The problems of financing the campaigns attracted oddly little attention. The government argued that they were contributing the equivalent of £750,000 to £1 million to each of the umbrella organisations by distributing their rival leaflets nationwide (but they were not responsive to Sir Con O'Neill's suggestion on March 18 that they should abandon the leaflets and divide the money saved between the campaigning organisations). The grant of £125,000 to each side seems to have been arrived at somewhat arbitrarily.

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<sup>99</sup> HC Deb vol 890 cc191-2W, 21.4.75. The Referendum Bill had not by then been enacted

<sup>100</sup> *Accounts of campaigning organisations*, Cmnd 6251, October 1975

<sup>101</sup> 2nd ed, 1996, pp 57,59

## Research Paper 97/61

The figure was within the range suggested by the NRC when they met Mr Short early in February. It was almost equivalent to the cost of one full page advertisement in every Sunday and daily paper. The proMarketeters were determined that there should be a grant, if only to deprive the anti-Marketeters of a grievance. No one pressed seriously for a higher figure against the Treasury's insistence on economy or suggested that the NRC would fare better in ostentatiously unsubsidised poverty. It seems probable that determined demands could easily have led to a doubling of the grant.<sup>5</sup>

Sir Con was also unsuccessful in his efforts to modify the condition of the grant that all receipts and expenditures should be fully accounted for publicly. He argued that publicity would involve a breach of faith with some donors. Mr Whitelaw and other leading figures in BIE pressed these points on Mr Short at a meeting in April, but his only concessions were the extension from one month to two of the time for the preparation of the accounts and the exclusion of the names of donors of less than £100. Since the condition only applied to all transactions after March 26 quite a lot of activity (especially on the BIE side) fell outside its compass (see p. 84-6).

<sup>5</sup> The final cost of the referendum to the taxpayer cannot be fully established. But it is possible to list the approximate expenditure under the main heads:

Returning Officers' expenses	£5,000,000
Cabinet Office activities - mainly the distribution of the three leaflets to every home	£4,000,000
Distribution of poll cards and arrangements for postal votes	£1,900,000
Grants to BIE and NRC	£250,000
COI advertising of postal votes and availability of pamphlets and of the need to vote	£250,000
Ministry of Defence expenditure on Service voting	£15,000
Total	£11,415,000

### 1979 Devolution Referendums

There was no public funding in the 1975 sense in the two devolution referendums. Para 5 of schedule 17 of the *Scotland Act 1978* and para 5 of schedule 12 of the *Wales Act 1978* were as follows:

5. An Order in Council under this Schedule shall not charge any sum on the Consolidated Fund but may provide for the expenses of the returning officers to be defrayed as administrative expenses of the Secretary of State.

Bradley and Christie's *The Scotland Act 1978* commented, in a note to that provision:

Para. 5. The first limb of this paragraph provides that the Order made under this Schedule may not charge any sum on the Consolidated Fund. No government funds will therefore be made available to any organisation for the purposes of the referendum campaign; cf. Referendum Act 1975, s. 3. The Government have, however, announced that since devolution forms part of their policy, the normal resources will be available to ministers in furthering, that policy;

Lord Kirkhill, Minister of State at the Scottish Office, Hansard, H.L. Vol. 394, cols. 457-8 (June 29, 1978). During the Third Reading stage in the Lords, the paragraph was amended so that no charge could be made on the Consolidated Fund for the purposes of the referendum, whether by the order Unable under this Schedule or otherwise; the object of the amendment was to prevent the use of the Civil Service and its facilities in the campaign. The amendment was rejected by the Commons; Hansard, H.L. Vol. 394, cols. 448-62 (June 29, 1978); H.C. Vol. 954, cols. 405-33 (July 18, 1978).

By the second limb of the paragraph, the order may provide for the expenses of returning officers (see para. 6) to be defrayed as administrative expenses of the Secretary of State. This relates to E;. 80, which provides that administrative expenses incurred by a minister; under this Act shall be paid out of money provided by Parliament. Unlike counting officers (see para. 7), returning officers exist for purposes other than the referendum, and the purpose of this provision is to ensure that their expenses will fall under s. 80.

A flavour of the Government's line can be gleaned from the remarks of the Minister, John Smith, introducing the relevant provisions during the Committee stage of the previous session's *Scotland and Wales Bill*:<sup>102</sup>

**Mr. Smith:** The hon. Gentleman raises the question of campaign funds or some subsistence being provided by Parliament to campaign organisations on either side. As the provisions now stand, there will be no power to make subventions from public funds to any campaign organisations. This is a matter that we are still considering. We have not yet come to a decision. We shall take account of any views that the Committee may express. I should say so that there is no misunderstanding, that our current inclination lies rather against making any public subventions. There are considerable difficulties in respect of umbrella organisations. As I have said, our inclination at present is not to make subventions from public funds. We shall listen carefully to what is said on the matter in Committee when we discuss it further.

and<sup>103</sup>

**Mr. Smith:** The Government are being very fair with regard to the expression of opinion. I do not know whether the Conservative Party takes any view on the question of campaign funds. No doubt that will be revealed during the debate if it is thought appropriate. If so, we shall listen. We have not finally decided that question. We shall listen to the views of the Committee. However, I must be fair. Our inclination is that there would be considerable difficulties about restricting the expenditure. Again, that matter will no doubt be explored.

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<sup>102</sup> HC Deb vol 925 cc 1807-8, 10.2.77

<sup>103</sup> c1809

## Research Paper 97/61

The study of the Scottish referendum by Bochel *et al* commented:<sup>104</sup>

In 1975 campaign organisations each received a sum of money of £125,000 (in addition to the free printing and distribution of their respective leaflets); this time no public funds went to either side. In the EEC case, "the problems of financing the campaigns attracted oddly little attention" (Butler and Kitzinger, 1976, p. 57); in the case of the devolution Referendum it was never seriously attempted but this decision again attracted little attention - it was presumably accepted as a consequence of the ruling party's attitude towards umbrella organisations.

The story on campaign expenditure is somewhat different. In 1975, although it was decided not to restrict expenditure by each side (it was considered too late for this to be feasible), it was nevertheless belatedly decided to oblige the campaigning organisations to publish accounts (Butler and Kitzinger, 1976, p.59). In debates on the devolution Referendum it was even suggested by a Conservative backbench opponent of the Scotland Act that there should be limits on expenditure by each side. What Sir John Gilmour described as a "loophole in the arrangements for the referenda" (Hansard, 958, cols 1321-1322), however, remained unplugged. As a result the public will never know precisely how much was spent on the campaign, where it all came from, nor how the expenditure was broken down. Jim Sillars, MP, leader of YFS, described this decision not to restrict expenditure as a further deliberate move by Labour backbench rebels to give the business community an advantage in the campaign; Parliament, however, remained indifferent.

The Foulkes *et al* study of the Welsh referendum also considered the issue very briefly:<sup>105</sup>

The Opposition moved at the Report Stage in the Lords an amendment to the Bill which sought to prevent the Government doing anything which involved the use of public funds to secure a result one way or the other in the referendum. The Government stated that they did not intend to provide public funds for campaigning organisations, and had no plans themselves to issue any leaflet, etc., explaining the provisions of the devolution legislation. However, devolution being government policy, the normal facilities available to ministers in furthering government policy should be available, The Opposition amendment would have forbidden this. It was agreed to by the Lords but disagreed by the Commons and is not in the Act. A similar provision had been inserted in the Scotland Bill with the same result.

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<sup>104</sup> *The referendum experience*, 1981, p.6

<sup>105</sup> *The Welsh veto*, 1983, p.94

## Appendix 1

### Results of referendums in the United Kingdom

#### 1. The Northern Ireland Border Poll, 8 March 1973<sup>106</sup>

Do you want Northern Ireland to remain part of the United Kingdom?	591,820	(98.9%)
Do you want Northern Ireland to be joined with the Republic of Ireland outside the United Kingdom?	6,463	(1.1%)
Rejected ballot papers	5,973	
Electorate	1,031,934	
Turnout <sup>107</sup>	58.1%	

#### 2. Referendum on UK membership of the EEC, 5 June 1975<sup>108</sup>

Do you think that the United Kingdom should stay in the European Community (The Common Market)?		
Yes	17,378,581	(67.2%)
No	8,470,073	(32.8%)
Rejected ballot papers	54,540	
Electorate <sup>109</sup>	40,084,594	
Turnout <sup>110</sup>	63.9%	

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<sup>106</sup> The Northern Ireland Border Poll 1973 (Cmnd 5875) paragraph 68

<sup>107</sup> Valid votes cast as percentage of electorate.

<sup>108</sup> The Certificate of the Chief Counting Officer Cmnd 6105; FWS Craig **British Electoral Facts 1832-1987** Table 13.02

<sup>109</sup> Civilian electorate.

<sup>110</sup> Civilian turnout only. If service voters (for whom special arrangements were made and for whom only approximate figures are available) are taken into account the overall turnout is very similar.

## Research Paper 97/61

### 3. Referendum on devolution for Scotland, 1 March 1979<sup>111</sup>

Do you want the provisions of the Scotland Act 1978 to be put into effect?

Yes	1,230,937	(51.6%)
No	1,153,502	(48.4%)
Rejected ballot papers	3,133	
Electorate <sup>112</sup>	3,747,112	
Turnout	63.6%	

### 4. Referendum on devolution for Wales, 1 March 1979<sup>113</sup>

Do you want the provisions of the Wales Act 1978 to be put into effect?

Yes	243,048	(20.3%)
No	956,330	(79.7%)
Rejected ballot papers	3,309	
Electorate <sup>114</sup>	2,038,049	
Turnout	58.8%	

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<sup>111</sup> The Certificate of the Chief Counting Officer Cmnd 7530; FWS Craig op cit Table 13.04

<sup>112</sup> Part estimated to take into account the numbers of registered electors who, by the date of the referendum, had died, were convicted prisoners in prison or were students or nurses registered at more than one address. This reduced the electorate from 3,787,312.

<sup>113</sup> FWS Craig op cit Table 13.03

<sup>114</sup> Part estimated to take into account the numbers of registered electors who, by the date of the referendum, had died, were convicted prisoners in prison or were students or nurses registered at more than one address. This reduced the electorate from 2,056,349.

Votes cast as percentage of the electorate

	Yes	No
Northern Ireland <sup>115</sup>	57.4%	0.6%
European Community <sup>116</sup>	43.0%	20.9%
Scotland	32.8%	30.8%
Wales	11.9%	46.9%

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<sup>115</sup> 'Remain part of the UK' is treated as 'Yes' here.

<sup>116</sup> Approximate figures in absence of accurate data on electorate of service voters.

## Appendix 2

### Queen's Speech background note on the bill<sup>17</sup>

#### REFERENDUMS (SCOTLAND AND WALES) BILL

**"Decentralisation is essential to my Government's vision of a modern nation. Legislation will be introduced to allow the people of Scotland and Wales to vote in Referendums on my Government's proposals for a devolved Scottish Parliament and the establishment of a Welsh Assembly. If these proposals are approved in the referendums, my Government will bring forward legislation to implement them."**

The Referendums (Scotland and Wales) Bill would:

- authorise the holding of Referendums in Scotland and Wales;
- stipulate the propositions (questions) to be voted on in the Referendums;
- stipulate that those entitled to vote in the Referendums would be those entitled to vote in local government elections;
- provide for the appointment of a Chief Counting Officer, who would appoint counting officers for each of the local Government areas and certify the total number of votes cast for each of the propositions;
- authorise the inclusion in secondary legislation of the necessary provisions relating to the conduct of the Referendums;
- authorise the Secretary of State to undertake preliminary work on the establishment of a Scottish Parliament and a Welsh Assembly.

#### Scotland Bill

Subject to the result of the referendum The Scotland Bill would:

- provide for the establishment of a Scottish Parliament;
- provide for the establishment of a Scottish Executive and its powers;
- provide for the establishment of relations with the UK Parliament and the UK Government.

Subject to the result of the referendum the legislation for the establishment of a Scottish Parliament will be introduced. A White Paper outlining the Government's proposals will be published in advance of the referendum to create a framework for discussion between all interested parties.

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<sup>117</sup> Queen's Speech briefing pack, 14.5.97, pp52-5

### Wales Bill

Subject to the result of a referendum a Bill would be introduced to establish a Welsh Assembly. The Assembly would ensure both that Wales is governed more democratically, and that the interests of Wales are more effectively represented on the national and international stages. In particular:

- the Assembly would inherit the powers of the The Rt Hon Ron Davies MP, Secretary of State for Wales, democratising the current functions of the Welsh Office and ensuring that the needs of the people of Wales are met by a body they elect directly;
- the Assembly would increase transparency and accountability of the network of Non Departmental Public Bodies (NDPBS) in Wales. It would closely monitor the performance of the NDPBs and would also be responsible for ensuring that appointments to them were fully open and in accordance with the Nolan Committee's recommendations;
- the Assembly would itself be elected on the Additional Member System (AMS), ensuring all parties in Wales were more fairly represented.

Recent Research Papers on related subjects include:

95/23	Referendum	21.02.95
97/10	Referendum: Recent Proposals	24.01.97
95/13	The government of Scotland: recent proposals	18.12.95
97/60	Wales and devolution	19.05.97

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