Annex A

Item 1

Building a New Scotland: Q&A

General lines

'Building a New Scotland' series

People in Scotland have voted for a Parliament with a clear majority in favour of independence and with a mandate for an independence referendum.

The Scottish Government committed in its Programme for Government to providing the people of Scotland with the information they need to make a choice about Scotland's future.

Independence will put the power to decide Scotland's future in Scotland's hands.

It will ensure Scotland always gets the governments it votes for.

Independence would enable an equal partnership with our friends in the UK - a new and better relationship.

The 'Building a New Scotland' series is designed to give people the information they need to make an informed choice about their future and to stimulate debate over what that future should be.

Paper 1

This paper is the first in a series contributing to the debate on Scotland's future.

It compares the UK's performance across a range of economic and social indicators to that of ten independent European countries such as Austria, Denmark and Ireland.
Most of these countries are similar to Scotland in terms of geographical size, population or both.

The analysis shows that the comparator countries frequently achieve better outcomes than the UK – often significantly better - on a range of measures including Gross Domestic Product (GDP) per capita, inequality, poverty, business investment and productivity. In short they are both wealthier and fairer.

The evidence in this paper suggests that decision-making at Westminster has led to outcomes that fail to match Scotland's potential. Moreover, the damage caused by Brexit will result in Scotland finding it harder to achieve that potential.

Scotland has a range of assets that could help Scotland flourish through independence, such as world class universities, stunning natural heritage, a world-leading approach to Net Zero and a strong global outlook.

The countries in this paper serve as working examples of the possibilities and options available to an independent Scotland. They also show the social and economic outcomes that can be achieved with the powers of independence.

The prospectus series will set out the government's proposals for how independence would enable the creation of a wealthier, happier, and fairer Scotland.

Prospectus content / policies

What's being published as part of the prospectus?

[Redacted – S.30(C)]

What are the timescales / how many papers will be published/ what will they cover?
Information on the major questions relating to an independent Scotland will be published in good time before a referendum takes place. This will allow people to make an informed choice over their future and stimulate debate over what that future should be.

The precise number, sequencing and dates for the subsequent papers are yet to be determined. **[Redacted – S.30(C)]**

Papers to come later in the series will cover areas including: currency; Scotland's fiscal position and how with independence we can build a more sustainable economy and therefore stronger public finances; pensions and social security; EU membership and trade; defence and security.

As outlined in the Programme for Government, the Scottish Government will work to ensure that a legitimate and constitutional referendum can be held within the first half of this Parliament.

Prospectus costs

The publication costs for the prospectus will be made available in due course.

What is the position on the EU?

The Scottish Government's proposal is that an independent Scotland should apply to join the EU as soon as possible.

Having been inside the EU for 47 years, Scotland is clearly well-placed to rejoin and we will set out later in the series an examination of the rights, benefits and obligations of EU membership for an independent Scotland.

What would border arrangements be?

Because of an arrangement called the Common Travel Area people will be able to move freely across the UK and the Republic of Ireland as now.

Membership of the EU would take down borders that the UK Government has put up with 27 other countries and provide the ability to trade freely within a market significantly bigger than the UK.

The benefits of being in a marketplace around seven times the size of the UK outweigh the challenges, and create enormous potential to grow our trade and exports.

Scotland exports more manufactured goods to the rest of the world than the rest of the UK.

We are looking in detail at the issue of goods crossing the border between Scotland and the rest of the UK and would put in place arrangements to mitigate the impact. We will set out our proposals for those arrangements later in the 'Building a New Scotland' series.

What would your currency be?

The Scottish Government's proposal is that the currency on day one of independence would be the pound sterling.

We would propose to move to a Scottish pound when it is safe and secure to do so in the interests of the whole economy, guided by robust tests of what is in the interests of people and businesses.

A Scottish pound would be introduced as soon as practicable.

We will set out further details later in the 'Building a New Scotland' series.

Would you have a big deficit and how would you close it?

Current estimates of Scotland's public finances show Scotland's fiscal position as part of the UK and include spending on UK Government priorities. Those estimates show that despite the economic damage of COVID, money raised through Scottish taxes cover day to day spending on all devolved matters, such as schools, hospitals and all Scottish social security as well as the State Pension.

An independent Scotland would be able to make different spending decisions, such as not spending billions of pounds on Trident.

Remember Scotland is a wealthy country with a national income of £180 billion.

As we set out in the first paper in the 'Building a New Scotland series', countries comparable to Scotland are successful at both growing their economies and running sound public finances.

What about state pensions in an independent Scotland?

The Scottish Government's position on pensions was clearly set out in the 2013 White Paper. That position hasn't changed.

The White Paper was clear that the responsibility for paying pensions after independence will transfer to the Scottish Government. It said: *"on retirement, the Scottish State Pension will be paid by the Scottish Government."*

As set out in the White Paper, pensioners would receive their pensions as now, on time and in full. All accrued rights would be honoured and protected.

It also said: *"for those people of working age who are living and working in Scotland at the time of independence, the UK pension entitlement they have accrued prior to independence will form part of their Scottish State Pension entitlement. Any pension entitlement accrued in*

Scotland after independence would also form part of that Scottish State Pension. On reaching the State Pension Age, their Scottish State Pension would be paid by the Scottish Government."

We will set out further details later in the 'Building a New Scotland' series.

What is the position on NATO / Trident?

Our proposal is that, alongside a strong relationship with the UK, membership of the EU and of NATO will be the foundation of an independent Scotland's security policy. An independent Scotland would be able to consider what support it can offer the NATO alliance and play a full part in the collective security of our allies and neighbours.

The Scottish Government firmly opposes the threat, use and possession of nuclear weapons. An independent Scotland allows for the removal of nuclear weapons and work with world allies, including NATO in working towards nuclear disarmament. Most NATO members do not have nuclear weapons so that is clearly not a barrier to membership.

Further details will be set out later in the 'Building a New Scotland' series.

Background
Nine of the 195 countries in the world have nuclear weapons.

Lines on preparation process

Timing – why now is the right time

In May last year, 72 of 129 MSPs were elected on manifestos that commit them to a referendum on Scottish independence during this Parliament. The agreement reached between the Scottish Government and the Scottish Green Party confirms and strengthens the clear mandate granted by the people of Scotland for a referendum on Scottish independence.

The Programme for Government published last September set out the Scottish Government's view that it must be up to the people of Scotland to decide how the country is governed in the future and that people must be given information to make that choice. This is an issue critical to Scotland's future and the people of Scotland are entitled to the information they need to make an informed choice about it. The PfG set out that the referendum should be held, Covid permitting, in the first half of this Parliamentary session.

Lines on number of civil servants working on independence

A core group of civil servants is currently engaged in co-ordinating work related to our clearly set-out PfG commitments on independence. Coordination of the work to deliver these commitments is part of the role of the Constitution and Cabinet Directorate.

Activity in advance of the referendum, including delivering the PfG commitment to prepare a prospectus for an independent Scotland, will be carried out in a range of portfolios. In most cases this is just one part of an individual's role.

Across the Scottish Government a range of staff has been or will be involved in independence work. We do not routinely record details of individual tasks carried out by civil

servants, including the number of hours spent on them, as there is no business need to do this.

Propriety

It is the role of civil servants to support the elected government in developing and implementing its policies. Civil servants must act, as always, in accordance with the Civil Service Code and values of integrity, honesty, objectivity and impartiality.

Civil servants often develop long-term policies that will be pursued by the government of the day if re-elected. For example the recent National Strategy for Economic Transformation has a ten-year time horizon while the UK Government has set out 'national levelling up missions' to 2030 and energy security policies that look to 2030 and 2050.

The prospectus will make clear to people that decisions about future policies in an independent Scotland will be made by the elected government and parliament at that time.

Legal advice received

The Scottish Government takes legal advice on all issues as appropriate.
Ensuring the confidentiality of legal advice provided to Ministers is covered in the Scottish Ministerial Code (paragraphs 2.41 and 3.4).

Ministers and officials need high-quality, comprehensive legal advice for the effective conduct of their business. That advice needs to be given in context, and with a full appreciation of relevant facts. Without such legal advice, which can only be provided frankly and comprehensively in the knowledge that it will be kept in confidence, the quality of the government's decision-making would be much reduced since it would not be fully informed.

There is a longstanding convention, observed by UK Governments and Scottish Governments, that government does not disclose legal advice, including whether law officers have or have not advised on any matter, except in exceptional circumstances. The content of any such advice is confidential and subject to legal professional privilege. This ensures that full and frank legal advice can be given.

The Scottish Government considers that the convention on legal advice is important for ensuring good government.

The Law Officers will of course advise the government about any bill which Ministers introduce.

Background

Ensuring the confidentiality of legal advice is covered in the Scottish Ministerial Code (paragraphs 2.41 and 3.4).

The Law Officer Convention applies both to Scottish Ministers and those in the UK Government, such is the importance of Ministers being able to receive frank, private advice.

Information Commissioner Decision – publication of legal advice

The Scottish Government has released the legal advice required under the Commissioner's decision as it does not merit the time and expense required for an appeal.

The Scottish Government disagrees strongly with the Commissioner's reasoning and consider that there would have been good grounds for a successful appeal to the Court of Session

The publication of the material in this case does not set any legally binding precedent on releasing any other information that is subject to legal professional privilege in future, including in response to any other Freedom of Information request.

The Scottish Government will therefore continue to apply the relevant exemptions, in line with the public interest test, as set out in the Freedom of Information (Scotland) Act 2002 and to follow the Scottish Ministerial Code in relation to legal advice.

Lines on Parliamentary Engagement

General

The Scottish Government respects the role of parliament in scrutinising delivery of its work programme.

The Government will seek to engage with Parliament and its Committees over the coming months as the Building a New Scotland prospectus series is published.

It is important that the Government maintains the ability to communicate effectively inside and outwith the chamber, while respecting the role of Parliament.

Parliamentary Handling of Paper 1

The publication of the paper followed a similar the approach as that for the Independence White Paper in 2013, with Parliament informed via a written answer prior to the press conference.

The Cabinet Secretary for Constitution, Europe and External Affairs came to the chamber to provide more information to MSPs and answer questions.

This first publication was a scene-setting, comparative analysis rather than a policy paper.

Lines on Paper 1

Purpose of the paper

The paper provides crucial context for the rest of the independence prospectus series by providing substantial evidence to show that the UK is frequently out-performed by other European countries across a range of economic and social indicators.

The paper compares the UK's performance across a range of economic and social indicators to a set of European countries comparable to Scotland and highlights the opportunities that could be created by independence.
In doing so, it provides detailed evidence to show that the comparator group of countries routinely out-performs the UK.

Are the comparator countries a fair basis for comparison?

The comparator countries are all relatively small (in population terms) European nations and they provide relevant examples for an independent Scotland to learn from and possibly emulate.

This paper looks specifically at national economic and social models that are both relevant to Scotland's circumstances – where Scotland can learn from their policy choices – and consistent with the current Scottish Government's aims and objectives to achieve greater equality alongside productivity growth.
It is possible to learn something from all economic and social models. However, those pursued in, for instance, Hong Kong and Singapore have limited applicability to Scotland's circumstances and ambitions. And large economies like France and Germany have limited relevance for Scotland due to the size difference.

The paper focuses on UK performance, why not include Scotland?

The paper is not about Scotland – it is explicitly concerned with the UK's performance compared to a group of ten European nations; independent nations with a range of economic powers not currently available to Scotland.
This is the first in the *Building New Scotland* prospectus series, providing a scene-setter, before the later papers which will set out the opportunities available through independence for Scotland.

Would the UK's relative performance appear better if different comparator countries were selected?

A range of countries could have been selected for any exercise of this nature, some of which perform better than the UK, and some of which do not. In seeking to explore the success of a range of independent European nations, and the factors in their success that might influence an independent Scotland's approach to economic and social development, it makes sense to select European countries that are roughly of Scotland's size in population and/or land area terms. It would make no sense to benchmark the UK's performance against emerging or post-communist economies.

The comparator countries are relatively small European nations. The list excludes countries in Southern Europe, post-communist countries, micro-states and countries that are too large to provide useful development models for Scotland. No countries within this geography have been deliberately excluded to exaggerate the UK's relatively poor economic and social outcomes.

Is the performance of the comparator countries relevant to Scotland under independence?

Yes. The performance of all countries is of course a product of both their history and a range of factors that, in combination, are unique to each of them. But we can look at the factors that we have in common with the comparator countries, and the choices and opportunities that become available to Scotland under independence in the same ways that they are available to neighbouring independent countries, and gain an understanding of how these might influence an independent Scotland's performance.

The comparator countries also don't represent a single model, and the paper is clear that independence in itself is not a guarantee of a better Scotland. Scotland's performance under independence will depend on democratic decisions made in the context of a full set of powers, and significant new choices and opportunities.

It is unfair to compare the UK to these countries - we would expect smaller countries to perform better than larger countries?

Not necessarily. Large countries have larger internal markets and are therefore less reliant on exports and foreign capital. What's so remarkable about the performance of the comparator countries – especially the Nordics - is that they manage to sustain systems combining business dynamism with deep social solidarity despite small populations. Membership of the EU single market also allows the comparator countries to realise the benefits of being part of a bigger market.

That said, we do believe small countries in the global economy of the 21st century can enjoy some intrinsic advantages, tending to have effective, responsive governments with a well-developed sense of strategic capacity, high levels of trust and social cohesion, and the ability to adapt in response to changing international circumstances.

Of course, the economic performance of some small countries can be flattered by natural resource endowments (true to an extent for Norway) or tax systems (true for Ireland – as acknowledged in the paper). But these scenarios cannot explain the comparator group as a whole outperforming the UK across the range of measures discussed in the paper.

Some of the comparator countries have very high tax/GDP ratios – can we assume the same for an independent Scotland?

No - the comparator countries, as well as others across the world, serve as working examples of the possibilities for and options available to a Scotland with the full powers of independence.
As the paper makes clear, the political choices of the electorate in Scotland would determine an independent Scotland's approach to taxation. Future papers in the series will discuss the options available to an independent Scotland in greater detail.

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Are the statistics for 2020 and 2021 a fair basis for international comparators given the impact of the Covid-19 pandemic?

Using the latest statistics (i.e. 2020 or 2021 instead of 2019) doesn't change the comparison for any of the indicators – mainly because the pandemic hit all countries under assessment

in similar ways. This is one of the reasons why we include time series data e.g. the wealth and productivity gaps have been sustained over time.

Item 2

First Minister

REFERENCE TO SUPREME COURT RE LEGISLATIVE COMPETENCE OF A PROPOSED BILL FOR A REFERENDUM ON SCOTTISH INDEPENDENCE

In the course of our recent discussions you have requested that I give consideration to making a reference to the Supreme Court under paragraph 34 of schedule 6 of the Scotland Act 1998 concerning the devolution issue of whether a Bill for a referendum on Scottish Independence would relate to reserved matters.

Having given this matter detailed consideration I have decided to make a reference to the Supreme Court regarding this question of law. The reference will be served and notified as required and then formally filed with the Supreme Court in the coming period.

Paragraph 34 of schedule 6 of the Scotland Act 1998 provides that:

> "The Lord Advocate….may refer to the Supreme Court any devolution issue which is not the subject of [court] proceedings."

A "devolution issue" is defined by paragraph 1 of schedule 6 to include (para. 1(f)):

> "any other question about whether a function is exercisable within devolved competence or in or as regards Scotland and any other question arising by virtue of this Act about reserved matters."

I consider that the question of whether a Bill would relate to the reserved matters of the Union or the UK Parliament comes within the scope of paragraph 1(f).

My power to make a direct reference under paragraph 34 is a "retained function" that is exercisable by me as Lord Advocate. Section 52 (Exercise of functions) of the Scotland Act 1998 provides that retained functions are not part of the statutory functions exercisable collectively by the Scottish Ministers, but rather are other statutory functions conferred on the Lord Advocate alone (section 52(6)(b)). The power in paragraph 34 is one such retained function. In short, this decision is mine, and mine alone.

I consider a direct reference to the Supreme Court to be the most appropriate way to proceed at the current time. I have had regard to a number of factors in arriving at this decision.

The Scottish Government has been elected with a democratic mandate to hold a referendum on the question of Independence in the course of the current session of the Scottish Parliament, and our collective commitment, in the Programme for Government 2021-22, is to "work to ensure that a legitimate and constitutional referendum can be held within this Parliament".

For some time, there has been debate about the scope of the Scottish Parliament's powers in this important matter. I have come to the view that legal certainty on this issue is required and, because this is a genuine question of law that is unresolved – of exceptional importance to the people of Scotland and the UK – that resolution can only be achieved by a judicial determination by the Supreme Court.

This is the first time that any Lord Advocate has exercised the power under paragraph 34, which is a measure of the fundamental importance of the issue and its exceptional nature. With that in mind I will present the reference personally in the Supreme Court.

The Solicitor General for Scotland is in agreement with my decision.

Acting in the public interest of the people of Scotland, and in accordance with the rule of law is intrinsic to the range of functions and responsibilities of the office of Lord Advocate, which I am privileged to hold. I also note my particular responsibility under the Scottish Ministerial Code to ensure that the Government acts lawfully at all times. It is with those obligations in mind that I have decided to refer this question to the Supreme Court.

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RT HON DOROTHY BAIN QC

LORD ADVOCATE

24th JUNE 2022

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Item 3

Referendums- background briefing

Previous "consultative" referendums

- The 1997 Scottish devolution referendum, 2014 Independence referendum and the 2016 EU referendums were all consultative, because in each case the legislation that provided for the referendum did not include any provisions specifying what would following the referendum.

- The referendums were not self-executing. Rather, further legislation was required (such as the Scotland Act 1998 and the various Brexit acts) to implement the changes.

- None of these referendums included any type of turnout threshold or provision for supermajority.

Previous self-executing referendums

- The 2011 Alternative Vote referendum operated differently, as the Parliamentary Voting System and Constituencies Act 2011 placed a duty on the UK Government to make an Order commencing or repealing the AV provisions of that Act according to the outcome of the referendum.

- The 1979 devolution referendum was self-executing as the Scotland Act 1978 required an Order in Council to be made repealing that Act if less 40% of the total registered electorate voted in favour of devolution, as well as a simple majority of those voting.

2022 Draft Bill

- As in 2014, the purpose of the referendum is to ascertain the views of the people of Scotland on whether or not Scotland should be an independent country.
- The Scottish Government proposes that the referendum question should be the same as that used at the 2014 referendum. The draft Bill therefore includes the question and the form of the ballot paper used in 2014.
- The draft Bill includes provision to extend the franchise to include foreign nationals with leave to remain in Scotland (or who do not require such leave).
- This fulfils the commitment made during the passage of the Referendums (Scotland) Act 2020 to align the referendum franchise with the elections franchise after the passage of the Scottish Elections (Franchise and Representation) Act 2020.
- It may be necessary to make some additional technical adjustments to the rules set out in the Referendums (Scotland) Act, including to accommodate the expansion of the franchise. The Bill includes a placeholder for any such modifications.

Referendums (Scotland) Act

- The Referendums (Scotland) Act 2020 sets out the conduct and campaign rules for referendums on devolved issues.
- These rules draw on existing electoral and referendum law. The rules in the Act about the conduct of the poll and the count are closely based on the rules applying to the conduct of elections to the Scottish Parliament and local government elections as well as other UK elections and referendums.