

**Document 1** - Extract –rest of the document is outwith the scope of the request

- Due to the coronavirus crisis, it is clearly not be possible to organise and hold an independence referendum that is beyond legal challenge before the end of the current Parliamentary term.
- The Scottish Government now plans to publish, before the end of this Parliament, a draft bill for an independence referendum – setting out the terms of a future referendum clearly and unambiguously to the people of Scotland.
- The draft bill will set out the question to be asked, subject to appropriate testing by the Electoral Commission, and the timescale in which, within the next term of Parliament, we consider the referendum should be held, most likely in the early part of the new Parliament.
- Timing of an independence referendum will take account of the development of the COVID-19 pandemic at the time of publication of the draft bill, and will ensure the flexibilities to respond to any further restrictions caused by it.
- If there is majority support for the bill in the Scottish Parliament in the next term, there could then be no moral or democratic justification whatsoever for any UK government to ignore the rights of the people of Scotland to choose our own future.
- Other work to prepare for an independence referendum has been paused for the time being as the Scottish Government is focused on responding to the current COVID-19 pandemic and we will return to the issue when it is appropriate to do so.

## Document 2

From: Penny Curtis, [Redacted]  
CCD: EFOI/CUKR  
2 February 2021

Cabinet Secretary for Government Business and Constitutional Relations  
First Minister

### **PROGRAMME FOR GOVERNMENT COMMITMENT: PUBLICATION OF A DRAFT INDEPENDENCE REFERENDUM BILL – APPROACH AND TIMING**

#### **Purpose**

1. To set out a proposed plan for publication of a draft Independence Referendum Bill in this Parliament and the handling implications, and to confirm that you are content that work on preparing the draft bill should start now. It would be helpful to have an early discussion of the matters raised in this submission.

#### **Priority**

2. Routine. However, work to prepare a Bill in time for publication in this Parliamentary session needs to commence imminently.

#### **Background**

3. The Programme for Government for 2020/21 included a commitment to publish a draft Independence Referendum Bill during the current Parliament. Previous work on independence and a draft Bill was paused, and resources were redeployed, in March in response to the pandemic. [Redacted] The commitment to publish a draft Bill was restated in the SNP Route Map to a Referendum.

4. In order to deliver the PfG commitment to publish a draft Bill in the current Parliament, work to provide more detailed advice on the approach, and to instruct the short draft Bill and develop any accompanying material will need to start now. This submission sets out a proposed plan for that work, [Redacted].

#### **Scope of the work**

5. The PfG commitment is:

...before the end of this parliament, to set out the terms of a future referendum clearly and unambiguously to the people of Scotland, the Scottish Government will publish a draft bill for an independence referendum setting out the question to be asked, subject to appropriate testing by the Electoral Commission, and the timescale in which, within the next term of Parliament, we consider the referendum should be held taking account of the development of the COVID-19 pandemic at the time of publication, and ensuring the flexibilities to respond to any further restrictions caused by it.

6. The main commitment is therefore to publish a draft Bill. The elements that will need to be considered for such a Bill are at Annex A [Redacted]. The two specific issues mentioned in PfG are the question to be asked and the timescale for the referendum to be held.

7. Work was done early in 2020 on the question for a future referendum bill prior to approaching the Electoral Commission for its advice on that question. The work was paused in March. The main difference in the current approach is that we would publish the question in a draft Bill before the Commission has offered a view. [Redacted].

8. A decision on the approach to timescales in the draft Bill for holding the referendum will be required. The main timetabling issues are summarised in the Annex. [Redacted].

9. [Redacted].

### **Handling considerations**

10. [Redacted].

11. [Redacted].

12. [Redacted].

### **Timing of Publication**

13. The commitment is to publish the draft Bill during this term of the Parliament which will need to be before the start of the pre-election period on 25 March. There will be considerable interest in its publication and scrutiny of the Scottish Government's work on the issue. [Redacted]. At this stage we predict that early-mid March should be a realistic timescale to work towards. We would be grateful for your views on timing.

### **Resources**

14. [Redacted].

### **Conclusion**

15. You are invited to note the scope of the work to fulfil the PfG commitment to publish a draft Independence Referendum Bill this Parliament, and the associated handling issues, and to indicate whether you are content for work to prepare a draft Bill to start.

16. It would be helpful to have an early discussion with you on the matters raised in this submission.

**PENNY CURTIS and** [Redacted]

CCD: Elections and FOI/Constitution and UK Relations

[Redacted]

2 February 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister			X		X
Minister for Parliamentary Business and Veterans					
Lord Advocate		X			
Solicitor General		X			

Permanent Secretary
DG Constitution and External Affairs
David Rogers
James Hynd
Colin Troup
LSLA
Ruaraidh Macniven
Andy Beattie
[Redacted]
Liz Lloyd
Ewan Crawford

## **ANNEX A**

### **Content of the Bill**

1. The Referendums (Scotland) Act 2020 provides the detailed conduct and campaign rules for a referendum held on a devolved matter under an Act of the Scottish Parliament. Primary legislation is required to set the date of the poll and the question, and the format of the ballot paper.

#### Referendum Question

2. The Government wrote to the Electoral Commission in February 2020 asking it to provide advice on the question used in the 2014 referendum. In March the Government indicated that it did not expect the Commission to undertake testing of a referendum question until public health circumstances permits such activity. The Commission's Board has, therefore, not yet taken a decision on the request for advice.

3. The PfG commitment now envisages publication of the draft Bill before testing of the question by the Electoral Commission. It is not necessary to have the Commission's advice on the question at the point at which a draft Bill is published. Indeed, the Referendums Act requires that the Commission's advice is provided as soon as practicable after introduction of a Bill. [Redacted].

4. [Redacted]

#### Date of the Referendum

5. The date of the poll is one of the key elements of a referendum bill, but for the purposes of a draft Bill for publication in the current Parliament, it will not be possible to identify a specific date (paragraph 8 of the main submission). [Redacted].

6. [Redacted]

7. [Redacted]

8. [Redacted]

9. [Redacted]

#### Franchise

10. The franchise for devolved referendums is set out in the Referendums Act. The policy intention was that the franchise for any referendum mirror the franchise for Scottish Parliament and local government elections. [Redacted]

[Redacted]

11. [Redacted]

### Document 3

From: [redacted]  
CCD: EFOI  
11 March 2021

Cabinet Secretary for Government Business and Constitutional Relations  
First Minister

### **PROGRAMME FOR GOVERNMENT COMMITMENT: PUBLICATION OF A DRAFT INDEPENDENCE REFERENDUM BILL – APPROACH TO TIMING OF THE POLL**

#### **Purpose**

1. To provide an update on preparation of a draft Independence Referendum Bill for Ministers' views and to provide advice on the options for handling [redacted].

#### **Priority**

2. Urgent. In order to finalise the draft Bill and accompanying paper for publication before the pre-election recess.

#### **Background**

3. The Programme for Government for 2020/21 included a commitment to publish a draft Independence Referendum Bill during the current Parliament. Penny Curtis' submission of 2 February set out proposals for the approach to the draft Bill. This submission provides an update on development of the draft Bill which covers the referendum question, update of the franchise to bring it into line with the current franchise for devolved elections, [redacted].

#### **Content of the Draft Bill**

4. The detailed rules for running a referendum are set out in the Referendums (Scotland) Act 2020. A Bill to provide for a specific referendum can be very short, setting out the question to be asked and the timing of the poll. We discussed the content of the draft Bill with Mr Russell who was content that the draft Bill should also include provisions to update the franchise. [redacted].

5. A draft Bill is provided as a separate attachment. It is still subject to refinement and checking, and will need to be refined in response to decisions on the issues in submission.

#### Timing of the legislation

6. For the purposes of this draft Bill we have not included a date in the short title of the Bill. The year chosen for the date of a Bill for introduction is the year in which we expect the Bill will receive Royal Assent. Timing of a Bill for introduction and its passage will be for the next Parliament to agree. [redacted]. **We would be grateful for Ministers' views on this approach.**

#### Question

7. The question is the same one used during the 2014 referendum, and reflects Ministers' policy statements that the question is clear and well understood by the public. The accompanying paper will

include a statement on Ministers' intention to ask the Electoral Commission to resume their consideration of the request for advice on the question as soon after the election as conditions allow. The existing request to the Commission was paused in March 2020 until a point at which the public health conditions allowed the work to start.

8. The accompanying paper also indicates an intention to ask the Electoral Commission to test the question translated into Gaelic that was discussed with Mr Russell. The outcome of the testing would then inform whether to include the question in Gaelic in a Bill for introduction. The draft Bill for publication this month will not include the question in Gaelic. [redacted].

**9. Ministers are invited for their views on setting out an intention to invite the Electoral Commission to test the referendum question in Gaelic as well as in English.**

Franchise

10. The draft Bill includes provision to extend the franchise to mirror the franchise at Scottish Parliament and local government which now includes foreign nationals with leave to remain (or who do not require such leave). This fulfils the commitment made during the passage of the Referendums (Scotland) Act to align the referendum franchise with the elections franchise after the passage of the Scottish Elections (Franchise and Representation) Act. It also demonstrates Scottish Ministers' commitment to ensuring those who live in Scotland and have made their lives here can influence decisions about the future of Scotland. Some additional technical changes may be required to adjust some of the specific arrangements; this will be considered at the point the Bill is prepared for introduction.

11. Prisoners serving terms of 12 months or less were already included in the franchise in the Referendums (Scotland) Act, as the legal disqualification for voting is linked to that used at Local Government Elections. [redacted].

Timing of the Poll

12. The Scottish Government's policy is that timing of the poll will be a matter for the next Scottish Parliament if there is a majority to support an independence referendum. The language in the accompanying paper will reflect that and say that timing will be conditional on the public health situation, consistent with what the FM has stated publicly. [redacted].

13. [redacted].

14. [redacted].

15. [redacted].

16. [redacted].

**Format of the Publication**

17. The proposal is that the draft Bill is accompanied by a very short paper that refers to the PfG commitment, the context of the detailed rules being provided for in the Referendums Scotland Act 2020, and describes the content of the Bill (date of the poll, the referendum question and the format of the ballot paper, and the franchise.) A communications proposal is also being developed.

18. [redacted].

### **Timing of the Publication**

18. The draft Bill will need to be published before the pre-election period starts on 25 March. The most suitable dates for publication are Thursday 18, Friday 19 or Wednesday 24 March.

### **Conclusion**

19. You are invited to note the update on development of the draft Independence Referendum Bill and to indicate:

- Whether you are content with the approach to the content of the draft Bill for publication;
- Your views on the proposal not to include a date in the title of the draft Bill;
- Whether you are content to indicate an intention to test the referendum question in Gaelic;
- [redacted].

20. It would be helpful to have an urgent response to enable us to finalise the draft Bill and accompanying paper for your clearance and to prepare for publication.

[redacted]

CCD: Elections and FOI/Constitution and UK Relations  
11 March 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister			X		X
Minister for Parliamentary Business and Veterans					
Lord Advocate		X			
Solicitor General		X			

Permanent Secretary
DG Constitution and External Affairs
David Rogers
Penny Curtis
James Hynd
Colin Troup
LSLA
Ruaraidh Macniven
Andy Beattie
[redacted]
Liz Lloyd
Ewan Crawford

## Document 4

### DRAFT INDEPENDENCE REFERENDUM BILL PUBLICATION - BRIEFING

#### Legislative Competence

- It was made clear during the passage of the Referendums (Scotland) Act that a transfer of power (e.g. a Section 30 order) would be required to put beyond doubt or challenge the Scottish Parliament's ability to apply the framework to an independence referendum.
- If there is a majority in favour of independence in the Scottish Parliament after the forthcoming election for this bill there can be no democratic justification whatsoever for any Westminster government to seek to block a post-pandemic referendum.

#### If the UKG refuses a section 30 order

- There would be no democratic justification for any Westminster government to seek to block a post-pandemic referendum.
- All parties signed up to the Smith Commission report in 2014 which said: "It is agreed that nothing in this report prevents Scotland becoming an independent country in the future should the people of Scotland so choose."

#### A "wildcat" referendum?

- The Scottish Government is committed to a referendum which is beyond legal challenge and which will be recognized both here at home and by the international community including by the EU. That will ensure that the decision people in Scotland make, should they vote in favour of independence, is given effect.

#### Timing of poll

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

#### Why is there no date in the Bill?

- The referendum will be held after the health crisis. The date of the poll will therefore be decided by the new Scottish Parliament – taking into account the situation with the pandemic.
- But the Scottish Government believes the powers needed to drive our long-term recovery from COVID should lie here in Scotland and not at Westminster. That means the referendum should be in the first half of the new Parliament – provided it is safe to do so.
- The draft Bill include provision to allow Ministers to change the date of the referendum by regulations, if it would be impossible or impractical for the poll to proceed on the date set out in the Bill, or if it could not be conducted properly.
- This provision provides a means to change the date of the poll if practical problems mean it cannot proceed as planned as is standard in electoral legislation

[redacted]

#### Question and Ballot paper

- The draft Bill includes the question as used in 2014, and the form of the ballot paper.
- Scottish Ministers are clear that the question used in 2014 is still familiar to voters and is the most appropriate question that could be used on this topic.
- The Referendums (Scotland) Act 2020 will require the Electoral Commission to consider the wording of the referendum question and publish a statement of any views of the

Commission as to the intelligibility of the question as soon as reasonably practicable after a referendum Bill is introduced.

- On Friday 31 January 2020 the Scottish Government informed the Scottish Parliament that it would ask the Electoral Commission for advice on the question which was used in the 2014 independence referendum - 'should Scotland be an independent country?'
- This request was made to the Electoral Commission in February 2020.
- In March 2020, the Scottish Government wrote to the Electoral Commission and asked for the request to be paused until the prevailing public health conditions would allow it to proceed.
- The Referendums (Scotland) Act 2020 will require the Electoral Commission to consider the wording of the referendum question and publish a statement of any views of the Commission as to the intelligibility of the question as soon as reasonably practicable after a referendum Bill is introduced.
- The Scottish Government is committed to supporting and promoting the use of Gaelic.
- The Scottish Government therefore intends to translate the question in to Gaelic, and ask the Electoral Commission to consider the translation as part of any question testing process as described above.

### **Franchise**

- The draft Bill follows the approach taken at the 2014 independence referendum by aligning the referendum franchise with that used for local government and Scottish Parliament elections.
- It was made clear during the passage of the Referendums (Scotland) Act that Ministers intended to keep the franchises in alignment if there were any changes, such as those then proposed in the Scottish Elections (Franchise and Representation) Bill.
- Since the passage of the Referendums (Scotland) Act, the Scottish Elections (Franchise and Representation) Act made changes to the franchise used for local government and Scottish Parliament elections, to include foreign nationals with leave to remain in Scotland (or who do not require such leave), and prisoners serving sentences of less than 12 months.
- The draft Bill therefore includes drafting to bring the referendum franchise in line with these changes.
- Prisoners serving sentences of less than 12 months were already enfranchised in the Referendums (Scotland) Act.

### **Referendums (Scotland) Act**

- The draft Bill applies the Referendums (Scotland) Act, with any modifications that might be needed.
- The Referendums (Scotland) Act provides a legislative framework for the holding of national referendums in Scotland that are within the legislative competence of the Scottish Parliament. It covers the technical aspects of holding the referendum by setting the rules for voting and setting out the rules for how the poll should be conducted, and also provides campaign rules to regulate campaigning at the referendum.
- Depending on the exact arrangements for the referendum, e.g. the exact date, it may be necessary to make some technical modifications to the Referendums (Scotland) Act.

### **Ancillary provision**

- The draft Bill includes ancillary provision, to allow Ministers to make regulations to provide for any incidental, supplementary or consequential provision to give effect to the Bill.
- This is a standard piece of drafting to include in any primary legislation.

### **Shouldn't the recovery come first?**

- The point of an independence referendum is so that people in Scotland – not Boris Johnson – decide how Scotland recovers from the pandemic.
- If Boris Johnson maintains control of Scotland, jobs and our economy will be hit hard by Brexit, our NHS will be vulnerable to post-Brexit trade deals and on past evidence the Tories will impose years of austerity.

### **General independence lines**

- The Scottish Government believes the best future for Scotland is to be an independent country in order to build a fairer, more prosperous society.
- There is no reason whatsoever that Scotland could not emulate the success of independent countries of our size which are far wealthier per head than the UK.
- Independence would allow Scotland to make the public spending choices best suited to Scotland's interests.
- Independence will give Scotland the powers we need to grow our economy and invest in our people and public services to create a fairer, wealthier, and greener country.
- As an independent member of the EU, free from the damage of Brexit, Scotland would be part of the huge Single Market which is seven times the size of the UK.
- Against its will, and in the middle of a pandemic and economic recession, Scotland has been removed from a market worth £16 billion in exports to Scottish companies – and which by population is seven times the size of the UK – as well as the Customs Union.
- The UK government has deliberately chosen a form of Brexit which will make it harder and more expensive for firms to export goods and services to the EU, and to employ EU nationals in their workforce.
- Scottish Government modelling estimates that a deal of the type that appears to have been agreed could cut Scotland's GDP by around 6.1% (£9 billion in 2016 cash terms) by 2030 compared to EU membership.
- This "hard Brexit" reinforces why it is so important for people in Scotland to have the right to decide their own future and to regain the full benefits of EU membership as an independent country.
- The decision whether the time is right for the people who live in Scotland again to make a choice about their constitutional future is for the Scottish Parliament, as the democratic voice of Scotland, to make.

### Queries on specific aspects of independence

- In March last year the Scottish Government paused work on updating the comprehensive plan for an independent Scotland to focus on the response to the Covid-19 pandemic.
- If there is majority support for an independence referendum in the next parliamentary term when the Covid-19 pandemic is over, the Scottish Government will return to this work to ensure that the people of Scotland have the information they need to make informed choices over the future of the country.

## Document 5

Extract – rest of the document is outwith the scope of the request

### **Due to the coronavirus crisis, it is clearly not possible to organise and hold an independence referendum that is beyond legal challenge before the end of the current Parliamentary term.**

- The Scottish Government has published a draft bill for an independence referendum which sets out the terms of a future referendum clearly and unambiguously to the people of Scotland.
- The draft bill sets out the question to be asked, subject to appropriate testing by the Electoral Commission, and the timescale in which, within the next term of Parliament, we consider the referendum should be held, most likely in the early part of the new Parliament.